BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Socket Telecom, LLC,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. TC-2007-0341
	)	
CenturyTel of Missouri, LLC and	)	
Spectra Communications Group, LLC,	)	
d/b/a CenturyTel,	)	
	)	
Respondents.	)	

RESPONDENTS' RESPONSE TO SOCKET TELECOM'S CROSS MOTION FOR SUMMARY DETERMINATION
AND
RESPONDENTS' REPLY TO SOCKET TELECOM'S RESPONSE TO CENTURYTEL'S MOTION FOR EXPEDITED RULING AND MOTION FOR SUMMARY DETERMINATION

COME NOW Respondents, CenturyTel of Missouri, LLC ("CenturyTel") and Spectra Communications Group, LLC, d/b/a CenturyTel ("Spectra") (collectively "Respondents"), pursuant to 4 CSR 240-2.117, and for their **Response** to *Socket Telecom's Cross Motion for Summary Determination ("Complainant's Cross Motion")*, and their **Reply** to *Socket Telecom's Response to CenturyTel's Motion for Expedited Ruling and Motion for Summary Determination ("Complainant's Response")*, respectfully state as follows:

INTRODUCTION

In filing this pleading, Respondents recognize that this matter will go to hearing on July 11-12, 2007, and therefore, as a practical matter this pleading may be irrelevant. Moreover, it is not Respondents' intent or desire to further burden the case file by filing unnecessary pleadings. However, because Respondents do not wish to be subject to any

claims that Respondents have waived their rights, or somehow be deemed to have admitted the truth of any allegation made by the Complainant that has not been specifically denied, Respondents are compelled to file this pleading.

After criticizing Respondents for failure to specifically follow the requirements of 4 CSR 240-2.117 (apparently not recognizing that Respondents' June 14, 2007 pleading included a "standard" procedural motion, separately set forth, as well as a motion for summary determination, again separately set forth, both in numbered paragraphs), Complainant has intermingled *Complainant's Cross Motion* with *Complainant's Response*; further, Complainant's numbered paragraphs largely contain argument rather than facts. Nevertheless, Respondents will follow the paragraph numbers used by Complainant in its combined pleading and will attempt to respond and reply accordingly.

PAGES 1 & 2 OF COMPLAINANT'S CROSS MOTION AND RESPONSE

In the very first sentence of its Introduction, Complainant intentionally and entirely misrepresents the two porting requests at issue in this case. Complainant wrongfully characterizes the two specific customers as only wanting "*to retain their telephone numbers as they changed providers from CenturyTel to Socket*". If these two customers were remaining at the same location within their existing exchanges and only switching between competing carriers, this would constitute an instance of "service provider portability", which is a specific type of "number portability" that Respondents legally are obligated to provide under currently applicable federal law.[1]

[1] 47 C.F.R. 52.21(q) states: "The term *service provider portability* means the ability of users of telecommunications services to retain, **at the same location**, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." [**bold** emphasis supplied, *italics* in the original]. By order, the FCC requires carriers to provide "service provider portability" in order to meet the requirements of the Federal Telecommunications Act, 47 U.S.C. Section 251(b)(2). *See*, First Report and Order and Further Notice of Proposed Rulemaking, *Telephone Number Portability*, 11 F.C.C.R. 8352 (1996) ("*First Order*").

However, this is **not** an instance of "service provider portability". It is an undisputed material fact that these two customers (one being a corporate affiliate of Complainant and both being Internet Service Providers) are physically relocating (or "moving from", or "changing" their "physical locations") from their existing exchanges in rural south Missouri to St. Louis, a location outside of their exising rate center.[2] As such, Complainant's porting requests by definition constitute "location portability" (or "geographic portability"), which Respondents are under no legal obligation to provide under currently applicable federal law.[3] The Commission should recognize this very important factual and legal distinction, Complainant's intentional attempt at obfuscation and definitional gymnastics notwithstanding.

