

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

PETITION OF SOCKET TELECOM, LLC FOR)	
COMPULSORY ARBITRATION OF)	
INTERCONNECTION AGREEMENTS WITH)	
CENTURYTEL OF MISSOURI, LLC AND)	
SPECTRA COMMUNICATIONS GROUP, LLC)	CASE NO. TO-2006-0299
PURSUANT TO SECTION 252(b)(1) OF THE)	
TELECOMMUNICATIONS ACT OF 1996)	

**CENTURYTEL'S MOTION TO STRIKE
SOCKET'S MOTION FOR RECONSIDERATION**

In response to the Arbitrator's June 9th Order Directing Filing, Socket filed a Motion for Reconsideration attempting, yet again, to re-argue the merits of the parties' substantive dispute relating to points of interconnection (POIs). Although Socket did not seek expedited treatment of its motion under 4 CSR 240-2.080(16), the Arbitrator granted Socket's motion without providing CenturyTel¹ an opportunity to respond.² Nevertheless, in light of the impending deadline for complete Commission resolution of this matter and because of certain erroneous assertions Socket made in its motion, CenturyTel is compelled to file this Motion to Strike demonstrating that the Commission should strike Socket's motion in its entirety and stay the course with respect to its resolution of the POI dispute.³ To that end, CenturyTel respectfully shows the following:

¹ The two CenturyTel ILECs, Spectra Communications Group, LLC ("Spectra Communications") and CenturyTel of Missouri, LLC ("CenturyTel of Missouri"), are referred to collectively as "CenturyTel" strictly as a matter of convenience. They are separate ILECs under the FTA, and each will each operate under a separate agreement with Socket. Exhibit F (Simshaw Rebuttal) at 44-45.

² While CenturyTel advised Socket and the Arbitrator less than 24 hours after Socket filed its motion that CenturyTel would be filing a response on an expedited basis, the Arbitrator apparently already had prepared his order for issuance.

³ The ostensible basis for Socket's motion, that the Order Directing Filing suffered from some purported due process defect, was little more than a pretense for re-arguing the POI issue. First, nothing about the Order was inconsistent with the Arbitrator's delegated authority under 4 CSR 240-36.040(15), the discretion afforded him in final offer arbitrations under 4 CSR 240-36.040(5)(E) or the evidentiary procedures erected by 4 CSR 240-2.130(8), the latter of which explicitly contemplates supplemental testimony and "a reasonable opportunity" to address matters not

- The Commission's rules permit the Arbitrator to weigh the parties' final offers and craft a separate solution that is consistent with the FTA.
- In its motion, Socket misrepresents its final offer on the POI dispute.
- The POI dispute is about apportioning the extraordinary costs associated with Socket's selection of an expensive form of interconnection, not technical feasibility.

To its detriment, Socket's motion compounded earlier evidentiary, analytical, and legal errors with additional mistakes and legal misconstructions. It also misrepresents the parties' "final offers" on the POI dispute. The Commission should strike the motion in its entirety.

A. The Arbitrator need not adopt the parties' final offers, but may develop a "middle ground" resolution that is consistent with the FTA.

Socket's motion errs both in suggesting that its final offer is a DS3 threshold and in implying that the Arbitrator is limited to selecting one or other of the parties' final offers unless it explicitly finds both unreasonable. Neither is true. First, as shown below, Socket's final offer in this proceeding is actually an OC3 traffic threshold. Second, it critically mischaracterizes the Commission's final offer arbitration procedure. Under the Commission's rules regarding final offers (4 CSR 240-36.040(5)), the decision here is between CenturyTel's DS1 final offer, Socket's OC3 final offer "or adopting a result not submitted by any party that is consistent with the requirements of section 252(c) of the Act, and the rules prescribed by the commission" and the FCC. As CenturyTel argued in its Post-Hearing Brief and in its Comments, as between the parties' final offers, the record demonstrates that CenturyTel's DS1-level proposal was reasonable⁴ and was consistent with both the FTA and Congressional intent to promote facilities-

previously disclosed. Second, the Order fully satisfied due process. Having both notice and an opportunity to respond, Socket's due process claim was without merit. Finally, Socket's well-documented inflexibility on scheduling, adamantly refusing to extend the ultimate deadline for resolution of this proceeding (except where it demands post-proceeding "collaboratives" on issues upon which it has presented little or no evidence), renders its complaint of lacking time hollow. It is odd indeed to allow Socket to wield that deadline as a shield to fend off CenturyTel's arguments and evidence in this proceeding while simultaneously using that same deadline as a weapon to attack the Order. Socket cannot have it both ways.

