

**CASE NO. TO-2006-0299**  
**MASTER LIST OF ISSUES BETWEEN CENTURYTEL AND SOCKET**  
**ARTICLE IV: GENERAL RULES GOVERNING RESOLD SERVICES AND UNBUNDLED ELEMENTS**

Issue Statement	Issue No.	Sec. Nos.	Socket Language	Socket Preliminary Position	CenturyTel Language	CenturyTel Preliminary Position
Should it be explicit that the terms and conditions of the Article only apply to UNEs and resold items?  RESOLVED	1	1.1	<b>1.1 The terms of Article IV apply to Resold Services and Unbundled Elements only.</b>	The title of this Article specifies that it addresses resold services and UNEs. However, since titles and headings are expressly designated as non-controlling in Article III, Section 25, Socket believes it is prudent to have an explicit provision in the Agreement identifying the applicability of the Article.	1.1 The terms of Article IV apply to Resold Services and Unbundled Elements only. .	CenturyTel concurs that the terms proposed herein only apply to Resold services and Unbundled Elements and agrees to Socket's language. Therefore, this issue is no longer in dispute.
(a) Should unspecified tariff provisions apply to unbundled network elements? (b) If tariff provisions are deemed to apply to unbundled network elements, should the language in the agreement prevail in the event of a conflict between the tariff and the agreement?	2	1.2	1.2 General regulations, terms and conditions governing rate applications, technical parameters, service availability, definitions and feature interactions, as described in the appropriate CenturyTel intrastate local, toll and access tariffs, apply to retail services made available by CenturyTel to Socket for resale, when appropriate, and unless otherwise specified in this Agreement. <b>In the event there is a conflict between the language in the Agreement and the language in any CenturyTel tariff, the language in the Agreement shall prevail.</b>	(a) All of the terms and conditions for the purchase of unbundled network elements (UNEs) should be contained in this interconnection agreement. While tariff provisions concerning services offered by CenturyTel at retail to the public may legitimately affect the terms under which Socket resells the same services, this rationale does not hold true for UNEs which are not available at retail to the public. CenturyTel should not be permitted to unilaterally assert that some unnamed general retail tariff provisions control the terms under which Socket purchases wholesale UNEs. (b) If the Commission determines that tariff provisions can supplement the UNE terms and conditions of this agreement, then such tariff provisions cannot control in the event of a conflict between the tariff and the ICA. This ICA is a contract between two parties, and, under general contract law, one party cannot unilaterally amend an agreement by creating a separate	1.2 General regulations, terms and conditions governing rate applications, technical parameters, service availability, definitions and feature interactions, as described in the appropriate CenturyTel intrastate local, toll and access tariffs, apply to retail services made available by CenturyTel to Socket for resale, when appropriate, and unless otherwise specified in this Agreement, <u>and will supplement the UNE terms and conditions in this Agreement, including, without limitation, where Socket specifically purchases such items directly from the CenturyTel tariff.</u>	The Commission should adopt CenturyTel's proposed language because it makes clear that the provisions of this ICA Article supplement the general limitation of liability and indemnity provisions with respect to specific matters relating to resold services and UNEs. Although these provisions could likely be included in the general indemnification and limitation of liability section (Article III, Section 28), CenturyTel proposes including them here since provisions they relate to specific matters concerning resale. For the parties' convenience and to reduce the likelihood of dispute between the parties, the Commission should include CenturyTel's proposed language clarifying the relationship of these provisions to the ICA.  The Commission should, however, reject Socket's proposed language because it is unnecessary. Unlike CenturyTel's proposal, Socket's

