

CASE NO. TO-2006-0299
MASTER LIST OF ISSUES BETWEEN CENTURYTEL AND SOCKET
ARTICLE I: SCOPE OF AGREEMENT

Issue Statement	Issue No.	Sec. Nos.	Socket Language	Socket Preliminary Position	CenturyTel Language	CenturyTel Preliminary Position
Should the Agreement explicitly recognize that CenturyTel and Spectra made commitments in the public interest when acquiring their respective service territories.	1	Whereas clauses	<p>For CenturyTel WHEREAS, CenturyTel of Missouri, LLC made certain commitments pertaining to interconnection agreements in Case No. TM-2002-232 when it acquired its service territory from GTE Midwest, Inc. d/b/a Verizon Midwest, Inc.</p> <p>For Spectra Whereas, Spectra Communications Group d/b/a CenturyTel made certain commitments pertaining to interconnection agreements in Case No. TM-2000-182 when it acquired its service territory from GTE Midwest, Inc.</p>	The ICAs between Socket and the respective CenturyTel entities should contain language in the Whereas clauses that explicitly acknowledges that CenturyTel made representations to the Commission in order to receive approval for the transfer of exchanges from GTE to CenturyTel. Those commitments, such as assuring the Commission that it would match GTE’s electronic ordering and provisioning systems, were instrumental in convincing the Commission that the transaction was in the public interest. To the extent that the commitments have not yet been met, or have been met but might be abandoned, these Whereas clauses will remind CenturyTel of its obligations within the body of the contract.	None.	<p>Socket’s demand to include extraneous whereas clauses in the parties’ successor ICA is unlawful and is inappropriate as a matter of policy.</p> <p>The Commission should reject Socket's effort to impose obligations on CenturyTel in the parties' successor ICA that are beyond the scope of CenturyTel’s obligations under sections 251 and 252 of the FTA. Initially, not only does Socket fail to demonstrate the purported "commitments" at issue, but the Commission lacks federally delegated compulsory arbitration jurisdiction to adopt contract language in this section 251/252 proceeding relating to certain unspecified and ambiguous prior non-251/252 "commitments." The parties did not negotiate any such "commitments" and this Commission’s jurisdiction is inherently limited to CenturyTel's section 251 obligations. <i>See, e.g., CoServ v. Southwestern Bell Tel. Co.</i>, 350 F.3d 482 (5th Cir. 2003). To the extent that Socket's proposed language does not relate to CenturyTel's section 251(b) or (c) obligations, which it does not, it is not subject to compulsory arbitration by state commissions under the FTA. The proposed language at issue, in short, does not belong in a section 251/252</p>

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						<p>ICA.</p> <p>Further, independent of the fact that state commission compulsory arbitration jurisdiction does not extend to such non-251 obligations, Socket's proposed language is unnecessary and inappropriate from a contract drafting perspective. To the extent that the Commission has previously ordered CenturyTel to adhere to "certain commitments," those commitments are presumably independently enforceable by the Commission and need not be redundantly reflected again in the successor ICA resulting from this proceeding. Concomitantly, the successor ICA should not purport to impose additional obligations relating to "certain commitments" that the Commission refrained from imposing on CenturyTel. Either way, the successor ICA should not include Socket's proposed language. Further, Socket's proposal would needlessly inject additional ambiguity and uncertainty into the parties' agreement, potentially leading to future disputes requiring Commission resolution. Referring to unspecified "certain commitments" is overly broad and fails to set forth with particularity the parties' obligations and commitments.</p> <p>Moreover, Article III, Section 51 provides that this Agreement constitutes</p>

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						<p>the entire agreement between CenturyTel and Socket, and the language of Section 51 has been accepted by Socket. Accordingly, the provisions of this Agreement will be the comprehensive and exclusive statement of the terms and conditions relating to interconnection between CenturyTel and Socket, and the reference to prior regulatory proceedings is unnecessary. Any matter in the record of such prior proceedings that relates to terms and conditions of interconnection between CenturyTel and Socket will be superseded by the terms and conditions of the interconnection agreement approved by the Commission in this proceeding. CenturyTel should be allowed to rely on the Agreement approved by the Commission as the final and exclusive statement of its interconnection obligations with Socket, and Socket should not be allowed--once the Agreement is approved--to argue that the record of prior regulatory proceedings should be used to modify or interpret the provisions of the final Agreement. To help ensure that such an argument is not made, the two "Whereas" clauses suggested by Socket should be deleted.</p> <p>Finally, the whereas clauses are designed to provide context and/or additional clarification regarding contractual obligations memorialized</p>

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						subsequently in the parties' contract. Socket's proposed clauses do not do that. Rather than providing any context for subsequent commitments, Socket would apparently impose additional, unspecified obligations on CenturyTel independent of its section 251 obligations. Socket cannot impose any such additional obligations on CenturyTel in a section 251/252 interconnection agreement that are not themselves moored in section 251.

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