⁴ The Commission should not credit Socket's misguided assertion that a DS1 threshold would require an additional POI every time Socket adds a customer. To the contrary, just because a customer orders a DS1 loop does not mean it is exchanging a DS1 volume of local traffic at peak over three consecutive months.

based competition, while Socket's demands are both unreasonable and unlawful.⁵ Nonetheless, recognizing the Arbitrator's authority to adopt a result consistent with the FTA, CenturyTel concluded that:

Recognizing the impropriety of Socket's effort to erect undue arbitrage opportunities and to shift its costs to CenturyTel, the Report properly rejected Socket's demand that it be allowed to deploy a single point of interconnection ("POI") per LATA virtually in perpetuity. The Report implements the FCC's recent orders and philosophy on the proper allocation of the costs of entry, particularly as they pertain to the establishment of new POI when a new entrant's calling volumes increase beyond the initial, new-entrant level, and properly considers the extraordinary cost of transport through extended, rural markets. This determination is reasonable, is consistent with the FTA's underlying goal of encouraging facilities-based competition, and minimizes Socket's ability to game the system.⁶

Nothing Socket has said undermines the Arbitrator's authority to adopt the POI result contained in the Arbitrator's Final Report. The Arbitrator arrived at a reasonable result that should not—and need not—be changed.

B. Socket misrepresented its final offer on the POI dispute.

In an attempt to secure reconsideration of the Arbitrator's decision, Socket misrepresented its final offer in this proceeding. In its Motion, Socket claimed that its final offer was "a DS3 threshold proposed by Socket."⁷ Not so. While Socket appears to have, of late, retreated on the POI dispute,⁸ this time proposing a DS3 threshold for additional POIs—*a traffic volume still 28 times higher than CenturyTel's proposed DS1 threshold*, its actual final offer for Commission consideration remains an OC3 threshold, *not a DS3*. Under the scheduling order in this proceeding, the parties were required to file a Final DPL with Final Offers on April 7,

⁵ See CenturyTel's Post-Hearing Brief on Certain Disputed Arbitration Issues at 5, 9-28; CenturyTel's Comments on Arbitrator's Final Report at 2, 5-7.

⁶ CenturyTel's Comments on Arbitrator's Final Report at 2.

⁷ See Socket's Motion for Reconsideration at 2-3.

⁸ Socket originally advocated an OC12 traffic threshold, retreating to an OC3 level in its final offer after seeing CenturyTel's testimony discrediting the OC12 level. Then, after the hearing and seeing the Arbitrator's Final Report, Socket apparently retreats from its OC3 final offer to a DS3 threshold that is still 28 times larger than a DS1, is not before the Commission, is not supported by the record, and, as explained during Oral Argument, remains excessive in the context of CenturyTel's network and the exchanges it serves.

2006.⁹ The parties did so,¹⁰ with CenturyTel advocating a DS1 threshold and Socket advocating an unreasonable OC3 threshold. Those are the parties' final offers, fixed as of April 7th.

As Socket conceded in a footnote to its motion, "a DS3 threshold for additional POIs was proposed by Socket to CenturyTel *after the Arbitrator's Final Report was issued.*"¹¹ Not only does the timing of Socket's position change emphasize the obvious fact that no evidence in the record supports Socket's newly proposed DS3 threshold—a proposal that was not before the Commission while the record remained open and for which Socket has not since sought to offer supplemental evidence, but it was too late under the Commission's rule requiring final offers to "precede the date of a limited evidentiary hearing."¹² No party should be allowed to revise its final offer after the Arbitrator rejects its proposal. Otherwise, the Commission would be inundated with revised final offers and the process of having a final offer that the Arbitrator can evaluate and rule upon would become meaningless. The Arbitrator should strike Socket's motion to the extent it misrepresents its final offer as anything other than an OC3 threshold.

C. Ultimately, the POI issue is about the substantial costs associated with Socket's selection of an expensive form of interconnection, not technical feasibility.

Under the guise of challenging the relevance of the Arbitrator's Order Directing Filing, Socket once again—and again unsuccessfully—attempted to re-argue the merits of the POI dispute. In doing so, Socket raised the same tired arguments that CenturyTel has repeatedly rebutted.¹³ The Arbitrator should strike the entirety of Socket's effort to re-argue this issue.

⁹ See Order Adopting Procedural Schedule (Feb. 15, 2006).

¹⁰ See Final DPL at Article V: Interconnection and Inter-carrier Compensation, Issue 7.

¹¹ See Socket's Motion for Reconsideration at 3 n.4.

¹² See 4 CSR 240-36.040(5)(A).