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				document that creates a change to the underlying contract.		language is not specifically tailored to this Article of the ICA, does not address unique issues arising herein and is already covered in The Scope and Intent of Agreement , where the ICA already provides that the terms of this Agreement prevail if a conflict exists, unless Socket has expressly purchased services from a CenturyTel tariff.
Should this Article contain additional limitation of liability provisions, including exempting CenturyTel from liability for errors and mistakes?	3	2.0-2.3	<p>2.0 <b>Intentionally Omitted.</b></p> <p>2.1 <b>Intentionally Omitted.</b></p> <p>2.2 <b>Intentionally Omitted.</b></p> <p>2.3 <b>Intentionally Omitted.</b></p>	<p>The Parties' ICA already contain comprehensive indemnification and liability provisions in Section 24 of Article III. All such provisions should be contained in a single section and article, rather than scattered throughout the contract.</p> <p>As to the specific additional provisions that CenturyTel seeks, they are either unnecessary or overreaching.</p> <p>On CenturyTel's proposed Sec. 2.1, CenturyTel's tariff terms do not apply to Socket's customers, so this subsection is unnecessary.</p> <p>On CenturyTel's proposed Sec. 2.2, it is unreasonable and unnecessary for CenturyTel to demand that Socket alter its own tariffs and its contracts with its own customers to specify that Socket is indemnifying CenturyTel from liability; CenturyTel is not a party to the Socket contracts and hence is not subject to any rights or obligations under the contract.</p>	<p><u>2.0 LIABILITY OF CENTURYTEL</u></p> <p><u>In addition to the general limitation of liability in Section 28.4 of Article III, the following shall also limit CenturyTel's liability under this Agreement.</u></p> <p><u>2.1 Inapplicability of Tariff Liability.</u></p> <p><u>CenturyTel's general liability, as described in the CenturyTel local exchange or other tariffs, does not extend to Socket's customers or any other third party. Liability of CenturyTel to Socket resulting from any and all causes arising out of services, facilities, UNEs or any other items relating to this Agreement shall be governed by the liability provisions contained in this Agreement and no other liability whatsoever shall attach to CenturyTel. CenturyTel shall be liable for the individual services, facilities or elements that it separately provides to</u></p>	<p>The Commission should adopt CenturyTel's proposed contract language because it provides resale and UNE-specific provisions that supplement, in a uniquely tailored manner, the general ICA provisions included elsewhere in the ICA. While it is true, as Socket asserts, that the ICA contains general indemnification and liability provisions in Article III, those general provisions do not speak to the specific issues that arise herein. For the parties' convenience and to specifically address the relationship and issues the parties face in the Article IV context of their interconnection relationship, the ICA should include the language CenturyTel proposes.</p> <p>Socket's stated objections to the proposed language are without merit. With respect to Section 2.1, for example, the language itself makes clear that CenturyTel's obligations with respect to services provided under the Agreement extend to Socket and not to</p>

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				<p>To the extent the indemnity provisions in Article III, Section 24, require Socket to indemnify CenturyTel from claims by third parties, including Socket's customers, those provisions will prevail regardless of whether Socket informs its customers that such provisions exist. Therefore, requiring the administrative burden of Socket's altering all its contracts for no necessary purpose is unreasonable.</p> <p>On CenturyTel's proposed Section 2.3, again CenturyTel is seeking a provision that is already covered under the comprehensive indemnity and limitation of liability provisions found in Article III, Section 28. It is simply not necessary, and is potentially confusing, to have a "stray" liability provision in a different Article of the ICA.</p>	<p><u>Socket and shall not be liable for the integration of components combined by Socket.</u></p> <p><u>2.2 Socket Tariffs or Contracts.</u></p> <p><u>Socket shall, in its tariffs or other contracts for services provided to its end-users using services, facilities or UNEs obtained from CenturyTel, provide that in no case shall CenturyTel be liable to Socket's end-users or any third parties for any indirect, special, consequential or punitive damages, including, but not limited to, economic loss or lost business or profits, whether foreseeable or not, and regardless of notification by Socket of the possibility of such damages and Socket shall indemnify and hold CenturyTel harmless from any and all claims, demands, causes of action and liabilities based on any reason whatsoever from Socket customers as provided in this Agreement. Nothing in this Agreement shall be deemed to create a third-party beneficiary relationship with Socket's end-users.</u></p> <p><u>2.3 No Liability for Errors.</u></p> <p><u>CenturyTel is not liable for mistakes that appear in CenturyTel's listings, 911 and other information databases, or for incorrect referrals of end-users to Socket for any ongoing Socket service, sales or</u></p>	<p>any other person, and that it is Socket's obligation to integrate the individual services and UNEs ordered from CenturyTel. While CenturyTel may have certain ICA- and tariff-based obligations to Socket, the ICA should note that any such obligations do not extend to Socket's customers (a substantive point on which Socket does not appear to disagree).</p> <p>As for Section 2.2, the proposed language requires Socket to take reasonable steps with respect to its customers to ensure that the contractual relationship of such customers is with Socket and not CenturyTel (whether through a direct contractual relationship or a third party beneficiary theory). This Section also requires Socket to include a provision in its end user agreements that limits CenturyTel's liability to such end user. As Socket (and not CenturyTel) controls the relationship with its customers, Socket has the ability to put in place contractual provisions that are consistent with the provisions of this Agreement (i.e., the limitation of liability provisions of Article III, Section 28). The provision requested by CenturyTel is a standard provision in end user agreements with carriers. Since Socket will likely be using UNEs and/or resold services acquired from CenturyTel to serve its customers, Socket should, in providing</p>

