

CASE NO. TO-2006-0299
MASTER LIST OF ISSUES BETWEEN CENTURYTEL AND SOCKET
ARTICLE III: GENERAL PROVISIONS

Issue Statement	Issue No.	Sec. Nos.	Socket Language	Socket Preliminary Position	CenturyTel Language	CenturyTel Preliminary Position
Should the Agreement contain comprehensive OSS terms and conditions?	1	8.0	8.0 This agreement contains comprehensive OSS terms and conditions. Socket represents, warrants and covenants that it will only use OSS furnished pursuant to this Agreement for activities related to UNEs, resold services or other services covered by the Agreement, and for which this Agreement contains explicit rates, terms, and conditions.	Socket is entitled to efficient and effective provisioning of wholesale facilities under CenturyTel’s FTA § 251(c) obligations. Socket therefore has proposed Article XIII-OSS, that lays out reasonable terms and conditions governing the interface between Socket and CenturyTel in the ordering and provisioning systems. Section 8.0 of this Article III merely references and acknowledges that the Agreement contains the rates, terms and conditions contained in Article XIII. If the Commission approves the inclusion of an OSS Article in the Parties’ ICA, then this reference to that Article in the General Provisions is appropriate. See also Article XIII-OSS DPL.	<u>8.0 A Web based GUI, facsimile orders, and E-mail orders are currently being used for Socket to order services in accordance with the CenturyTel Service Guide. Conventional electronic ordering interface is not currently available. If CenturyTel later makes electronic interface ordering available to Socket, then the parties agree that, to the extent practicable, electronic interface will be used by Socket for ordering services and manual interface will be discontinued unless this is impracticable.</u>	In addition to the reasons more fully set forth in the DPL for Article XIII: OSS, the Commission should reject Socket’s proposed language here as unnecessary and unduly burdensome. The practical, operational, and policy ramifications of Socket’s OSS proposal should compel the Commission to reject it. CenturyTel does not dispute that Socket is entitled to efficient and effective provisioning of wholesale facilities under CenturyTel’s FTA §251(c) obligations, which CenturyTel provides. However, Socket demands that CenturyTel implement real time electronic pre-ordering and ordering systems for Interconnection, Resale, and UNE functions. CenturyTel estimates such system development would cost millions of dollars. Given the low CLEC order volumes CenturyTel experiences in Missouri and elsewhere in its system, the cost of electronic systems development is extremely prohibitive and is not a rational expenditure for CenturyTel’s Missouri ratepayers. Instead, the Commission should adopt CenturyTel’s proposal, which reflects the ordering system currently in place.
Should the payment due date be 45 calendar days	2	9.2, 9.3	9.2 Due Date Payment is due forty-five (45) days	The Parties’ dispute concerns whether payment is due to CenturyTel within 45 calendar days of the date printed on the	9.2 Due Date Payment is due <u>twenty (20) Business</u>	The Commission should reject Socket’s efforts to expand the payment period for undisputed charges from 30 days to 45

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or 20 business days from the bill date?			<p>from the bill date. If either Party fails to pay within forty-five (45) days after the bill date any and all undisputed charges billed under this Agreement, including any valid late payment charges (collectively, "Unpaid Charges"), excepting previously disputed charges for which Party may withhold payment, the Parties will utilize the procedures set forth in section 9.3 below.</p> <p>9.3 Default Notice of Nonpayment for Services</p> <p>Following such Default for services within the required forty-five (45) days following the bill date, the billing Party shall notify the billed Party in writing that it must pay all Unpaid Charges to the billing Party within twenty (20) Business days. If the billed Party disputes any or all of the Unpaid Charges, it shall, within said (20) twenty Business day notice period, deliver to the billing Party a written description of the disputed Unpaid Charges, including the specific details and reasons for the dispute, unless such reasons have been previously provided in writing, and shall immediately pay to the billing Party all undisputed Unpaid Charges. Failure of a Party to pay undisputed Unpaid Charges will constitute Default as defined in Section 2.2 of Article III.</p>	<p>bill or within 20 business days (or approximately 30 calendar days) from the date printed on the bill. Socket seeks a longer time period for several reasons.</p> <p>First, there is not necessarily a correlation between the "bill date" and the date that Socket receives the bill and can begin processing it. Building in an extra cushion will help give Socket sufficient time to review the charges even if CenturyTel delays sending the bill past the "bill date" or if there are further delays because of mail time. Socket needs a reasonable amount of time to review the bills because they are typically lengthy and complicated, and require significant manual effort to ensure that the billing is accurate. Having a longer period before the bill is due also enables Socket and CenturyTel to review and resolve possible discrepancies prior to the date the payment is due, rather than Socket having to withhold funds and dispute later. Enabling a reasonable amount of time for processing and paying the bill will therefore benefit both parties.</p>	<p><u>Days</u> from the bill date. If either Party fails to pay within <u>twenty (20) Business Days</u> after the bill date any and all undisputed charges billed under this Agreement, including any valid late payment charges (collectively, "Unpaid Charges"), excepting previously disputed charges for which Party may withhold payment, the Parties will utilize the procedures set forth in section 9.3 below.</p> <p>9.3 Default Notice of Nonpayment for Services</p> <p>Following such Default for services within the required <u>twenty (20) Business Days</u> following the bill date, the billing Party shall notify the billed Party in writing that it must pay all Unpaid Charges to the billing Party within twenty (20) Business days. If the billed Party disputes any or all of the Unpaid Charges, it shall, within said (20) twenty Business day notice period, deliver to the billing Party a written description of the disputed Unpaid Charges, including the specific details and reasons for the dispute, unless such reasons have been previously provided in writing, and shall immediately pay to the billing Party all undisputed Unpaid Charges. Failure of a Party to pay undisputed Unpaid Charges will constitute Default as defined in Section 2.2 of Article III.</p>	<p>days. CenturyTel should not be subject to such an undue delay in receiving payment relating to undisputed charges for services rendered. Indeed, CenturyTel's proposal is commercially reasonable in all respects.</p> <p>Socket's demanded payment delay is unwarranted and would result in expensive and unnecessary changes to CenturyTel's billing systems. First, contrary to Socket's claims, CenturyTel's bills are not "typically lengthy and complicated, and require significant manual effort to ensure that the billing is accurate." On average, the CABs bills to Socket are 9 pages and its bills for other services, which are processed in CenturyTel's Ensemble billing system, are also very small, mostly in the neighborhood of only 4 pages. Indeed, in researching Socket's complaint, the largest Socket Ensemble bill CenturyTel reviewed was 19 pages in length. Nor are the charges complicated for resold basic local services, UNEs and service charges. While it may be true that SBC produces substantially longer and significantly more complicated bills, CenturyTel is not SBC and should not be subject to inapplicable SBC-oriented obligations.</p> <p>Moreover, the Commission should reject Socket's demand because it would</p>

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			<p>9.5 Dispute</p> <p>Disputing Party shall notify the billing Party in writing regarding the nature and the basis of any dispute relating to unpaid charges within forty-five (45) days of the bill date or up to one year for paid charges, subject to any State regulatory requirements. The Parties shall diligently work toward resolution of all billing issues.</p>		<p>9.5 Dispute</p> <p>Disputing Party shall notify the billing Party in writing regarding the nature and the basis of any dispute relating to unpaid charges within <u>twenty (20) Business Days</u> of the bill date or up to one year for paid charges, subject to any State regulatory requirements. The Parties shall diligently work toward resolution of all billing issues.</p>	<p>require considerable time and expense for CenturyTel to write programs to change the handling of bills for Socket. This company and any that opted into this agreement are the only companies for which CenturyTel would provide these payment terms, so it is difficult to justify the amount of work and cost that would be involved to make this change. Socket should currently be receiving its CABS bill within 4-7 days of the bill date and CenturyTel also offers options for faster review and payment of these bills. For example, CenturyTel offers “MyAccount,” which is an online service that allows CenturyTel customers to review and pay their Ensemble bills online. The bills are usually available for review 5-7 days after the bill date. These bills are also available in electronic format within that same time frame. Companies that utilize the electronic format can incorporate that format into their own systems and electronically analyze the data. Using either MyAccount or the electronic bill along with online payment shortens the turnaround period considerably as compared to waiting for a paper bill and remitting payment using the postal system. Since CenturyTel has alternatives available for Socket to review its bills and remit payment that would shorten the time it has for receipt and review of its bills, the Commission</p>

