

**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.)	

RESPONSE TO ORDER DIRECTING FILING

COME NOW CenturyTel of Missouri, LLC and Spectra Communications Group, LLC d/b/a CenturyTel (collectively “Respondents”), and for their Response to the Commission’s *Order Directing Filing* issued on December 31, 2007, respectfully state as follows:

1. The Commission has directed “the parties to state what effect, if any, the Commission’s decision in TC-2007-0307 [“the RCF case”] should have on this case”. Respondents agree with the Staff that the factual and legal issues in the two cases are “disparate” and that the Commission’s decision in the RCF case, therefore, is not and cannot be dispositive here.
2. As discussed below, this Complaint involves a distinct and separate set of facts and the relief requested by Socket in this case is entirely different than in that of the RCF case. More importantly, resolution of this case is governed by entirely different applicable law and therefore requires a different legal analysis than that of the RCF case. The *only* similarity between the two cases is that Socket has used the RCF case and is again trying to use this case to game the inter-company compensation system by avoiding

interexchange transport costs and improperly forcing Respondents to carry Socket's traffic without compensation thereby creating a competitive advantage.¹

I. THE FACTS ARE DIFFERENT

2. The evidentiary record clearly shows that the two cases are factually distinct.

The main differences include, but are not limited to:

a. The RCF case involved Respondents' request to terminate a Commission approved end-user tariff (yet grandfathering existing customers), while the instant case involves not a tariff, but rather Respondents' obligation to provide geographic/location porting under currently applicable federal law relating to interconnection between competing carriers.

b. The RCF case involved a number of Respondents' existing retail customers already receiving an existing end user tariffed service from Respondents, while the instant case involves a geographic/location number porting request by a competitive carrier associated with numbers it would like to assign to two of its internet service providers—one of which is Socket's own affiliate (Socket Internet).

c. Another difference between the cases is that Socket did not attempt to supplement the factual evidentiary record in the RCF case, while in the instant case Socket has improperly attempted through a myriad of post-record pleadings to supplement the closed evidentiary record in clear violation of Commission rules 4 CSR 240-2.110(8), 4 CSR 240-2.130(17), and 4 CSR 240-2.150(1).

¹ The Staff points out that Respondents have raised the issue of network congestion in both cases. While this is true, in the RCF case the network congestion was a related but somewhat delayed result occurring after the RCF customer switched service to Socket CLEC. In the instant case the network congestion on interoffice facilities is a direct result of the customer moving out of the local area and porting their number to Socket CLEC.

II. THE APPLICABLE LAW IS DIFFERENT

3. The applicable law governing each case is entirely distinct in that:

a. The RCF case was a *tariff* case, initiated by Respondents, whereas the instant case is a *complaint* case initiated by Socket, with Socket—not the Respondents—bearing the burden of proof.

b. The RCF case dealt with Respondents’ legal obligations to continue to offer forms of service under their end-user tariffs, while the instant case is based on Respondents’ location portability obligations under 47 U.S.C. Section 251(b)(2) and applicable FCC rules and decisions relating to interconnection between competing carriers.² While the RCF case dealt with the relationship between CenturyTel and its retail, end-user customer, the instant case deals with the relationship between CenturyTel and another competing carrier.

c. While the Staff ultimately recommended that the Commission rule against CenturyTel in the RCF case, in the instant case the Staff agrees with Respondents that Socket’s porting requests constitute—by definition and despite Socket’s arguments to the contrary—geographic/location portability, and, that currently applicable federal law places no legal obligation upon Respondents to provide geographic/location portability.³

d. The RCF case did not involve the interconnection agreements (“ICAs”) between Socket and the Respondents, while in the instant case Socket primarily and the

² The applicable FCC Rules are found in Subpart C of Part 52, and along with federal statute and FCC and court decisions, are fully discussed in Respondents’ brief. It is important for the Commission to recognize as part of its legal analysis in this case that the FCC specifically has found that geographic/location portability is not required under Section 251(b)(2) and that the FCC has yet to exercise its prerogative to order geographic/location portability under different sections of the Act. *See FCC, RM 8535, Second Memorandum Opinion and Order on Reconsideration, Released October 30, 1998; see also*, Exhibit 6, pp. 10-11.

³ *See* Exhibit 5, pp. 18-20, Voight Rebuttal Testimony.

Staff exclusively⁴ relies on six words—read out of context of the remaining provisions of the ICAs, contrary to the Commission’s arbitration decision, and wholly failing to take into account currently applicable federal law—to support the novel notion that Respondents are required to somehow provide geographic/location porting *despite* not being obligated to do so under currently applicable federal law.

THE UNDERLYING COMPENSATION ISSUE

4. The only similarity between the two cases is that they both involve Socket’s overall business plan to do everything it can to avoid legitimate interexchange transport costs and to improperly shift those costs to Respondents while expanding Socket’s local calling area.⁵

5. In the instant case, the Commission already intuitively has recognized that there is “a catch” with Socket’s geographic/location portability requests. *See, e.g.*, Tr. 141. That “catch” involves Socket’s attempt to avoid and shift the additional costs created by Socket’s increased use of the interexchange toll network, as most clearly illustrated in Exhibits 22-25, attached hereto for reference.

6. The compensation issue, underlying both cases in varying degrees, could be significantly mitigated if not entirely eliminated by Socket establishing additional local points of interconnection (“POIs”) as it expands its local calling area and increases its traffic. The evidentiary record in this case, however, shows that Socket will attempt everything in its power to avoid establishing new POIs, even when Socket’s traffic rises

⁴ Even the Staff, however, places a fundamental qualifier and precondition with respect to the ICAs: if the service offered by Socket is V-NXX service *and* V-NXX traffic is not local traffic, then Socket cannot prevail in this proceeding. *See* Exhibit 5, pp. 6, 12, and 15. Under the clear terms of the ICAs, V-NXX traffic is **not** local traffic. ICAs, Article V-9.2.3.

⁵ Socket of course is entirely free to determine the limits and expand its local calling area but it should not do so by improperly shifting interexchange transport and new facility costs to Respondents.

to the threshold traffic levels specified in the ICAs. And even if Respondents advise Socket that its traffic has exceeded the agreed-upon traffic levels specified in the ICAs, Socket will take issue with Respondents' methodology for conducting its traffic studies, which is entirely consistent with methods used by the industry for measuring voice traffic, to further avoid its clearly-established responsibilities pursuant to the terms of the ICAs.

7. The instant case should be easily disposed of in favor of Respondents on the basis of currently applicable federal law without ever addressing the compensation issue. But as suggested from the bench at the hearing in this case, Respondents' earlier predictions of Socket using the Commission's decision in the arbitration proceeding to engage in arbitrage have now ripened into reality. So it is time for the Commission to revisit and clarify that portion of its arbitration decision to ensure that costs are properly and fairly allocated between the two competing carriers.

WHEREFORE, Respondents submit the foregoing in response to the Commission's *Order Directing Filing* issued on December 31, 2007.

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 attorneys of all parties of record in Case No. TC-2007-0341 this 10th day of January 2008.

/s/ Charles Brent Stewart