Complainant next alleges that it seeks an order from the Commission that not only should Respondents fulfill the two specific porting requests at issue, but that "similar future orders should be fulfilled" as well. As to this allegation, Respondents submit that if, as Respondents have clearly shown, they were and are under no legal obligation to fulfill the two specific porting requests, then they likewise are under no legal obligation to fulfill "similar future orders", and as such, this additional part of the Complaint is moot and a nullity.

---

[2] The first customer (Socket Holdings Corporation d/b/a Socket Internet, porting request for 417-469-9090 and 417-469-4900) is moving from Willow Springs to St. Louis. The second customer (porting request for 573-322-8421) is moving from Ellsinore to St. Louis. Voight Rebuttal, p. 3; Smith Rebuttal, pp. 3, 17, 19, 21, 27.

[3] 47 C.F.R. 52.21(j) states: "The term *location portability* means the ability of users of telecommunications services to retain existing telecommunications numbers without impairment of quality, reliability, or convenience **when moving from one physical location to another**." [**bold** emphasis supplied, *italics* in the original]. The Staff agrees with Respondents that currently applicable federal law does not impose any obligation on Respondent to provide "location portability" (Voight Rebuttal, pp. 8, 20). A more detailed discussion has been more than adequately addressed previously in Respondents' pleadings and testimony and need not be here repeated.

Finally, Complainant alleges that Respondents are further "*required by the interconnection agreements between the parties to port such numbers in accordance with industry practices"*. Once again, Complainant intentionally misstates and misleads by omitting the important phrase "*agreed-upon*" while knowing full well that the Interconnection Agreements ("ICAs") actually and clearly use the phrase "*industry agreed-upon practices*". This omission is very significant. The parties' specific disputes with respect to the particulars of this issue aside, it should be obvious that even if one or more Missouri carriers *may* engage in certain "location portability" practices of the type requested by Complainant, it does not logically or necessarily follow that those practices are somehow industry-wide in scope, let alone that they constitute "industry agreed-upon practices".[4]

Beyond this significant omission, and after having raised the question of "industry agreed-upon practices" in the first place, Complainant then states with audacious incongruity that "this case involves a dispute between two carriers; other carriers need not be involved". Complainant first asks that the Commission determine (necessarily based on the record evidence) what constitutes "industry agreed-upon practices", and then in the next breath, vociferously argues that first-hand information from other carriers as to their porting practices is unnecessary. Complainant cannot have it both ways.

As fully discussed in Respondents' prior pleadings, the Commission cannot lawfully base any decision as to what constitutes "industry agreed-upon practices" without receiving first-hand competent and substantial record evidence as to the actual porting practices of these other carriers. Complainant's and Staff's pre-filed testimony

[4] As noted in Respondents' prior pleadings, the language "industry agreed-upon practices" refers only to LRN and the porting of DID numbers.

consisting of merely second and third-hand unsupported speculation, conjecture, and hearsay simply does not constitute competent and substantial evidence. For example, if it is in fact true that other carriers have processed Complainant's location porting requests, there is no way to determine if this was done as a matter of established company practice or whether the requests were processed inadvertently. As another example, Respondents have uncovered and pre-filed, as a schedule, public record evidence of Embarq's porting policy, which appears to be contrary to what Complainant and Staff allege.[5] The bottom line is that if Complainant desires a Commission decision on this issue, Complainant should not try to deny the Commission's right to receive evidence that it fundamentally and lawfully needs to make such a decision.

To the extent that the remainder of Complainant's allegations and arguments contained in pages 1 and 2 legitimately deserves responsive comment, they will be specifically addressed below.

RESPONSE AND REPLY

1. Respondents continue to assert as a matter of law that this case should be dismissed on the basis that Complainant has failed to state a claim upon which relief may be granted. Respondents incorporate herein by reference Respondents' prior pleadings and previously cited testimony respecting same. Beyond this, Complainant fails to set forth within the paragraph any additional, material facts that require response or reply.

2. Complainant fails to set forth within the paragraph any additional, material facts that require response or reply.

[5] Respondents note Complainant's evidentiary challenge of this information in Complainant's pleading filed on June 28, 2007. *Socket Telecom's Response To CenturyTel's Motion Regarding Procedural Schedule*, footnote 3, page 3.