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						should not extend the due date of undisputed bills to 45 calendar days.
Should the traffic factors address all jurisdictions of traffic using defined terms? RESOLVED	3	10.2, 10.3	<p>10.2 Percent Local Use</p> <p>Upon request of either Party, each Party will report to the other an accurate Percentage Local Usage (“PLU”). The application of the PLU will determine the amount of Local Interconnection Traffic minutes to be billed to the other Party. For purposes of developing the PLU, each Party shall consider every Local Interconnection Traffic call and every non-Local Interconnection Traffic call, excluding intermediary traffic. PLU requests shall be made no more frequently than every twelve (12) months. Notwithstanding the foregoing, where the terminating Party has message recording technology that identifies the jurisdiction of traffic terminated as defined in this Agreement, such information, in lieu of the PLU factor, shall, at the terminating Party’s option, be utilized to determine the appropriate Local Interconnection Traffic usage compensation to be paid.</p> <p>10.3 Percentage Interstate Usage</p> <p>In the case where Socket desires to terminate its Local Interconnection Traffic over or co-mingled on its</p>	<p>Socket has proposed a definition for “Local Interconnection Traffic” that specifies the universe of traffic that is subject to interconnection obligations. Both Parties have proposed competing definitions of “Local Traffic” that is a subset of “Local Interconnection Traffic” and is more restrictive. Because CenturyTel has an obligation to carry a broader scope of traffic over interconnection trunks than is covered by the definition of “Local Traffic,” Socket has specified that the broader term “Local Interconnection Traffic” is appropriate in the provisions concerning percent local use and percentage interstate usage.</p>	<p>10.2 Percent Local Use</p> <p>Upon request of either Party, each Party will report to the other an accurate Percentage Local Usage (“PLU”). The application of the PLU will determine the amount of Local Interconnection Traffic minutes to be billed to the other Party. For purposes of developing the PLU, each Party shall consider every Local Interconnection Traffic call and every non-Local Interconnection Traffic call, excluding intermediary traffic. PLU requests shall be made no more frequently than every twelve (12) months. Notwithstanding the foregoing, where the terminating Party has message recording technology that identifies the jurisdiction of traffic terminated as defined in this Agreement, such information, in lieu of the PLU factor, shall, at the terminating Party’s option, be utilized to determine the appropriate Local Interconnection Traffic usage compensation to be paid.</p> <p>10.3 Percentage Interstate Usage</p> <p>In the case where Socket desires to terminate its Local Interconnection Traffic over or co-mingled on its</p>	<p>This issue has been resolved. CenturyTel has agreed to accept Socket’s proposed language as shown.</p>

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			switched access Feature Group D trunks, Socket will be required to provide a projected Percentage Interstate Usage (“PIU”) to CTOC. All jurisdictional report requirements, rules and regulations for Interexchange Carriers specified in CTOC’s Interstate Access Services Tariff will apply to Socket. After interstate and intrastate traffic percentages have been determined by use of PIU procedures, the PLU factor will be used for application and billing of local interconnection. Notwithstanding the foregoing, where the terminating Party has message recording technology that identifies the jurisdiction of traffic terminated as defined in this Agreement, such information, in lieu of the PIU and PLU factor, shall, at the terminating Party’s option, be utilized to determine the appropriate local usage compensation to be paid.		switched access Feature Group D trunks, Socket will be required to provide a projected Percentage Interstate Usage (“PIU”) to CTOC. All jurisdictional report requirements, rules and regulations for Interexchange Carriers specified in CTOC’s Interstate Access Services Tariff will apply to Socket. After interstate and intrastate traffic percentages have been determined by use of PIU procedures, the PLU factor will be used for application and billing of local interconnection. Notwithstanding the foregoing, where the terminating Party has message recording technology that identifies the jurisdiction of traffic terminated as defined in this Agreement, such information, in lieu of the PIU and PLU factor, shall, at the terminating Party’s option, be utilized to determine the appropriate local usage compensation to be paid.	
Must written notices initiating the dispute resolution process be subject to the delays inherent in registered mail, or may the process be initiated by electronic mail followed by	4	18.2	18.2 Negotiations Upon written notice from either Party initiating the dispute resolution process, each Party will appoint a knowledgeable, responsible and empowered representative to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The Parties intend that these negotiations be conducted by	When the Parties have a dispute that is significant enough to warrant using the more formal dispute resolution proceedings set out in the ICA, then time is usually of the essence in beginning the resolution process. Socket’s language permits the process to begin immediately by notification through electronic mail, but also ensures that the proper personnel are alerted to the dispute through a follow-up with	18.2 Negotiations Upon written notice from either Party initiating the dispute resolution process, each Party will appoint a knowledgeable, responsible and empowered representative to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The Parties intend that these negotiations be conducted by	This issue has been resolved. CenturyTel has agreed to accept the Socket proposed language as shown.

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registered mail? RESOLVED			business representatives. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives, except that the Parties' representatives will hold an initial discussion within ten (10) days of the written request initiating the dispute resolution process. Written requests may be provided via electronic mail followed by registered mail to the contacts listed in this agreement.	registered mail. Resolution of a dispute between the Parties should not be put on hold because of mail delays.	business representatives. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives, except that the Parties' representatives will hold an initial discussion within ten (10) days of the written request initiating the dispute resolution process. Written requests may be provided via electronic mail followed by registered mail to the contacts listed in this agreement.	
Should mutual agreement be required before a Party may seek resolution of a dispute from the Commission? RESOLVED	5	18.3	18.3 Arbitration If the negotiations do not resolve the dispute within thirty (30) days of the initial written request, the dispute shall be submitted to binding arbitration. The parties may mutually agree to postpone submitting the dispute to binding arbitration. At the election of either Party, arbitration shall be before the Commission, FCC, or court of competent jurisdiction. Otherwise, arbitration shall be by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association ("AAA") except that the Parties may select an arbitrator outside American Arbitration Association rules upon mutual agreement. If the State Commission is selected as the arbitrator, its arbitration rules shall apply. Otherwise, the rules described in part (a) below shall be applicable. Nothing	While the Parties agree that binding arbitration may be appropriate for resolution of a dispute, the Parties disagree about the circumstances under which the dispute can be submitted to this Commission or the FCC or a court. Socket's position is that there should not have to be an agreement of the Parties before one Party seeks resolution outside the commercial arbitration context. In the case of a customer-affecting dispute, Socket (and CenturyTel) should retain the ability to seek Commission intervention. Similarly, in extreme situations where an injunction is necessary and appropriate, the Parties should not have to seek permission in order to go to court. Socket's language retains the intent of keeping down the cost of litigation through the arbitration process, while allowing for exceptions for emergency situations.	18.3 Arbitration If the negotiations do not resolve the dispute within thirty (30) days of the initial written request, the dispute shall be submitted to binding arbitration. The parties may mutually agree to postpone submitting the dispute to binding arbitration. At the election of either Party, arbitration shall be before the Commission, FCC, or court of competent jurisdiction. Otherwise, arbitration shall be by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association ("AAA") except that the Parties may select an arbitrator outside American Arbitration Association rules upon mutual agreement. If the State Commission is selected as the arbitrator, its arbitration rules shall apply. <u>Commission, FCC, or court of competent jurisdiction.</u> Nothing herein	This issue has been resolved. CenturyTel has agreed to accept the language proposed by Socket as shown.

