

**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 SOCKET TELECOM'S  
MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF  
AND RESPONDENTS' MOTION TO STRIKE**

COME NOW CenturyTel of Missouri, LLC and Spectra Communications Group, LLC d/b/a CenturyTel (collectively "Respondents"), pursuant to 4 CSR 240-2.080 (15), and for their *Response to Socket Telecom's Motion For Leave to File Supplemental Brief and Respondents' Motion To Strike*, respectfully state as follows:

1. For the reasons stated below, the Commission should deny Socket's latest *Motion* and should strike and disregard Socket's Supplemental Brief. In addition, the Commission should immediately direct Socket to cease and desist from any further procedural machinations that attempt to repair, repackage, and reargue Socket's case-in-chief. Socket must be disabused of the notion that it can with impunity continue to drown the Commission and the Respondents with a never-ending series of improper post-brief submissions long after the record has been closed in contravention of Commission rules and procedure.<sup>1</sup>

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<sup>1</sup> It has become painfully obvious without such an order Socket will continue on its improper pleading spree, which in turn, unfortunately but necessarily each time requires Respondents to respond. As noted

2. Socket's latest ploy in a series of ploys is its attempt to submit a supplemental brief that merely rehashes and restates its arguments from its September 10, 2007 brief-- under the guise of pointing the Commission to a recent Federal Communications Commission ("FCC") decision that addresses local number portability ("LNP") obligations in the limited context of interconnected voice over Internet Protocol (VoIP) arrangements ("*VoIP Decision*").<sup>2</sup>

3. So there is no misunderstanding, Respondents certainly do not object to the Commission keeping itself apprised of relevant FCC decisions (and other relevant cases)<sup>3</sup> that might arise while the Commission is deliberating and considering a case before it. In fact, Respondents would expect the Commission to do so as a matter of standard practice. Such FCC (or other decisions), however, speak for themselves, and barring very unusual circumstances (such as, for example, a major sea change in federal policy), do not call for additional comment, briefing, or argument unilaterally submitted by a complainant in a Commission complaint proceeding. Such is the case with the FCC's *VoIP Decision*,

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previously, Socket's myriad post-brief submissions necessarily have put Respondents in the untenable position of either remaining silent on Socket's erroneous and factually incomplete allegations or filing responses to challenge such allegations. Out of necessity, Respondents have been forced into the latter. Respondents here again raise their continuing objection to all of Socket's attempts to supplement the evidentiary record and to rehabilitate Socket's already submitted case-in-chief.

<sup>2</sup> Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, *In the Matter of Telephone Number Requirements for IP-Enabled Service Providers et al.*, CC Docket Nos. 07-243 et al., FCC 07-188, issue date November 8, 2007 ("*VoIP Decision*").

<sup>3</sup> For example, the Commission no doubt is aware that several state commission decisions in Kansas, Oregon and Washington State have been issued since this *Complaint* was submitted for decision that support Respondents' contention that the type of porting scheme attempted by Socket where no local Point of Interconnection ("POI") exists wrongly deprives other carriers of the compensation due them for use of the interexchange/toll network.

which speaks for itself. The Commission does not need Socket's "assistance" in interpreting and determining the *VoIP Decision*'s relevance--if any--to this case.<sup>4</sup>

4. Beyond this and more significantly, Socket once again is attempting to mislead the Commission by mischaracterizing the relevance, scope, and applicability of the *VoIP Decision* to this case. As discussed below, the *VoIP Decision* in no way obligates Respondents to provide the type of "location portability" or geographic porting requested by Socket in this proceeding<sup>5</sup> nor does it somehow mark a sea change in FCC policy with respect to "location portability" in the wireline-to-wireline setting under currently applicable federal law.

**5. The record before the Commission in this proceeding reflects that the Commission Staff agrees with the Respondents that: a) Socket's porting requests at issue in this case constitute "location portability" in the wireline-to-wireline setting; and 2) currently applicable federal law places no obligation on Respondents to provide geographic porting or "location portability" in such a setting.** In fact, the record reflects that the FCC repeatedly has considered whether to mandate "location portability" in the wireline-to-wireline context but each time has specifically declined to do so.

6. Unless the *VoIP Decision* now somehow reverses currently applicable federal law and FCC policy in the context of "location portability" in the wireline-to-wireline

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<sup>4</sup> Respondents likewise would expect the Commission Staff to keep apprised and inform the Commission of changes in federal law and policy. The record reflects that the Staff agrees with the Respondents that federal law and policy applicable during litigation of this case did not place any legal obligation on Respondents to port the numbers at issue. The Commission should note that the Staff has not found it necessary to make a supplemental filing respecting the *VoIP Decision*.

<sup>5</sup> This is true not only on an ongoing basis but obviously also as of the time Socket first filed its *Complaint* last spring.

setting, it is irrelevant, not on point, immaterial, and certainly is not dispositive in Socket's favor in this case.