¹³ Compare Socket's Motion for Reconsideration at 3-4 with CenturyTel's Post-Hearing Brief on Certain Disputed Arbitration Issues at 5, 9-28 and CenturyTel's Comments on Arbitrator's Final Report at 2, 5-7. For example, Socket again ignores that the legal viability of a single POI requirement remains suspect. Neither the FTA nor any FCC regulation provides that CLECs are entitled to a single POI per LATA, much less that they are so entitled virtually in perpetuity. See, e.g., CenturyTel's Post-Hearing Brief on Certain Disputed Arbitration Issues at 14-16. Socket has never responded or otherwise challenged the conclusion.

Although Socket's arguments as to the substantive POI dispute should be stricken in their entirety, to ensure the record is not misleading it is incumbent on CenturyTel to make the following observations. Contrary to Socket's assertion, the POI issue is not about "technical feasibility" but is rather about a CLEC-selected expensive form of interconnection. If Socket selects a "technically feasible" but expensive form of interconnection (*i.e.*, a single POI in Branson requiring CenturyTel to incur the costs associated with bringing traffic from 60-plus exchanges throughout the Springfield LATA to that single POI¹⁴), then Socket should bear the cost of that interconnection.¹⁵ As the FCC observed in the *First Report and Order*, "[o]f course a requesting carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to Section 251(d)(1), be required to bear the cost of that interconnection, including a reasonable profit."¹⁶ Thus, the POI dispute is about apportioning the costs associated with Socket's selection of an expensive form of interconnection. Here, a reasonable apportionment is best accomplished by either adopting CenturyTel's proposed DS1 volume threshold or the threshold recommended by the Arbitrator in his Final Report. Socket's proposal to establish an additional POI volume threshold at an OC3 (or even a DS3), however, would in effect be a single POI in perpetuity and would not result in a reasonable allocation of costs.

D. The Arbitrator should strike Socket's motion.

Socket's motion should not be permitted to stand in the record. For the reasons set forth above, the Commission should strike Socket's motion.

¹⁴ See, *e.g.*, Exhibit E (Simshaw Direct) at 15-23; ; Exhibit F (Simshaw Rebuttal) at 12-13; Tr. at 211:2-16, 225:3-226:2 (Simshaw).

¹⁵ See *MCI Telecommunications Corp. v. Bell Atlantic Pennsylvania*, 271 F.3d 491, 518 (3rd. Cir. 2001); *Petition of AT&T Communications of the Southern States, Inc., for Arbitration of Certain Terms and Conditions of a Proposed Interconnection Agreement with BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. Section 252*, Docket No. 2000-527-C, Order on Arbitration, Order No. 2001-079 (SC Pub. Serv. Comm'n 2001); *In the Matter of Arbitration of Interconnection Agreement Between AT&T Communications of the Southern States, Inc., and TCG of the Carolinas, Inc., and BellSouth Telecommunications, Inc., Pursuant to the Telecommunications Act of 1996*, Docket Nos. P-140, Sub 73, P-646, Sub 7 (NC Util. Comm'n 2001).

¹⁶ See *Local Competition First Report and Order* at ¶ 199.

Respectfully submitted,

FISCHER & DORITY, P.C.

/s/ Larry W. DORITY

Larry W. DORITY, #25617
FISCHER & DORITY, P.C.
101 Madison, Suite 400
Jefferson City, Missouri 65101
(573) 636-6758 Telephone
(573) 636-0383 Facsimile
lwdority@sprintmail.com

HUGHES & LUCE, LLP

/s/ David F. Brown (by Larry W. DORITY)

David F. Brown
Texas State Bar No. 03108700
Hughes & Luce LLP
111 Congress Avenue, Suite 900
Austin, TX 78701
(512) 482-6867 Telephone
(512) 482-6859 Facsimile
david.brown @hughesluce.com

Floyd R. Hartley, Jr.
Texas State Bar No. 00798242
Gavin E. Hill
Texas State Bar No. 00796756
Hughes & Luce LLP
1717 Main Street, Suite 2800
Dallas, TX 75201
(214) 939-5500 Telephone
(214) 939-5849 Facsimile
fhartley@hughesluce.com
gavin.hill@hughesluce.com

**ATTORNEYS FOR CENTURYTEL OF
MISSOURI, LLC AND SPECTRA
COMMUNICATIONS GROUP, LLC**

CERTIFICATE OF SERVICE

I hereby certify that the undersigned has caused a complete copy of the attached document to be electronically filed and served on the Commission's Office of General Counsel at (gencounsel@psc.mo.gov), the Office of the Public Counsel at (opcservice@ded.mo.gov), and counsel for Socket Telecom, LLC at (clumley@lawfirmemail.com; lcurtis@lawfirmemail.com; and b.magness@phonelaw.com) on this 19th day of June 2006.

/s/ Larry W. Dority

Larry Dority