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			herein shall limit the right of either Party to bring a matter to court for injunctive relief or to address matters outside the scope of the agreement.		shall limit the right of either Party to bring a matter to court for injunctive relief or to address matters outside the scope of the agreement.	
Should changes in standard practice be governed by the process proposed by Socket?	6		<p>24.0 STANDARD PRACTICES</p> <p>The Parties acknowledge that CenturyTel shall be adopting some industry standard practices and/or establishing its own standard practices to various requirements hereunder applicable to the CLEC industry which may be added in the CenturyTel Service Guide. Socket agrees that CenturyTel may implement such practices to satisfy any CenturyTel obligations under this Agreement; provided however that changes to standard practices will be done according to the Network Maintenance, Management, and Change Management provisions set forth in Section 54. Where a dispute arises between the Parties with respect to a conflict between the CenturyTel Service Guide and this Agreement, the terms of this Agreement shall prevail.</p> <p>54.0 NETWORK MAINTENANCE, MANAGEMENT AND CHANGE MANAGEMENT</p> <p>54.1 The Parties will work cooperatively to implement this Agreement. The Parties will exchange</p>	<p>The Parties have agreed to the majority of the terms to govern changes in standard practices, with the exception of the notice and implementation of changes in network maintenance, management and change management found in Socket’s proposed Section 54.5. Socket’s proposal envisions a more formal notification for significant changes and a greater level of cooperation between the Parties in effecting those changes. Because CenturyTel’s changes in these areas can have a significant impact on Socket’s operations, it is important for Socket to be fully involved in their implementation.</p>	<p>24.0 STANDARD PRACTICES</p> <p>The Parties acknowledge that CenturyTel shall be adopting some industry standard practices and/or establishing its own standard practices to various requirements hereunder applicable to the CLEC industry which may be added in the CenturyTel Service Guide. Socket agrees that CenturyTel may implement such practices to satisfy any CenturyTel obligations under this Agreement; provided however that changes to standard practices will be <u>posted on the CenturyTel web site</u> as set forth in Section 54. Where a dispute arises between the Parties with respect to a conflict between the CenturyTel Service Guide and this Agreement, the terms of this Agreement shall prevail.</p> <p>54.0 NETWORK MAINTENANCE, MANAGEMENT AND CHANGE MANAGEMENT</p> <p>54.1 The Parties will work cooperatively to implement this Agreement. The Parties will exchange</p>	<p>The Commission should reject Socket’s proposed contract language because it purports to erect an unduly burdensome, potentially problematic, and unnecessary mechanism for CenturyTel to notify Socket of changes in certain practices. Rather than Socket’s unwieldy proposal, CenturyTel reasonably proposes that all changes to practices be posted on the CenturyTel web site accessible to CLECs, prior to implementation. In this manner, all CLECs are uniformly and promptly advised of changes that may impact them and they would still have the right and ability to request that changes be delayed or modified where there is an adverse business impact. In addition, CenturyTel also affords CLECs the right to escalation through the dispute resolution process. In the end, CenturyTel’s proposal should satisfy Socket’s requirements, while remaining administratively manageable and providing the same information on the same basis at the same time to all CLECs.</p>

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			<p>appropriate information (e.g., maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the Government, etc.) to achieve this desired reliability.</p> <p>54.2 Each Party will provide a 24-hour contact number for Network Traffic Management issues to the other's surveillance management center.</p> <p>54.3 Neither Party will use any service provided under this Agreement in a manner that impairs the quality of service to other carriers nor to either Party's subscribers. Either Party will provide the other Party notice of said impairment at the earliest practicable time.</p> <p>54.4 Consistent with Section 12.1, CenturyTel agrees to provide Socket with advance notice of changes in the information necessary for the transmission and routing of services using CenturyTel's facilities or networks, as well as other changes that affect the interoperability of those respective facilities and networks. This Agreement is not intended to limit CenturyTel's ability to upgrade its network through the incorporation of new equipment, new software or otherwise nor to limit Socket's access to</p>		<p>appropriate information (e.g., maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the Government, etc.) to achieve this desired reliability.</p> <p>54.2 Each Party will provide a 24-hour contact number for Network Traffic Management issues to the other's surveillance management center.</p> <p>54.3 Neither Party will use any service provided under this Agreement in a manner that impairs the quality of service to other carriers nor to either Party's subscribers. Either Party will provide the other Party notice of said impairment at the earliest practicable time.</p> <p>54.4 Consistent with Section 12.1, CenturyTel agrees to provide Socket with advance notice of changes in the information necessary for the transmission and routing of services using CenturyTel's facilities or networks, as well as other changes that affect the interoperability of those respective facilities and networks. This Agreement is not intended to limit CenturyTel's ability to upgrade its network through the incorporation of new equipment, new software or otherwise nor to limit Socket's access to</p>	

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			<p>UNEs provided over those facilities.</p> <p>54.5 Notification will be provided via email followed by registered mail to designated Socket contacts CenturyTel shall designate a qualified person who can be contacted by Socket to provide clarification of the scope of the change and timeline for implementation. Either Party may request the assignment of project team resources for implementation of the change. Notwithstanding the foregoing, Socket reserves its right to request changes to be delayed or otherwise modified where there is an adverse business impact on Socket, with escalation through the dispute resolution process.</p>		<p>UNEs provided over those facilities.</p> <p>54.5 All changes to standard practices will be posted on the CenturyTel web site prior to implementation. Posting will include CenturyTel personnel who may be contacted by Socket to provide clarification of the scope of the change and timeline for implementation. Socket reserves its right to request changes to be delayed or otherwise modified where there is an adverse business impact on Socket, with escalation through the dispute resolution process.</p>	
Should the Parties' liability to each other be limited as Socket proposes?	7	<u>28</u>	<p>28.0 LIABILITY AND INDEMNITY</p> <p>28.1 Indemnification</p> <p>Subject to the limitations set forth in Section 28.3.1 of this Article III, each Party agrees to release, indemnify, defend, and hold harmless the other Party from all losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees,</p>	<p>In § 28.4.2, Socket proposes that the Parties' liability to each other should be limited to the amount charged to Socket by CenturyTel. This additional provision reinforces the subsequent agreed portion of § 28.5, wherein the Parties have agreed that no consequential damages are due as a result of the Parties' dealings with each other. Such a limitation is standard in business contracts, and was included in the contract approved by the PSC in Docket No. TO-2005-0336, for the interconnection agreement between</p>	<p>28.0 LIABILITY AND INDEMNITY</p> <p>28.1 Indemnification</p> <p>Each Party <u>(the "Indemnifying Party")</u> agrees to indemnify, defend, and hold harmless the other Party <u>(the "Indemnified Party")</u> and the other Party's subsidiary and parent entities, predecessors, successors, affiliates, and assigns, as well as all of their respective <u>current and former officers, directors,</u></p>	<p>The Commission should reject Socket's proposed language because it is in certain respects inapplicable to CenturyTel, is not reasonable, and presents undue problems for the parties.</p> <p>First, Socket inappropriately attempts to impose inapplicable SBC-oriented obligations on CenturyTel by proposing contract language that is virtually verbatim cut-and-pasted from the SBC successor ICA to the M2A. Socket's effort in that regard must fail. CenturyTel is not SBC and the</p>