3. Respondents admit that paragraph 3 of their June 14, 2007 pleading contained legal argument and did not identify undisputed material facts within that particular paragraph. Respondents respond and reply, however, that they were not required to do otherwise. The undisputed material facts supporting Respondents' *Motion For Summary Determination* are specifically set forth in paragraphs 5, 6, and 20 of their June 14, 2007 pleading and show that the two porting requests at issue involved customers physically moving (relocating) outside their existing rural south Missouri exchanges (rate centers) to St. Louis.[6] As noted in footnote 2 above, even the Staff agrees that the two customers specified in the Complaint are physically moving (relocating) outside their existing exchanges (rate centers) and that Complainant's two porting requests constitute "location portability".

Respondents again deny that the Complaint states a claim upon which the requested relief may be granted and assert that the Commission should resolve this case by granting Respondents' *Motion To Dismiss* and/or its *Motion For Summary Determination* in favor of Respondents for the reasons stated in Respondents' paragraph 3. Respondents further deny that the Commission should resolve this case on a summary basis in favor of Complainant, not only because *Respondents* are entitled to summary determination in their favor as a matter of law, but also for the additional reasons more fully set forth herein.

Beyond this, Complainant fails to set forth within the paragraph any additional, material facts that require response or reply.

---

[6] As noted in footnote 3 of Respondents' *Motion Regarding Procedural Schedule and Motion For Expedited Treatment*, filed on June 26, 2007, the particular telephone numbers of the two customers had been inadvertently and unintentionally reversed by both Respondents (and Complainant) in prior pleadings but were corrected by Respondents in that June 26, 2007 *Motion*.

4. Respondents deny that their failure to fulfill the two porting requests at issue in this case was or are in any way "illegal". The same holds true with respect to Complainant's remaining allegations with respect to similar future or otherwise unspecified porting requests. As fully discussed in the pre-filed testimony of Dr. Furchtgott-Roth and Ms. Smith, and previously properly cited in Respondents' prior pleadings, Respondents were (and continue to be) under no legal obligation to fulfill these two specific or similar porting requests, either at the time the porting requests were denied, at the time the Complaint was filed, or currently. If Respondents are under no legal obligation to fulfill the two specifically identified porting requests at issue, then they likewise are under no legal obligation to fulfill any other such orders (past or future) and as such, this additional part of Complainant's Complaint is rendered moot. Ignoring this, Complainant continues to attempt to improperly enlarge the focus and scope of this proceeding beyond the threshold question of Respondents' lawful obligation to fulfill the two specific porting requests at issue.

In further response and reply, Respondents reassert their statement that the Staff in theory is supposed to be an objective neutral party in this case.[7] For some unknown reason, Complainant turns Respondents' simple, straightforward statement into a claim that Respondents' somehow are claiming in their pleading bias and unfairness on the part of the Staff in this proceeding. Read in context, Respondents clearly are citing Mr. Voight's *agreement* with Respondents with respect to the two particular customer porting requests being the true basis of the Complaint (Voight Rebuttal, pages 3, 15-16). This is in direct contravention to Complainant who in various places in its testimony, and in its

[7] Respondents would here further expand this statement to include not only this case, but in all Commission cases as well.

pleadings, requests “general relief” for a laundry list of all the various purported ills Complainant claims it is suffering at the hands of Respondents.

Complainant’s inexplicable misinterpretation of and umbrage taken at Respondents’ unambiguous language notwithstanding, Respondents actually agree with Complainant’s suggestion--should the Commission feel it necessary to follow it--“that the Commission take notice of the entirety of its records and experience” to determine if the “Staff is, in fact, an objective and neutral party”. This no doubt would prove an interesting and perhaps, even an instructive inquiry. In any event, Respondents in their pleading did not contest “Staff’s continued objectivity and neutrality” as claimed by Complainant.

Beyond this, Complainant fails to set forth within the paragraph any additional, material facts that require response or reply.