7. The Commission need not parse through every paragraph and footnote of the FCC's ninety-seven (97) page *VoIP Decision* to see that Socket once again has mischaracterized and misapplied FCC precedent with respect to Respondents' LNP obligations under applicable federal law for purposes of this case. Just as the FCC's *Intermodal Order*<sup>6</sup> only changed LNP obligations in the limited context of the wireless-to-wireline setting, the *VoIP Decision* only changed LNP obligations in the limited context of interconnected VoIP providers. The Commission need only read the introduction to the *VoIP Decision* and the attached statements of the FCC Commissioners to see that this is so.

8. By its own terms, the *VoIP Decision* does not reverse or even modify currently applicable federal law in the context of "location portability" obligations in the wireline-to-wireline setting. If it had, Socket no doubt would have highlighted any such language prominently in its *Motion*. Socket did not because it cannot. If the *VoIP Decision* is of any relevance to this proceeding whatsoever, **it supports Staff's and Respondents' position** because once again the FCC had the opportunity to consider and include wireline-to-wireline "location portability" in the LNP obligations mandated by the Act but it once again chose not to do so.

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<sup>6</sup> *Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 96-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23697 (2003). The record reflects that the Staff agrees that Socket's reliance on the *Intermodal Order* to support its position in this case is misplaced.

9. While not cited by Socket for obvious reasons, the FCC in its *VoIP Decision* actually and affirmatively continues to recognize **geographic LNP limitations** when the customer requests number porting when changing physical locations outside of the customer's original exchange:

“We note that because interconnected VoIP providers offer telephone numbers not necessarily based on the geographic location of their customers—many times at their customers’ requests—there may be limits to number porting between providers. **The Act only provides for service provider portability and does not address service or location portability.** See *First Number Portability Order*, 11 FCC Rcd at 8447, para. 181. **Thus, for example, if an interconnected VoIP service customer selects a number outside his current rate center, or if the interconnected VoIP service customer selects a number within his geographic rate center and moves out of that rate center, and then requests porting to a wireline carrier in his new rate center, the customer would not be able to port the number.** See 47 C.F.R. § 52.26(a). We expect interconnected VoIP providers to fully inform their customers about these limitations, particularly limitations that result from the portable nature of, and use of non-geographic numbers by, certain interconnected VoIP services. (emphasis supplied).<sup>7</sup>

10. Throughout this case Socket has repeatedly strained to convince the Commission that currently applicable federal law and FCC rules, regulations, and decisions have somehow “evolved” in such a way as to mandate the type of geographic porting at issue in this case. This still has not happened, despite Socket’s desperate desire to make it so, and any Commission finding in Socket’s favor clearly would be contrary to currently applicable federal law.

11. Moreover, Socket’s rehashed arguments respecting PIM-60 and Respondents’ obligations under the Interconnection Agreements likewise do not place Respondents under any legal mandate to provide geographic porting or “location portability”. Socket’s PIM-60 is not typical of the matters that normally come before the LNPA-WG.

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<sup>7</sup> *VoIP Decision*, paragraph 34, footnote 114.

The LNPA-WG primarily deals with technical LNP issues; it does not mandate sea changes in a carrier's federal LNP legal obligations under the Act. Pursuant to federal law, the opinions of the LNPA-WG are not legally binding on Respondents. Respondents have appealed the LNPA-WG's PIM-60 opinion and the FCC has yet to even rule on the LNPA-WG's opinion one way or the other. Socket's characterization of the impact of its PIM-60 effort on this case is simply wrong. As noted in Respondents' September 10, 2007 Brief, Socket's attempt to bootstrap a mere six words of the Interconnection Agreements into a legal obligation to provide geographic porting likewise is misplaced, ignores the meaning of the contract read as a whole and in proper context, and is contrary to currently applicable federal law.

12. The Commission should recognize Socket's repeated antics for what they truly are—nothing more than attempts to improperly rehabilitate Socket's case-in-chief. There has been no change in currently applicable federal law since the close of the record in this case which would place a legal obligation on Respondents to honor Socket's geographic porting requests. As noted in Respondents' prior responsive pleadings, the record in this case was closed upon the simultaneous submission of briefs on September 10, 2007 pursuant to Commission order and the Commission's own rules, specifically, 4 CSR 240-2.110(8), 4 CSR 240-2.130(17), and 4 CSR 240-2.150(1). As the moving party bearing the burden of proof in its *Complaint*, Socket is and should be held subject to these rules and merits no special exemption or consideration in this or any other case.<sup>8</sup>

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<sup>8</sup> In its cite of authority for its *Motion For Leave To File Supplemental Brief*, Socket merely cites to the general provisions of 4 CSR 240-2.080 and "other applicable authority" without specifying what specific authority that might be. As such, Socket's pleading is deficient on its face in addition to being in direct contravention of prior Commission order and the Commission rules cited above.

WHEREFORE, for all the reasons stated above, the Commission should deny Socket's *Motion For Leave To File Supplemental Brief*, strike and disregard Socket's Supplemental Brief in its entirety, and issue an order directing Socket to cease and desist from further post-record filings until such time as the Commission issues its decision in this proceeding.

Respectfully submitted,

**/s/ Charles Brent Stewart**

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**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 on the 26<sup>th</sup> day of November 2007.

**/s/ Charles Brent Stewart**

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