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			whether suffered, made, instituted, or asserted by any other party or person, for invasion of privacy, personal injury to or death of any person or persons, or for losses, damages, or destruction of property, whether or not owned by others, proximately caused by the indemnifying Party's negligence or willful misconduct, regardless of form of action. The indemnified Party agrees to notify the other Party promptly, in writing, of any written claims, lawsuits, or demands for which it is claimed that the indemnifying Party is responsible under this Section and to cooperate in every reasonable way to facilitate defense or settlement of claims. The indemnifying Party shall have complete control over defense of the case and over the terms of any proposed settlement or compromise thereof. The indemnifying Party shall not be liable under this Section for settlement by the indemnified Party of any claim, lawsuit, or demand, if the indemnifying Party has not approved the settlement in advance, unless the indemnifying Party has had the defense of the claim, lawsuit, or demand tendered to it in writing and has failed to assume such defense. In the event of such failure to assume defense, the indemnifying	Socket and SBC Missouri. Socket also proposes an addition to §28.5 to clarify that liability should not be limited in the case of willful misconduct or if the liability arises because of bodily injury. In such cases, public policy dictates that damages should not be limited.	<u>members, shareholders, agents, and employees, from any and all Claims. "Claim" means any action, cause of action, suit, proceeding, claim, or demand of any third party (and all resulting judgments, bona fide settlements, penalties, damages, losses, liabilities, costs, and expenses (including, but not limited to, reasonable costs and attorney's fees)), (a) based on allegations that, if true, would establish (i) the Indemnifying Party's breach of this Agreement; (ii) the Indemnifying Party's misrepresentation, fraud or other misconduct; (iii) the Indemnifying Party's negligence; (iv) infringement by the Indemnifying Party or by any Indemnifying Party product or service of any patent, copyright, trademark, service mark, trade name, right of publicity or privacy, trade secret, or any other proprietary right of any third party; (v) the Indemnifying Party's liability in relation to any material that is defamatory or wrongfully discloses private or personal matters; or (vi) the Indemnifying Party's wrongful use or unauthorized disclosure of data; or (b) that arises out of (i) any act or omission of the Indemnifying Party or its subcontractors or agents relating to the Indemnifying Party's performance or obligations under this Agreement; (ii) any act or omission of the Indemnifying Party's customer(s) or end</u>	Commission should not adopt contract language as if it were. Instead, CenturyTel is a non-RBOC ILEC serving relatively smaller communities in Missouri. Although CenturyTel has operations in numerous other states, Missouri represents one of the very few instances in which CenturyTel has received any UNE orders. Moreover, those UNE orders derive from a total of three CLECs, the largest of which, Socket, has only ordered a small number of UNEs (all of which are DS1 loops). Quite simply, CenturyTel is much smaller than SBC, operates on a different size and scale, operates a substantially different network, has different economies of scale/scope, serves geographic areas with much less population density, and has fundamentally different operations, procedures, mechanisms, and capabilities. This proceeding is about developing an ICA for Socket and CenturyTel, it is not about replacing the M2A for SBC. That the Commission may have approved similar language as to SBC in an entirely different context is irrelevant to resolution of this dispute between Socket and CenturyTel. Socket cannot prevail in its effort to compel CenturyTel to mirror SBC's operations and offerings.

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			<p>Party shall be liable for any reasonable settlement made by the Indemnified Party without approval of the indemnifying Party.</p> <p>28.2 End-User and Content-Related Claims</p> <p>The Indemnifying Party agrees to release, indemnify, defend, and hold harmless the other Party, its affiliates, and any third-party provider or Operator of facilities involved in the provision of services, UNEs or Facilities under this Agreement (collectively, the "Indemnified Party") from all losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees, suffered, made, instituted, or asserted by the Indemnifying Party's end-users against an Indemnified Party arising from Services, UNEs or Facilities. The Indemnifying Party further agrees to release, indemnify, defend, and hold harmless the Indemnified Party from all losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees, suffered, made, instituted, or asserted by any third party against an</p>		<p><u>user(s); (iii) the bodily injury or death of any person, or the loss or disappearance of or damage to the tangible property of any person, relating to the Indemnifying Party's performance or obligations under this Agreement; (iv) the Indemnifying Party's design, testing, manufacturing, marketing, promotion, advertisement, distribution, lease or sale of services and/or products to its customers, or such customers' use, possession, or operation of those services and/or products; or (v) personal injury to or any unemployment compensation claim by one of more of the Indemnifying Party's employees, notwithstanding any protections the Indemnifying Party might otherwise have under applicable workers' compensation or unemployment insurance law, which protections the Indemnifying Party waives for purposes of this Section 28.1. "Reasonable costs and attorney's fees" as used in this Section 28.1 includes without limitation fees and costs incurred to interpret or enforce this Section 28.1. The Indemnified Party will provide the Indemnifying Party with reasonably prompt written notice of any Claim. At the Indemnifying Party's expense, the Indemnified Party will provide reasonable cooperation to the Indemnifying Party in connection with the defense or settlement of any Claim.</u></p>	<p>Moreover, CenturyTel's proposed contract language, which is specifically tailored to the parties' relationship and operations, better serves the parties and the industry. For example, CenturyTel's proposed language includes commercially reasonable contract terms, resolves internal inconsistencies that may arise from Socket's language, is more comprehensive in addressing likely situations that may arise, and provides greater clarity and less ambiguity than Socket's proposed language. In short, CenturyTel's proposed language better deals with the relationship, operations, and dealings of these specific parties, and does so in a commercially reasonable manner. Therefore, the Commission should adopt CenturyTel's proposed language.</p>

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CASE NO. TO-2006-0299
MASTER LIST OF ISSUES BETWEEN CENTURYTEL AND SOCKET
ARTICLE III: GENERAL PROVISIONS

Issue Statement	Issue No.	Sec. Nos.	Socket Language	Socket Preliminary Position	CenturyTel Language	CenturyTel Preliminary Position
			<p>Indemnified Party arising from or in any way related to actual or alleged defamation, libel, slander, interference with or misappropriation of proprietary or creative right, or any other injury to any person or property arising out of content transmitted by the Indemnifying Party to the Indemnified Party or such Party's end-users.</p> <p>28.3 DISCLAIMER</p> <p>28.3.1 EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, AND IN APPLICABLE LAW, PROVIDER MAKES NO REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES, UNEs OR FACILITIES PROVIDED UNDER THIS AGREEMENT. PROVIDER DISCLAIMS, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.</p>		<p><u>The Indemnified Party may, at its expense, employ separate counsel to monitor and participate in the defense of any Claim.</u></p> <p>Notwithstanding anything to the contrary in this Section 28.1, a Party may not seek indemnification with respect to any Claim by that Party's customer(s) or end user(s), but rather shall be the Indemnifying Party with respect to all Claims by its customer(s) and end user(s).</p> <p>The Indemnifying Party agrees to release, indemnify, defend, and hold harmless the other Party, its affiliates, and any third-party provider or Operator of facilities involved in the provision of services, UNEs or Facilities under this Agreement (collectively, the "Indemnified Party") from all losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees, suffered, made, instituted, or asserted by the Indemnifying Party's customer(s) or end-user(s) against an Indemnified Party arising from Services, UNEs or Facilities. The Indemnifying Party further agrees to release, indemnify, defend, and hold harmless the Indemnified Party from all losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees, suffered, made, instituted, or asserted by any third party against an Indemnified Party arising from or in any way related to actual or alleged defamation, libel, slander, interference with or misappropriation of proprietary or creative right, or any other injury to any person or property arising out of content transmitted by the Indemnifying Party to the Indemnified Party or such Party's customer(s) or end-user(s).</p> <p>28.2 <u>DISCLAIMER OF WARRANTIES</u></p>	

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ARTICLE III: GENERAL PROVISIONS