5. Respondents deny that they “cloud the issues by misusing technical terms in a colloquial manner”, misuse “the phrase ‘physically relocating’”, engage “in erroneous legal argument”, and do not “state an uncontested material fact”. Throughout their testimony and in their pleadings, Respondents have directly and correctly quoted the Federal Communications Commission’s (“FCCs”) own definitions that are contained in 47 C.F.R. Section 52.21; the FCC has not adopted the peculiar re-definitions of “location” and “physical location” for wireline-to-wireline situations that are here urged by Complainant. Complainant admits that it is uncontested that the customer mentioned in paragraph 5 wants to use its existing telephone number in rural south Missouri for a

new modem bank in St. Louis.[8] Respondents deny that Respondents have forced this customer to be served against its will and further state that Respondents are ready, willing and able to fulfill any *lawful* porting request with respect to this or any other customer. Respondents deny that there is any question as to whether this customer's "location"/ "physical location" has changed under currently applicable "FCC regulations and/or industry practices", and Respondents especially deny that "the Commission is in a position to resolve that question summarily in Socket's favor". 47 C.F.R. Section 52.21 (j), (l), (q); Dr. Furchtgott-Roth, Rebuttal pp. 7-17; Surrebuttal, pp. 1-20. Even Complainant acknowledges that the FCC, not this Commission, has primary jurisdiction over this issue. *Complainant's Response*, para. 11. Beyond this, Complainant fails to set forth within the paragraph any additional, material facts that require response or reply.

6. For purposes of its response and reply, Respondents incorporate their response and reply to paragraph 5 above.

7. Respondents correctly cited page 3 of Mr. Voight's testimony for the proposition stated by Respondents and Complainant here concedes Mr. Voight's statement on page 3 of his testimony. Respondents therefore deny any violation of rule 2.117. That Complainant then takes issue with Mr. Voight's use of the word "location" and his later conclusion that "the Act (and by extension…the FCC), …in Staff's opinion, does not require any form of location portability such as requested by Socket" (Voight Rebuttal, page 8), only shows that Complainant stands alone in its erroneous interpretation of applicable federal definitions and federal law. Respondents did not directly cite Complainant's testimony on this issue because, quite simply, Complainant's

[8] Complainant mistakenly claims that the customer's current exchange associated with telephone number 573-322-8421 is Willow Springs. This particular number involves a porting request from the Ellsinore exchange. *See*, footnote 4 above; Complaint, pp. 4, 17.

definition of "location" is both tortured and inconsistent with currently applicable federal law. For the reasons set forth above, Respondents further deny that Respondents' arguments and averments in their paragraphs 5 and 6 are inaccurate. Beyond this, Complainant fails to set forth within the paragraph any additional, material facts that require response or reply.

8. Respondents are without knowledge as to what might prompt Complainant to include or not include any item in Complainant's surrebuttal testimony and therefore denies same. Respondents deny that they seek to "cloud the issue" by using the word "relocate" incorrectly in any common understanding of the word's definition. It is Complainant, not Respondents who are engaging in novel and tortured definitions of terms, inconsistent with currently applicable federal law. *See*, citations set forth in paragraph 5 above. Complainant correctly cites page 5 of Ms. Smith's Rebuttal testimony for the proposition stated by Complainant. Beyond this, Complainant fails to set forth within the paragraph any additional, material facts that require response or reply.

9. Complainant here again (albeit erroneously) asserts that federal law and FCC rules, regulations and decisions provide a legal basis for its Complaint. By so doing, Complainant confirms the accuracy of Respondents' specific averment in Respondents' paragraph 9. Respondents deny that Respondents' averment is incomplete or that Respondents are implying that the above-mentioned federal requirements constitute the entire legal basis of the Complaint. Respondents obviously fully address the remainder of the purported legal basis for the Complaint later in their paragraphs 13-16. Beyond this, Complainant fails to set forth within the paragraph any additional, material facts that require response or reply.