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					<u>repair inquiries, and with respect to such mistakes or incorrect referrals, Socket shall indemnify and hold CenturyTel harmless from any and all claims, demands, causes of action and liabilities whatsoever, including costs, expenses and reasonable attorney's fees incurred on account thereof, by third parties, including Socket's end-users or employees. For purposes of this Section 2.3, mistakes and incorrect referrals shall not include matters arising out of the willful misconduct of CenturyTel or its employees or agents.</u>	<p>those services/UNEs to its customers, ensure that the customer recognizes that its relationship and all recourse is as to Socket, not CenturyTel.</p> <p>Finally, CenturyTel's proposed Section 2.3 is necessary, supplementing the general provisions in Article III, because it addresses CenturyTel's liability with respect to specific resale-related matters (e.g., erroneous listing information, incorrect referrals of repair inquiries, etc.). As with the preceding subsections, these provisions could be included in the indemnification and limitation of liability sections of Article III, but for convenience have been included in this Article. Also, as with the preceding sections, Section 2.3 is consistent with applicable provisions of Article III. Socket does not appear to oppose the substance of the language CenturyTel is proposing.</p>
Should the Agreement contain a provision requiring Socket to comply with certain Commission rules?	3	3.0	3.0 <b>Intentionally Omitted.</b>	<p>Socket certainly intends to comply with all of the Commission's rules that are applicable to Socket. However, the Parties' ICA should not set up a situation where Socket could be in breach of its agreement if it fails to abide by a specific Commission rule in any particular instance. It is not CenturyTel's job to enforce the Commission's rules.</p>	<p><b><u>3.0 END USER NOTICE REQUIREMENT</u></b></p> <p><u>Socket shall comply with Missouri Public Service Commission Rule 4 CSR 240-32.120.</u></p> <p><u>If Socket is in Default, Socket shall, at its sole expense, within five (5) Business Days notify its end-users that their service may be disconnected for Socket's failure to pay Unpaid Charges.</u></p>	<p>Since Socket does not appear to dispute the substance of CenturyTel's proposed language or the obligations noted therein, and its inclusion would provide certainty as to the parties' obligations, the Commission should include the language in the parties' successor ICA. It is important to recognize that, in case of default, Socket has an obligation to provide notice to its end-users that they must select a new provider of local exchange services. As the Commission</p>

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					<u>and that its end-users must select a new provider of local exchange services. If Socket fails to provide such notification, or any of Socket's end-users fail to select a new provider of services within the applicable time period, CenturyTel may provide local exchange services to Socket's end-users under CenturyTel's applicable end-user tariff at the then current charges for the services being provided. In this circumstance, otherwise applicable service establishment charges will not apply to Socket's end-user, but will be assessed to Socket.</u>	is well aware, in cases of resale, it is critical that this is enforced., since CenturyTel will be left with the obligation to continue to provide service, with no compensation, and provide the required notice to the customer if Socket fails to timely notify its customers. Due to the impact to CenturyTel of Socket's failure to satisfy its obligations in this context, it is entirely appropriate for the obligation to be reflected in the agreement between Socket and CenturyTel.
Should the Agreement contain comprehensive provisions relating to procedures for pre-ordering, ordering, and provisioning rather than a generic reference to a CenturyTel document that can be unilaterally amended or discontinued at CenturyTel's sole option?			<b>4.0 Intentionally Omitted.</b>	Socket has drafted extensive provisions in Articles III (GT&C), VI (Resale), VII (UNEs), VIII (Ordering and Provisioning UNEs), IX (maintenance) and XIII (OSS), among others, that address terms and conditions governing preordering, ordering, provisioning, maintenance, and billing. These Articles lays out specific reasonable terms and conditions governing the relationship between the Parties. Many of the provisions are agreed, and those that are not are frequently derived in large part from the provisions approved by this Commission as reasonable and appropriate in Case No. TO-2005-0336. CenturyTel should not be permitted to unilaterally dictate all of these important terms governing the relationship of the parties through a separate document that	<b>4.0 PROCEDURES FOR PREORDERING, ORDERING, PROVISIONING, ETC.</b>  <u>Certain procedures for preordering, ordering, provisioning, maintenance and billing for many of these functions are governed by the CenturyTel Service Guide.</u>	The Commission should adopt CenturyTel's proposed contract language, which reasonably provides that certain procedures set forth in the ICA will be supplemented in the CenturyTel Service Guide. Especially in light of the specific language CenturyTel is proposing, Socket's concerns are misplaced and exaggerated.  Contrary to Socket's rhetoric, the proposed language has nothing to do with unilaterally dictating procedures. Rather, the ICA may not—and should not—speak in detail about each specific detail on a given issue. In that reasonable event, the parties should recognize that external procedural guides may specifically set forth the procedures at issue. Indeed, in Section

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				can be modified or eliminated in the sole discretion of CenturyTel. Instead, all such terms should be contained in a comprehensive enforceable contract between the Parties.		24 of Article III both parties acknowledge that certain practices will be included in the CenturyTel Service Guide. This Guide contains a description of procedures for ordering, provisioning, maintenance and billing for many functions. In this Section, CenturyTel has already acknowledged that if at any time these practices conflict with this Agreement, that the Agreement applies. Since the ICA trumps in the event of any conflict, Socket's concerns are fundamentally misplaced. In addition, CenturyTel has proposed prior notification provisions wherein Socket has the right to discuss, and to request that changes be delayed or otherwise modified where there is an adverse business impact on Socket, with escalation through the dispute resolution process. Therefore, the Commission should adopt CenturyTel's proposed contract language on this issue.

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