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			<p>28.4 Limitation of Liability</p> <p>28.4.1 Each Party's liability, whether in contract, tort or otherwise, shall be limited to direct damages, which shall not exceed the monthly charges, plus any related costs/expenses the other party may recover, including those under Section 17 above, and plus any costs/expenses for which the Parties specify reimbursement in this Agreement for the services or facilities for which the claim of liability arose.</p> <p>28.4.2 Except as specifically stated in this Agreement, the Parties' liability to each other during any Contract Year resulting from any and all causes, other than as specified below and for willful or intentional misconduct (including gross negligence), will not exceed the total of any amounts charged to Socket by CenturyTel under this Agreement during the Contract Year in which such cause accrues or arises. For purposes of this Section, the first Contract Year commences on the first day this Agreement becomes effective and each subsequent Contract Year commences on the day following that anniversary date.</p>		<p><u>EXCEPT FOR THOSE WARRANTIES EXPRESSLY PROVIDED IN THIS AGREEMENT OR BY STATUTE, EACH PARTY ON BEHALF OF ITSELF AND ITS AFFILIATES AND SUPPLIERS DISCLAIMS ALL WARRANTIES AND DUTIES, WHETHER EXPRESS OR IMPLIED, AS TO THE SERVICES, PRODUCTS AND ANY OTHER INFORMATION OR MATERIALS EXCHANGED BY THE PARTIES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES, DUTIES, OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, REASONABLE CARE, WORKMANLIKE EFFORT, RESULTS, LACK OF NEGLIGENCE, OR ACCURACY OR COMPLETENESS OF RESPONSES. THERE IS NO WARRANTY OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION, AUTHORITY, OR NON-INFRINGEMENT WITH RESPECT TO THE SERVICES, PRODUCTS, AND ANY OTHER INFORMATION OR MATERIALS EXCHANGED BY THE PARTIES UNDER THIS AGREEMENT.</u></p> <p>28.3 Limitation of Liability;</p>	

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CASE NO. TO-2006-0299
MASTER LIST OF ISSUES BETWEEN CENTURYTEL AND SOCKET
ARTICLE III: GENERAL PROVISIONS

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			<p>28.5 No Consequential Damages</p> <p>EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, NEITHER SOCKET NOR CENTURYTEL WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES SUFFERED BY SUCH OTHER PARTY (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY SUCH OTHER PARTY), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING WITHOUT LIMITATION, NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER THE PARTIES KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT. Should either Party provide advice, make recommendations, or supply other analysis related to the services or facilities described in this Agreement, this limitation of liability shall apply to the provision of such advice, recommendations, and analysis.</p>		<p><u>Disclaimer of Consequential Damages; Exceptions</u></p> <p>28.3.1 Except as <u>provided in Section 28.3.3</u>, each Party's liability, whether in contract, tort or otherwise, shall be limited to direct damages, which shall not exceed the monthly charges, plus any related costs/expenses the other party may recover, including those under Section 17 above, and plus any costs/expenses for which the Parties specify reimbursement in this Agreement for the services or facilities for which the claim of liability arose. Except as <u>provided in Section 28.3.3</u>, each Party's liability to the other during any Contract Year resulting from any and all causes will not exceed the total of any amounts charged to Socket by CenturyTel under this Agreement during the Contract Year in which such cause accrues or arises. For purposes of this Section <u>28.3.1</u>, the first Contract Year commences on the first day this Agreement becomes effective, and each subsequent Contract Year commences on the day following <u>the anniversary of that</u> date.</p> <p>28.3.2 EXCEPT AS PROVIDED IN <u>SECTION 28.3.3</u>, NEITHER <u>PARTY</u> WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT,</p>	

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CASE NO. TO-2006-0299
MASTER LIST OF ISSUES BETWEEN CENTURYTEL AND SOCKET
ARTICLE III: GENERAL PROVISIONS

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			EACH PARTY HEREBY RELEASES THE OTHER PARTY (AND SUCH OTHER PARTY'S SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS) FROM ANY SUCH CLAIM. NOTHING CONTAINED IN THIS SECTION WILL LIMIT THE LIABILITY OF EITHER CENTURYTEL OR SOCKET TO THE OTHER FOR (i) WILLFUL OR INTENTIONAL MISCONDUCT (INCLUDING GROSS NEGLIGENCE); (ii) BODILY INJURY, DEATH, OR DAMAGE TO TANGIBLE REAL OR TANGIBLE PERSONAL PROPERTY PROXIMATELY CAUSED BY THE NEGLIGENT ACT OR OMISSION OF EITHER PARTY HERETO OR THE NEGLIGENT ACT OR OMISSION OF THEIR RESPECTIVE AGENTS, SUBCONTRACTORS OR EMPLOYEES, NOR WILL ANYTHING CONTAINED IN THIS SECTION LIMIT THE PARTIES' INDEMNIFICATION OBLIGATIONS, AS SPECIFIED BELOW.		<p>INCIDENTAL, CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES SUFFERED BY SUCH OTHER PARTY (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY SUCH OTHER PARTY), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING WITHOUT LIMITATION NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER THE PARTIES KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT.</p> <p>Should either Party provide advice, make recommendations, or supply other analysis related to the services or facilities described in this Agreement, this limitation of liability shall apply to the provision of such advice, recommendations, and analysis.</p> <p><u>28.3.3 Section 28.3.1 and Section 28.3.2 do not apply to the following:</u></p> <ul style="list-style-type: none">• <u>Indemnification under Section 28.1</u>• <u>Breach of any obligation of confidentiality referenced in this</u>	

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ARTICLE III: GENERAL PROVISIONS

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					<u>Agreement</u> <ul style="list-style-type: none">• <u>Violation of security procedures</u>• <u>Any breach by Socket of any provision relating to Socket’s use of Operations Support Systems</u>• <u>Failure to properly safeguard, or any misuse of, customer data</u>• <u>Statutory damages</u>• <u>Liability for intentional or willful misconduct</u>• <u>Article IV (General Rules Governing Resold Services and Unbundled Elements), Section 2.2 and/or Section 2.3</u>• <u>Article XI (E911), Section 8.3 and/or Section 8.4</u>• <u>Socket’s obligations under Section 29.3 and/or Section 29.6 of this Article III</u>	
What are the Parties’ obligations and rights associated with intellectual property?	8		29.0 INTELLECTUAL PROPERTY	Socket believes that the Parties’ rights and obligations concerning use of a third party’s intellectual properly should be clearly delineated in the agreement, and such language should not be vague or summary in nature. Socket has therefore proposed the language previously approved by the PSC in Docket No. TO-2005-0336 for the interconnection agreement between Socket and SBC Missouri	29.0INTELLECTUAL PROPERTY 29.1 <u>Socket acknowledges that its right under this Agreement to interconnect with CenturyTel’s network and to unbundle and/or combine CenturyTel’s Unbundled Network Elements (including combining with Socket’s network elements) may be subject to or limited by Intellectual Property rights (including, without limitation, patent, copyright, trade</u>	Socket inappropriately attempts to impose inapplicable SBC-oriented obligations on CenturyTel by proposing contract language that is virtually verbatim cut-and-pasted from the SBC successor ICA to the M2A. Socket’s effort in that regard must fail. CenturyTel is not SBC and the Commission should not adopt contract language as if it were. Instead, CenturyTel is a non-RBOC ILEC serving relatively smaller communities in Missouri. Although CenturyTel has

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CASE NO. TO-2006-0299
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ARTICLE III: GENERAL PROVISIONS