10. Respondents are not limited to stating undisputed material facts as part of their *Motion For Expedited Ruling On Respondents' Pending Motion To Dismiss* and within that pleading may include paragraphs containing legal arguments and conclusions, which is what was done. Respondents strongly deny that their legal conclusions contained in their paragraph 10 are in any way "inapposite"; in fact, these legal conclusions are not only pertinent, but relevant and on point to the currently applicable federal law that necessarily governs the disposition of this Complaint. Once again, Complainant erroneously claims that under currently applicable federal law its two porting requests do not constitute "location portability" and again Complainant tries to intentionally blur and misstate the various definitions of "portability" as those terms are currently applied by the FCC. Beyond this, Complainant fails to set forth within the paragraph any additional, material facts that require response or reply.

11. Respondents deny that the word "location" and the phrase "physical location" are ambiguous or indisputably imprecise absent further legal interpretation. Respondents further deny the same with respect to the definition of "local number portability" and "service provider portability". As discussed in paragraph 5 above, the definitions of the various forms of "portability" are found in 47 C.F.R. Section 52.21. Complainant's desire for a tortured re-definition of these terms in such a way as to impose an obligation on Respondents that currently does not exist under federal law is perhaps intellectually interesting, but quite irrelevant.

Respondents wholeheartedly agree with Complainant to the extent Complainant avers that "*the FCC is the agency with primary jurisdiction (subject of course to court review and Congressional action) to put the…words of its definitions (and the statute*

from which they are derived—i.e. copied) into context." Unfortunately for Complainant, the public record is clear that the FCC has had numerous opportunities to further define these terms, but it has not; it also has had numerous opportunities to or make the obligation of "number portability" applicable to the type of "location portability" porting requests specified in this case, but has not. See citations in paragraph 5 above.

Complainant's sole reliance on the *Intermodal Order*[9] in support of its proposition that the FCC has held that any port that does not change the rating or routing of a call is not a location port, and that this FCC decision is directly applicable in this proceeding, is entirely misplaced and simply wrong.

First, and most importantly, the *Intermodel Order* by its own terms applies to wireline-to-wireless porting and is not applicable to wireline-to-wireline porting situations.[10] Second, even if the *Intermodal Order* did apply to wireline-to-wireline porting situations, the FCC in that case primarily focused on the geographic service location and only secondarily looked to the question of rating and routing. The FCC there concluded that there would not be location porting in wireline-to-wireless situations if the rating and routing were not changed, but only after it was first established that the wireless carrier has service coverage in the geographic location of the existing rate center. In other words, it must first be established that the wireless carrier can provide service, and the ported customer can take service from the wireless carrier "at the same location".[11] Under the particular facts of this Complaint and Complainant's refusal to provide its own adequate facilities in the existing exchanges (rate centers), it is at best

[9] *In the matter of Telephone Number Portability*, CC Docket No. 95-116 (2003) (*Intermodal Order*).

[10] Dr. Furchtgott-Roth Surrebuttal, pp. 13-16.

[11] *Intermodal Order*, para. 22.

unclear whether the porting requests at issue would even meet the relatively looser requirements for wireline-to-wireless location porting.

Complainant also attacks the dictionary's definition of "location" as provided by Dr. Furchtgott-Roth (Dr. Furchtgott-Roth Rebuttal, p.8, footnote 4). It is unclear whether Complainant is taking issue with Dr. Furchtgott-Roth or with the dictionary's publishers. To the extent Complainant wishes to change the dictionary definitions, Respondents suggest that this Commission proceeding is not the proper forum.

Respondents deny that the "Crab Nebula", or any of Complainant's rather odd ramblings about same, is in any way relevant in this proceeding. According to Google, cited as an authority by Complainant, the Crab Nebula is approximately 6000 to 6300 light years away from the Willow Springs exchange. Perhaps Complainant believes that Respondents must port Complainant's ISP affiliate telephone number if it relocated there and then absorb all the cost of transport and new facilities to accomplish same?

Respondents agree with Complainant that "[t]here is only one set of definitions concerning portability, and the definitions use the word 'location'. These definitions apply uniformly to all telecommunications carriers." Respondents simply would add that this necessarily includes Respondents. Beyond this, Complainant fails to set forth within the paragraph any additional, material facts that require response or reply.