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			<p>29.1 Socket acknowledges that services and facilities to be provided by CenturyTel hereunder may use or incorporate products, services or information proprietary to third party vendors and may be subject to third party intellectual property rights. In the event that proprietary rights restrictions in agreements with such third party vendors do not permit CenturyTel to provide to Socket, without additional actions or costs, particular unbundled Network Element(s) otherwise required to be made available to Socket under this Agreement, then, as may be required by applicable state or federal law:</p> <p>29.2 CenturyTel agrees to provide written notification to Socket, directly or through a third party, of such restrictions that extend beyond restrictions otherwise imposed under this Agreement or applicable Tariff restrictions; and</p> <p>29.3 For any new agreements that CenturyTel enters into or existing agreements that it renews, CenturyTel shall use its best efforts to procure rights or licenses to allow CenturyTel to provide to Socket the particular</p>		<p><u>secret, trademark, service mark, trade name and trade dress rights) and contract rights of third parties.</u></p> <p><u>29.2</u> Socket acknowledges that services and facilities to be provided by CenturyTel hereunder may use or incorporate products, services or information proprietary to third party vendors and may be subject to third party <u>Intellectual Property</u> rights. In the event that restrictions in agreements with such third party vendors <u>and/or such third party Intellectual Property rights</u> do not permit CenturyTel to provide to Socket, without additional actions or costs, particular <u>Unbundled</u> Network Element(s), products, services or facilities otherwise required to be made available to Socket under this Agreement, then, as may be required by applicable state or federal law:</p> <p><u>29.3</u> CenturyTel agrees to provide written notification to Socket, directly or through a third party, of such restrictions of which CenturyTel has actual notice, and Socket agrees not to act in violation of such restrictions or any third party Intellectual Property rights; and</p> <p><u>29.4</u> For any new Intellectual</p>	<p>operations in numerous other states, Missouri represents one of the very few instances in which CenturyTel has received any UNE orders. Moreover, those UNE orders derive from a total of three CLECs, the largest of which, Socket, has only ordered a small number of UNEs (all of which are DS1 loops). Quite simply, CenturyTel is much smaller than SBC, operates on a different size and scale, operates a substantially different network, has different economies of scale/scope, serves geographic areas with much less population density, and has fundamentally different operations, procedures, mechanisms, and capabilities. This proceeding is about developing an ICA for Socket and CenturyTel, it is not about replacing the M2A for SBC. That the Commission may have approved similar language as to SBC in an entirely different context is irrelevant to resolution of this dispute between Socket and CenturyTel. Socket cannot prevail in its effort to compel CenturyTel to mirror SBC's operations and offerings.</p> <p>Notwithstanding the initiation of this arbitration proceeding, CenturyTel fully intends, consistent with 4 CSR 240-36.040(5) (B), to continue negotiating with Socket to resolve disputes between</p>

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			<p>unbundled Network Element(s), on terms comparable to terms provided to CenturyTel, directly or on behalf of Socket (“Additional Rights/Licenses”).</p> <p>29.4 For any new agreements that CenturyTel enters into or existing agreements that it renews, in the event that CenturyTel, after using its best efforts, is unable to procure Additional Rights/Licenses for Socket, CenturyTel will promptly provide written notification to Socket of the specific facilities or equipment (including software) that it is unable to provide pursuant to the license, as well as any and all related facilities or equipment; the extent to which it asserts Socket's use has exceeded (or will exceed) the scope of the license; and the specific circumstances that prevented it from obtaining the revised provisions.</p> <p>29.5 In the event Socket provides in writing within thirty (30) calendar days of written notice in Section 7.3.8.3 above that CenturyTel has not exercised such best efforts, Socket may seek a determination through an expedited petition to the Missouri Public Service Commission as to whether CenturyTel has exercised such best efforts.</p>		<p>Property agreements that CenturyTel enters into or existing agreements that it renews, CenturyTel shall use <u>commercially reasonable</u> efforts to procure rights or licenses to allow CenturyTel to provide to Socket the particular <u>Unbundled Network Element(s)</u>, products, services or facilities identified in a written notification by Socket to CenturyTel (“Additional Rights <u>and</u> Licenses”).</p> <p><u>29.5</u> For any new Intellectual Property agreements that CenturyTel enters into or existing agreements that it renews, in the event that CenturyTel, after using <u>commercially reasonable</u> efforts, is unable to procure Additional Rights <u>and</u> Licenses for Socket, CenturyTel will promptly provide written notification to Socket of: <u>(i)</u> the specific Unbundled Network Element, product, service or facility that it is unable to provide; <u>(ii)</u> the extent to which CenturyTel believes that Socket's use the specific Unbundled Network Element, product, service or facility pursuant to this Agreement has exceeded (or will exceed) the scope of the <u>applicable agreement</u>; and <u>(iii)</u> the specific circumstances that prevented CenturyTel from obtaining the <u>provisions necessary to procure the Additional Rights and Licenses</u>.</p>	<p>the parties. To that end, CenturyTel anticipates being able to substantially resolve this issue. More specifically, CenturyTel agrees that the Parties’ rights and obligations concerning use of a third party’s intellectual property should be clearly delineated in the Agreement; accordingly, CenturyTel will accept the language proposed by Socket, subject to the revisions described below.</p> <ol style="list-style-type: none"> 1. The first subsection of the intellectual property section in the Socket / SBC Missouri agreement (section 7.3.4 of that agreement) has been added to clarify that Socket’s rights under the Agreement are subject to third party intellectual property rights (while Socket’s proposed revisions to the intellectual property section of the CenturyTel agreement are based on the Socket / SBC Missouri agreement, Socket did not include this subsection in its proposed revisions). 2. CenturyTel proposes language to make clear that, in addition to unbundled network elements, other products, services and facilities provided by CenturyTel pursuant to the Agreement may be subject to third party intellectual property

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CASE NO. TO-2006-0299
MASTER LIST OF ISSUES BETWEEN CENTURYTEL AND SOCKET
ARTICLE III: GENERAL PROVISIONS

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			<p>29.6 If and to the extent CenturyTel is unable to make all warranties required pursuant to this agreement without additional costs, including payment of additional fees, in renegotiating with its vendors or licensors, CenturyTel may seek recovery of such costs as are reasonable. Such additional costs shall be shared among all requesting carriers, including CenturyTel, provided, however, all costs associated with the extension of Intellectual Property rights to Socket pursuant to Section 7.3.8.2, including the cost of the license extension itself and the costs associated with the effort to obtain the license, shall be a part of the cost of providing the unbundled network element to which the Intellectual Property rights relate and apportioned to all requesting carriers using that unbundled network element including CenturyTel.</p> <p>29.7 Both Parties agree to promptly inform the other of any pending or threatened Intellectual Property Claims</p>		<p>29.6 In the event Socket provides notice to CenturyTel in writing within thirty (30) calendar days of <u>the</u> written notice referenced in Section <u>29.5</u> above that CenturyTel has not exercised such commercially reasonable efforts, Socket may seek a determination through an expedited petition to the Missouri Public Service Commission as to whether CenturyTel has exercised such commercially reasonable efforts.</p> <p><u>Socket shall promptly reimburse CenturyTel for all costs incurred by CenturyTel and/or CenturyTel's affiliates in connection with the procurement of Additional Rights and Licenses, including without limitation all software license fees and/or maintenance fees, or any increase thereof, incurred by CenturyTel or any CenturyTel affiliate. CenturyTel shall have the right to obtain reasonable assurances of such prompt reimbursement by Socket prior to the execution by CenturyTel or any CenturyTel affiliate of any new agreement or extension of any existing agreement relating to any Additional Rights and Licenses. In the event Socket fails to promptly reimburse CenturyTel for any such fee, then, in addition to other remedies available to CenturyTel under this Agreement, CenturyTel shall have no obligation to</u></p>	<p>rights.</p> <p>3. Socket is required to agree that it will not act in violation of applicable third party intellectual property rights.</p> <p>4. CenturyTel is required to use commercially reasonable efforts (as opposed to best efforts) to obtain the additional rights and licenses required to provide services to Socket. For example, CenturyTel should not be required to modify its own license rights in order to obtain license rights on Socket's behalf; rather, CenturyTel should only be required to obtain such license rights if this can be done on commercially reasonable terms (such as by payment of an additional license fee, which would be reimbursed by Socket).</p> <p>5. Socket is required to specify which license rights Socket wishes CenturyTel to procure, through such commercially reasonable efforts.</p> <p>6. Socket is required to reimburse CenturyTel for the costs incurred by CenturyTel or its affiliates in procuring license rights for Socket, and CenturyTel is not required to</p>

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			<p>of third parties that may arise in the performance of this Agreement.</p> <p>29.8 Any Intellectual Property originating from or developed by a Party shall remain in the exclusive ownership of that Party. Notwithstanding the exclusive ownership of Intellectual Property originated by a Party, the Party that owns such Intellectual Property will not assess a separate fee or charge to the other Party for the use of such Intellectual Property to the extent used in the provision of a product or service, available to either party under this Agreement, that utilizes such Intellectual Property to function properly.</p>		<p>provide to Socket any Unbundled Network Element, product, service or facility to which such Additional Rights and Licenses relate. <u>In the event any Unbundled Network Element to which the Additional Rights and Licenses relate is provided to any carrier(s) other than CenturyTel, CenturyTel’s affiliates and Socket, CenturyTel shall reasonably apportion among Socket and such non-CenturyTel carriers, on a prospective basis only, the costs incurred by CenturyTel and/or its affiliates in connection with the procurement and continuation of such Additional Rights and Licenses; provided, however, that such apportionment shall not apply to any previously incurred costs and shall apply only for the period of such provision to such carrier(s).</u></p> <p><u>29.7</u> Both Parties agree to promptly inform the other of any pending or threatened Intellectual Property Claims of third parties that may arise in the performance of this Agreement.</p> <p><u>29.8</u> Any Intellectual Property originating from or developed by a Party shall remain in the exclusive ownership of that Party. Notwithstanding the exclusive ownership of Intellectual Property originated by a Party, the Party that owns such Intellectual Property will</p>	<p>provide the services to which such license rights relate unless Socket provides such reimbursement. CenturyTel is required to apportion such costs in the event that, at the time each cost is incurred, the license rights benefit non-CenturyTel carriers in addition to Socket. No apportionment is made to CenturyTel or its affiliates as, by definition, the license rights apply to the services provided to non-CenturyTel entities, and CenturyTel would not have been required to incur the cost of procuring such licenses but for the obligation to provide services to Socket and other nonaffiliated carriers.</p>

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					not assess a separate fee or charge to the other Party for the use of such Intellectual Property to the extent used in the provision of a product or service, available to either party under this Agreement, that utilizes such Intellectual Property to function properly.	
Should the Agreement contain an obligation and a process for CenturyTel to communicate official information to Socket?	9	<u>32</u>	<p>32.2 CenturyTel shall communicate official information not covered by the Notice provisions above to Socket via an Accessible Letter notification process. This process shall cover a variety of subjects, including updates on products/services promotions; deployment of new products/services; modifications and price changes to existing products/services; cancellation or retirement of existing products/services; and operational issues.</p> <p>32.2.1 CenturyTel Accessible Letter notification will be via electronic mail (“e-mail”) distribution. Accessible Letter notification via e-mail will be deemed given as of the transmission date set forth on the e-mail message.</p> <p>32.2.2 Socket may designate up to a maximum of ten (10) recipients for Accessible Letter notification via e-mail.</p>	It is critical that CenturyTel notify Socket of any internal change that may affect Socket and the Parties’ relationship under the Agreement. While Socket is not insistent that the method of notice be termed an “Accessible Letter,” Socket believes both Parties will benefit from the example provided by SBC Missouri’s Accessible Letter system. Consequently Socket has proposed the same Accessible Letter language as that TO-2005-0336, for the interconnection agreement between Socket and SBC Missouri.	<p>32.2 CenturyTel shall communicate official information not covered by the Notice provisions above to Socket via <u>the CenturyTel Web Site</u>. This process shall cover a variety of subjects, including updates on products/services promotions; deployment of new products/services; modifications and price changes to existing products/services; cancellation or retirement of existing products/services; and operational issues.</p>	<p>While CenturyTel agrees to notify Socket of internal changes that may affect their relationship, Socket demands too much by way of the mechanism for such notification. The Commission should reject Socket’s excessive and unreasonable SBC-oriented demands.</p> <p>First, Socket inappropriately attempts to impose inapplicable SBC-oriented obligations on CenturyTel by proposing contract language that is virtually verbatim cut-and-pasted from the SBC successor ICA to the M2A. Socket’s effort in that regard must fail. CenturyTel is not SBC and the Commission should not adopt contract language as if it were. Instead, CenturyTel is a non-RBOC ILEC serving relatively smaller communities in Missouri. Although CenturyTel has operations in numerous other states, Missouri represents one of the very few instances in which CenturyTel has received any UNE orders. Moreover, those UNE orders derive from a total of</p>

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ARTICLE III: GENERAL PROVISIONS

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			32.2.3 Socket shall submit a letter to the contacts listed in this agreement to designate in writing each individual’s e-mail address to whom Socket requests Accessible Letter notification be sent. Socket shall submit a completed Accessible Letter Recipient Change Request Form to add, remove or change recipient information for any Socket recipient of CenturyTel’s Accessible Letters. Any completed Accessible Letter Recipient Change Request Form shall be deemed effective ten (10) calendar days following receipt by CenturyTel.			<p>three CLECs, the largest of which, Socket, has only ordered a small number of UNEs (all of which are DS1 loops). Quite simply, CenturyTel is much smaller than SBC, operates on a different size and scale, operates a substantially different network, has different economies of scale/scope, serves geographic areas with much less population density, and has fundamentally different operations, procedures, mechanisms, and capabilities. This proceeding is about developing an ICA for Socket and CenturyTel, it is not about replacing the M2A for SBC. That the Commission may have approved similar language as to SBC in an entirely different context is irrelevant to resolution of this dispute between Socket and CenturyTel. Socket cannot prevail in its effort to compel CenturyTel to mirror SBC’s operations and offerings.</p> <p>Second the Commission should reject Socket’s proposed contract language because it purports to erect an unduly burdensome, potentially problematic, and unnecessary mechanism for CenturyTel to notify Socket of changes. Rather than Socket’s unwieldy proposal, CenturyTel reasonably proposes that all changes be posted on the CenturyTel web site accessible to CLECs, prior to implementation. In this manner, all</p>

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CASE NO. TO-2006-0299
MASTER LIST OF ISSUES BETWEEN CENTURYTEL AND SOCKET
ARTICLE III: GENERAL PROVISIONS

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						CLECs are uniformly and promptly advised of changes that may impact them and they would still have the right and ability to request that changes be delayed or modified where there is an adverse business impact. In addition, CenturyTel also affords CLECs the right to escalation through the dispute resolution process. In the end, CenturyTel's proposal should satisfy Socket's requirements, while remaining administratively manageable and providing the same information on the same basis at the same time to all CLECs.
Should a price be established for those services and / or facilities designated as TBD prior to Socket ordering any such TBD item?		<u>47</u>	47.0 TBD PRICES Numerous provisions in this Agreement and its Attachments refer to pricing principles. If a provision references a specific rate element in an attachment and there are no corresponding prices in such Attachment, such price shall be considered "To Be Determined" (TBD). With respect to all TBD prices, the Parties shall meet and confer to establish a price. Upon the request of one party, the parties shall meet within five Business Days to confer to establish a price.		47.0 TBD PRICES Numerous provisions in this Agreement and its Attachments refer to pricing principles. If a provision references a specific rate element in an attachment and there are no corresponding prices in such Attachment, such price shall be considered "To Be Determined" (TBD). With respect to all TBD prices, <u>prior to Socket ordering any such TBD item</u> , the Parties shall meet and confer to establish a price. Upon the request of one party, the parties shall meet within five Business Days to confer to establish a price.	The parties have agreed to meet within 5 Business Days of request to establish a price. This is not unreasonable. A price needs to be determine prior to services being provided to ensure compensation for services and / or facilities provided.