12. Respondents agree that the legal meaning of the word "location" as used in the FCC's rules is a matter of law. As explained above, Respondents further state that the applicable law is clear as it currently is applied by the FCC and is contrary to the interpretation urged by Complainant. While the Staff may be mistaken as to a great number of things, Staff's view with respect to the *Intermodal Order* not applying to

wireline-to-wireline porting situations is consistent with the terms of that Order and is inconsistent only with Complainant's assertion that it applies directly here. *See*, paragraph 11 above. Beyond this, Complainant fails to set forth within the paragraph any additional, material facts that require response or reply.

13. While Respondents agree that they are obligated to meet all the terms and conditions of the ICAs, Respondents deny that they have violated any provision or provisions thereunder. Dr. Furchtgott-Roth Surrebuttal pp. 4-11; Smith Rebuttal, p. 10; Smith Surrebuttal pp. 2, 8-15, 19-20, 26-28. With respect to the remaining allegations contained in paragraph 13, Respondents deny same and incorporate herein by reference the ICA citations and related discussion contained in *Respondents' Legal Memorandum in Support of Motion For Summary Determination*, pp. 6-7, and *Respondents' Motion Regarding Procedural Schedule and Motion For Expedited Treatment*, pp. 7-12. Beyond this, Complainant fails to set forth within the paragraph any additional, material facts that require response or reply.

14. Complainant's several allegations in paragraph 14 are nothing more than restatements of Complainant's erroneous positions in this case, and for the reasons stated above Respondents once again deny that Complainant is entitled to its requested relief as a matter of law. Complainant mischaracterizes Respondents' position and pre-filed testimony with respect to the question of (once again, omitting an important clause) "the practices of the industry". Respondents deny that they ever have suggested that "everyone else in the industry is engaged in illegal number porting". All Respondents have said is that Respondents <u>are not legally obligated</u> under currently applicable federal law or under their ICAs to fulfill the porting requests at issue. Furthermore, Respondents

(let alone the Commission) are not in a position in this proceeding to even know what the "practices of the industry" may or may not be since, according to the Complainant and Staff, "other carriers need not be involved" in this case. As stated above, the issue under the ICAs is what constitutes "industry agreed-upon practices", not simply what (according to Complainant and Staff's second and third-hand conjecture) one or two other Missouri carriers may (or very well may not) be doing with respect to their respective "location portability" practices. Respondents' pre-filed testimony and various pleadings with respect to this issue speak for themselves and to avoid repetition will not here be restated, but if necessary for the procedural completeness of the response, are hereby incorporated.

With respect to the ICAs generally, Respondents further state that their legal obligation under the ICAs to fulfill the two porting requests at issue in this case is limited by Respondents' obligations under applicable federal law, FCC regulations, rules and decisions. No other language contained in the ICAs, or what one or more other Missouri carriers *may* do with respect to "location portability" standing alone, overrides currently applicable federal requirements. Here, Complainant and Staff in this case are mis-reading and mis-applying the terms and provisions of the ICAs.[12] Respondents <u>on their own volition</u> can decide to go beyond these currently applicable federal requirements but they may not lawfully <u>be compelled</u> to do so under currently applicable law or under the guise of "industry agreed-upon practices" which have yet to be determined. Beyond this,

[12] In order to avoid repetition, for citation purposes here Respondents incorporate by reference the record citations and discussion contained in Respondents' *Motion For Expedited Ruling on Respondents' Pending Motion To Dismiss and Motion For Summary Determination*, paragraphs 12-15, and Respondents' *Motion Regarding Procedural Schedule and Motion For Expedited Relief*, paragraphs 2, 7-14.

Complainant fails to set forth within the paragraph any additional, material facts that require response or reply.

15. For purposes of response and reply to paragraph 15, Respondents incorporate here by reference paragraphs 3, 7-14 hereinabove. Beyond this, Complainant fails to set forth within the paragraph any additional, material facts that require response or reply.