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Should the Agreement contain provisions for credits in the event of an outage?	10	<u>49</u>	<p>49.0 OTHER OBLIGATIONS</p> <p>Allowance for Interruption of Service. A service interruption period begins when an out of service condition of Interconnection or an Unbundled Network Element is reported by Socket to CenturyTel designated maintenance and repair contact point and ends when the service is restored and reported by CenturyTel to the Socket's designated contact. No allowance for a service outage will be provided where the outage is due to the actions of Socket, its agents or Customers. A credit allowance will be made to Socket where the service outage is isolated to CenturyTel network. When a credit allowance does apply, the credit will be determined based on the monthly recurring rates applicable to the service affected; however, the credit allowance for a service outage or for a series of outages for a specific service shall not, except where otherwise provided in this Agreement, exceed the applicable monthly recurring rate for the service(s) involved. For calculating credit allowances, every month is considered to have thirty (30) days.</p>	<p>If CenturyTel were a willing wholesaler, it would not be opposed to service credits. In any other commercial context, a customer would not expect to pay for something it did not receive. Indeed, if one of Socket's customers experiences an outage, it is credited for the time it is without service; this is a standard commercial practice. In fact, CenturyTel's access tariff at § 2.4.4 offers a credit allowance for service interruptions. There is no reason that CenturyTel should not be required to offer such credits under this Agreement as well. In Docket No. TO-2005-0336, the Commission considered a similar issue concerning SBC Missouri, and ruled that SBC must provide credits for service interruptions. Such a ruling is appropriate here as well.</p>	Intentionally Omitted	<p>Socket inappropriately attempts to impose inapplicable SBC-oriented obligations on CenturyTel by proposing contract language that is virtually verbatim cut-and-pasted from the SBC successor ICA to the M2A. Socket's effort in that regard must fail. CenturyTel is not SBC and the Commission should not adopt contract language as if it were. Instead, CenturyTel is a non-RBOC ILEC serving relatively smaller communities in Missouri. Although CenturyTel has operations in numerous other states, Missouri represents one of the very few instances in which CenturyTel has received any UNE orders. Moreover, those UNE orders derive from a total of three CLECs, the largest of which, Socket, has only ordered a small number of UNEs (all of which are DS1 loops). Quite simply, CenturyTel is much smaller than SBC, operates on a different size and scale, operates a substantially different network, has different economies of scale/scope, serves geographic areas with much less population density, and has fundamentally different operations, procedures, mechanisms, and capabilities. This proceeding is about developing an ICA for Socket and CenturyTel, it is not about replacing the M2A for SBC. That the Commission may have approved similar language as</p>

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						to SBC in an entirely different context is irrelevant to resolution of this dispute between Socket and CenturyTel. Socket cannot prevail in its effort to compel CenturyTel to mirror SBC's operations and offerings.
Should the Agreement contain service parity standards?	11	<u>52</u>	<p><u>52.0 SERVICE PARITY AND STANDARDS</u></p> <p>Notwithstanding anything in this Agreement to the contrary, CenturyTel shall meet any service standard imposed by the FCC or by the Missouri Public Service Commission for any services or facilities provided under this Agreement.</p> <p>For any services that either Party is required by Applicable Law to provide to the other at parity, each Party shall provide services under this Agreement to the other Party that are equal in quality to that the Party provides to itself. "Equal in quality" shall mean that the service will meet the same technical criteria and performance standards that the providing Party uses within its own network for the same service at the same location under the same terms and conditions.</p> <p>CenturyTel and Socket agree to implement standards to measure the</p>	Socket believes the Agreement should contain specific provisions that expressly address CenturyTel's parity obligations under 47 U.S.C. § 251. In addition to setting forth these general obligations, Socket also believes that specific performance standards are appropriate, as well as penalties for failure to meet those standards.	<p><u>52.0 SERVICE PARITY AND STANDARDS</u></p> <p>Notwithstanding anything in this Agreement to the contrary, CenturyTel shall meet any service standard imposed by the FCC or by the Missouri Public Service Commission for any services or facilities provided under this Agreement.</p> <p>For any services that either Party is required by Applicable Law to provide to the other at parity, each Party shall provide services under this Agreement to the other Party that are equal in quality to that the Party provides to itself. "Equal in quality" shall mean that the service will meet the same technical criteria and performance standards that the providing Party uses within its own network for the same service at the same location under the same terms and conditions.</p>	<p>The Commission should reject Socket's proposed language because it goes too far and is unnecessary.</p> <p>As similarly explained in the DPL for Article XV, Socket's proposed language is unduly burdensome, is in many respects unnecessary or inappropriate, and would impose unreasonable requirements on CenturyTel. In all respects CenturyTel is in full compliance with FTA § 251(c). Notwithstanding its rhetorical assertions otherwise, much of what Socket proposes is not required by § 251(c). Moreover, Socket would impose obligations that are not technically feasible for CenturyTel to satisfy and would impose metrics and intervals that CenturyTel, unlike SBC, cannot meet.</p> <p>CenturyTel recognizes that Socket is entitled to interconnection that is equal in quality to that provided by CenturyTel to itself or any other interconnecting party. CenturyTel satisfies that obligation, providing Socket nondiscriminatory, parity-based</p>

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			quality of the Local Services, Unbundled Network Elements, and Interconnection Facilities supplied by CenturyTel, in particular with respect to pre-ordering, ordering/provisioning, maintenance and billing. These quality standards are described in Article XV – Quality of Service and Performance Measures. In the event of a violation of Quality Standards by either Party, which the Complaining Party alleges constitutes a breach of this Agreement, the Complaining Party may elect, subject to the dispute resolution procedures set forth in this Agreement, either (1) to seek such money damages as may be available at law; or (2) to claim the penalties specified in Article X – Quality of Service and Performance Measures but the Complaining Party may not seek both (1) and (2) based on the same alleged breach; provided, however, that nothing in this sentence shall prevent the Complaining Party from seeking equitable relief at the same time that it pursues a claim for money damages or a claim under Article XV – Quality of Service and Performance Measures.			interconnection. To memorialize those obligations, CenturyTel has also provided Socket a copy of the Company’s Service Ordering Guidelines that apply to all CLECs interconnecting with CenturyTel for local service. Additionally, CenturyTel met with representatives of Socket and meticulously went through all of the Company’s ordering and provisioning guidelines for both local service and access services. In the end, CenturyTel fully intends to satisfy its obligations with respect to Socket, but Socket’s proposed language goes too far. The Commission should reject Socket’s proposal.
Should CenturyTel be required to designate a point of contact for	12	<u>53</u>	53.0 SINGLE POINT OF CONTACT Upon the effective date of this agreement, CenturyTel shall designate a	Socket believes the Parties’ business relationship will be more productive and less prone to misunderstanding and disputes if CenturyTel will designate a specific person within CenturyTel’s	Intentionally omitted.	The Commission should reject Socket's effort to impose obligations on CenturyTel that are beyond the scope of CenturyTel’s obligations under sections 251 and 252 of the FTA. CenturyTel

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Socket to work with in order to implement this Agreement?			single point of contact (“SPOC”) for Socket to work with to implement and operate under the provisions of this agreement. The SPOC shall be knowledgeable of CenturyTel’s processes and procedures for establishing interconnection, providing UNEs and services available for resale, resolving billing and other disputes as well as other functions necessary to implement and operate under this agreement. This person shall not have any retail job responsibilities.	organization as a liaison to Socket. Further, in order for such a liaison relationship to work properly, Socket has crafted language describing the knowledge base of that person so that Socket can readily resolve the most common problems arising under an interconnection agreement.		<p>provides information on initial contacts and escalations for the various services provide. Services provided require involvement by numerous departments and personnel throughout the company. Contacts information is provided for billing, ordering, maintenance, porting, etc. It would be impossible, inefficient, and economically infeasible for CenturyTel to provide one individual that is knowledgeable of all CenturyTel processes, procedures and services. When contract or procedure issues arise, CenturyTel provides an escalation point where issues can be reported for assistance in resolution.</p> <p>The Commission should reject Socket’s proposed contract language as unnecessary, unduly burdensome, and inflexible.</p>

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