16. For purposes of response and reply to paragraph 16, Respondents incorporate here by reference paragraphs 3, 7-14 hereinabove. Beyond this, Complainant fails to set forth any additional, material facts that require response or reply.

17. While it unfortunately perhaps is now too late, Respondents too would welcome an immediate ruling on its *Motion to Dismiss*, provided of course it was in Respondents' favor. Beyond this, Complainant fails to set forth within the paragraph any additional, material facts that require response or reply.

18. For purposes of response and reply to paragraph 18, Respondents incorporate here by reference paragraphs 3, 7-14 hereinabove. Beyond this, Complainant fails to set forth within the paragraph any additional, material facts that require response or reply.

19. For purposes of response and reply to paragraph 19, Respondents incorporate here by reference paragraphs 3, 7-14 hereinabove. Beyond this, Complainant fails to set forth within the paragraph any additional, material facts that require response or reply.

20. For purposes of response and reply to paragraph 20, Respondents incorporate here by reference paragraphs 3, 7-14 hereinabove. Beyond this, Complainant fails to set forth within the paragraph any additional, material facts that require response or reply.

21. Respondents have been forced to repeat themselves because they must respond to Complainant "saying the same [erroneous] things over and over again". For

purposes of further response and reply to paragraph 21, Respondents incorporate here by reference paragraphs 3, 7-14 hereinabove. Beyond this, Complainant fails to set forth within the paragraph any additional, material facts that require response or reply.

22. For purposes of response and reply to paragraph 22, Respondents incorporate here by reference paragraphs 3, 7-14 hereinabove. Beyond this, Complainant fails to set forth within the paragraph any additional, material facts that require response or reply.

23. For purposes of response and reply to paragraph 23, Complainant fails to set forth within the paragraph any additional, material facts taht require response or reply.

24. Paragraph 24 is not a response to Respondents' *Motion for Summary Determination,* and therefore, it necessarily must be considered as a separately numbered paragraph in *Complainant's Cross Motion*. Paragraph 24 contains no statement of undisputed facts, only Complainant's positions and broad conclusions with respect to certain issues tangential and otherwise not relevant to the fundamental threshold legal issue in this proceeding. As such, paragraph 24 violates the provisions of 4 CSR 240-2.117(1)(B) and should be stricken.

Nevertheless responding further, Complainant once again erroneously relies upon the *Intermodal Order* (which as discussed above does not impose any legal obligations in wireline-to-wireline situations) for its proposition that network capacity issues are not grounds for denying a number porting order. 47 U.S.C. Section 251(b)(2) governs Respondents' obligation to provide "number portability", to the "extent technically feasible" in accordance with FCC requirements. Smith Rebuttal, pp.17-20, 24-26; Smith Surrebuttal, pp. 30-33. Article XII of the ICAs govern the particular porting procedures that Respondents' are obligated to follow. Smith Rebuttal, p. 12. Trunk capacity and

network blockage are important technical concerns necessarily related to number porting; potential network problems are acerbated when, as here, the porting requests for internet service provider traffic must utilize interexchange toll trunks rather than the local trunk group. Penn Rebuttal, pp. 8-10. Respondents deny that they have, at least intentionally, violated any lawful requirements or required procedures with respect to porting requests from Complainant. Beyond this, Complainant fails to set forth within the paragraph any additional, material facts that require response.

25. Paragraph 25 is not a response to Respondents' *Motion for Summary Determination,* and therefore, it necessarily must be considered as a separately numbered paragraph in *Complainant's Cross Motion*. Paragraph 25 contains no statement of undisputed facts, only Complainant's positions and broad conclusions with respect to certain issues tangential and otherwise not relevant to the fundamental threshold legal issue in this proceeding. As such, paragraph 25 violates the provisions of 4 CSR 240-2.117(1)(B) and should be stricken.

Nevertheless responding further, Respondents again reiterate that Complainant's reliance on the *Intermodal Order* in support of its proposition that the FCC has held that <u>any</u> port that does not change the rating or routing of a call is not a location port, and that this FCC decision is directly applicable in this proceeding, is entirely misplaced and simply wrong.

First, and most importantly, the *Intermodal Order* by its own terms applies to wireline-to-wireless porting and is not applicable to wireline-to-wireline porting situations.[13] Second, even if the *Intermodal Order* did apply to wireline-to-wireline

[13] Dr. Furchtgott-Roth Surrebuttal, pp. 13-16.

porting situations, the FCC in that case primarily focused on the geographic service location and only secondarily looked to the question of rating and routing. The FCC there concluded that there would not be location porting in wireline-to-wireless situations if the rating and routing were not changed, but only after it was first established that the wireless carrier has service coverage in the geographic location of the existing rate center. In other words, it must first be established that the wireless carrier can provide service, and the ported customer can take service from the wireless carrier "at the same location".[14] Under the particular facts of this Complaint, and Complainant's refusal to provide its own adequate facilities in the existing exchanges, it is at best unclear whether the porting requests at issue would even meet the relatively looser requirements for wireline-to-wireless porting.

Beyond this, Complainant fails to set forth within the paragraph any additional, material facts that require response.

26. Paragraph 26 is not a response to Respondents' *Motion for Summary Determination,* and therefore, it necessarily must be considered as a separately numbered paragraph in *Complainant's Cross Motion*. Paragraph 26 contains no statement of undisputed facts, only Complainant's positions and broad conclusions with respect to certain issues either tangential or otherwise not relevant to the fundamental threshold legal issue in this proceeding. As such, paragraph 26 violates the provisions of 4 CSR 240-2.117(1)(B) and should be stricken.

Nevertheless responding further, Respondents specifically deny each and every averment contained in paragraph 26. As discussed above, customers have the right to

---

[14] *Intermodal Order*, para. 22.

"service provider portability", not "location portability". Respondents' actions in denying the specific porting requests at issue are fully consistent with applicable law, and therefore, Respondents have not denied these customers of any legal right. Unless or until the currently applicable federal law changes, Respondents' actions are in fact consistent with "the essential features of competition as envisioned by Congress and the FCC under the Act." Should the Commission grant Complainant's requested relief, not only Respondents, but their existing customers as well, will be adversely affected. In addition, the Commission will be improperly infringing upon the FCC's primary jurisdiction to determine when and under what circumstances "location portability" will, if ever, be required. Call rating and call routing purportedly remaining the same is not the currently applicable legal standard to determine "location portability" in wireline-to-wireline situations. Dr. Furchtgott-Roth Rebuttal and Surrebuttal (in entirety); Smith Rebuttal and Surrebuttal (in entirety); Penn Rebuttal and Surrebuttal (in entirety); Anderson Rebuttal (in entirety).

Beyond this, Complainant fails to set forth within the paragraph any additional, material facts that require response.

WHEREFORE, having fully replied to Complainant's Response and to Complainant's Cross Motion consistent with 4 CSR 240-2.117, Respondents again request that the Commission: 1) grant the relief requested in Respondents' previously filed *Motion to Dismiss* and/or *Motion for Summary Determination* and/or *Motion Regarding Procedural Schedule*; 2) deny Complainant's Cross Motion for Summary Determination; and 3) grant such other and further relief as the Commission deems just and proper in the premises.

Respectfully submitted,

/s/ Charles Brent Stewart

_____

Charles Brent Stewart Mo. Bar 34885
STEWART & KEEVIL, L.L.C.
4603 John Garry Drive, Suite 11
Columbia, Missouri 65203
Tel: (573) 499-0635
Fax: (573) 499-0638
Email: stewart499@aol.com

Attorney for CenturyTel of Missouri, LLC and Spectra Communications Group, LLC, d/b/a CenturyTel

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, transmitted by electronic mail or mailed, First Class, postage prepaid, to the following parties on the 9th day of July, 2007.

/s/ Charles Brent Stewart

William K. Haas
Deputy General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

Office of the Public Counsel
P.O. Box 2230
Jefferson City, Missouri 65102

Carl J. Lumley
Leland B. Curtis
Curtis, Heinz, Garrett & O'Keefe
130 Bemiston, Suite 200
St. Louis, Missouri 63105