

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Confirmation of)
Adoption of)
an Interconnection Agreement with) Cause No. CO-2005-0066
CenturyTel of Missouri, LLC d/b/a)
CenturyTel and Spectra Communications)
Group, LLC, d/b/a CenturyTel by)
Socket Telecom, LLC.)

SOCKET TELECOM, LLC'S BRIEF

Socket Telecom is a relatively small competitive local exchange company authorized to provide service in the combined CenturyTel of Missouri, LLC d/b/a CenturyTel and Spectra Communications Group, LLC d/b/a CenturyTel (herein collectively "CenturyTel") service territory and other parts of Missouri. (Tr. 48-49 and Exhibits 2 and 3).¹ Socket is a Missouri limited liability company in good standing. (Exhibit 1). According to Staff's witness, Socket Telecom is the only facilities-based CLEC that seeks to use its own switch to provide services in the rural areas at issue in this case. (Tr. 267).

CenturyTel is a national organization that is one of the largest ILECs in the country. (Tr. 55-56).

While CenturyTel has done its best to slow down Socket's facilities-based competitive entry into rural markets, it has nonetheless provided local interconnection facilities to Socket pursuant to the interconnection agreement between the companies. It has also exchanged traffic with Socket over those facilities. CenturyTel has provided such facilities and exchanged such traffic in the rural exchanges at issue, but now contends that it does not have to provide any additional facilities in these areas, based on its new and sudden assertion that there is no interconnection agreement that applies to these exchanges.

¹ During the hearings CenturyTel attempted to divert the Commission's attention by making reference to other previously certificated entities with the name Socket, but Socket reminded the Commission that those entities are not in operation. (Tr. 166, 173-74 and Exhibits 39 and 40).

While CenturyTel admits that it is bound by an interconnection agreement with Socket regarding certain exchanges, it contends that the agreement does not apply to the exchanges in question. Even though the agreement on its face covers all the exchanges, and even though CenturyTel has provided facilities pursuant to the agreement in the set of exchanges that it acquired in a transaction that occurred prior to Socket's adoption of the agreement, CenturyTel now contends that the agreement does not apply to those particular exchanges.

In truth, the agreement applies to all the exchanges, regardless of when CenturyTel acquired them. CenturyTel operates on a de facto basis as a single entity with a single set of operating systems. It committed to abide by the agreement in connection with its acquisition of a second set of exchanges, including as to Socket Telecom. Further, CenturyTel has demonstrated its agreement to be bound to Socket Telecom by the interconnection agreement in the first set of exchanges that it had previously acquired from the same seller and reassembled with the second set of exchanges, by providing facilities under the interconnection agreement in those exchanges to Socket Telecom.

On June 27, 2002 the Commission recognized the adoption of the GTE/AT&T interconnection agreement by Socket in Case No. TK-2002-1085. (Exhibit 4). That agreement was the product of an arbitration in 1998 before the Commission between GTE and AT&T. (Tr. 51-52, 113-14). On its face, the agreement applies to the entire GTE service area as it existed at the time of the arbitration. (Tr. 92, 151 and Exhibit 5).

On April 14, 2000, the Commission authorized CenturyTel's acquisition of certain exchanges from GTE under the name Spectra in Case No. TM-2000-182. In connection with obtaining that authorization, CenturyTel agreed to abide by the terms of GTE's existing interconnection agreements. One such existing agreement was the aforesaid agreement between GTE and AT&T. (Tr. 52-55 and Exhibits 6, 7 and 9).

At the time that CenturyTel acquired these exchanges from GTE, it was majority owner of the acquiring subsidiary. (Tr. 55-56 and Exhibit 6). CenturyTel initially invested \$55 million in equity, for a 57.1% ownership interest in the acquiring subsidiary. Furthermore, it was the source of somewhere between \$200 million and \$250 million in funds loaned in connection with this acquisition of the GTE exchanges. In the first quarter of 2001, CenturyTel purchased an additional 18.6% interest for \$47.1 million. And in the fourth quarter of 2003 it purchased the remaining 24.3% interest for \$32.4 million and became the sole owner of the subsidiary. (Tr. 56-62, 79-80 and Exhibits 6, 8, 11, 17 and 33). CenturyTel stipulated at hearing in this case that it is the 100% owner of its subsidiary Spectra. (Tr. 68). It is also the sole source of credit for Spectra. (Tr. 69 and Exhibit 8, Tr. 85 and Exhibit 21).

On March 1, 2001, the Commission approved subsidiary Spectra's use of the name CenturyTel to conduct business pursuant to the two companies' plan to operate as one in the state. (Tr. 78-79 and Exhibit 15). Even before that, with its original tariff filing Spectra began operations under the name CenturyTel. (Tr. 79 and Exhibit 16).

On May 31, 2002, the Commission authorized CenturyTel to acquire the remaining exchanges of GTE (then doing business under the name Verizon) through another subsidiary in Case No. TM-2002-232. In connection with obtaining that authorization, CenturyTel again agreed to abide by the terms of GTE's existing interconnection agreements including the GTE/AT&T agreement. In approving the transfer of assets, the Commission noted the close relationship between CenturyTel of Missouri, LLC to Spectra Communications Group, LLC d/b/a CenturyTel and relied upon the relationship to find that CenturyTel of Missouri, LLC d/b/a CenturyTel possessed the experience, skills, and financial resources to operate in Missouri. The Commission stated: "CenturyTel is a member of a corporate family that constitutes a major provider of telecommunications services in the United States. At least two related entities --CenturyTel of

Northwest Arkansas and Spectra Communications Group, LLC, d/b/a CenturyTel-- already provide telecommunications services in Missouri at an acceptable level of quality." (Tr. 69 and Exhibit 12).

CenturyTel closed on its acquisition of the second set of exchanges in late 2002, after Socket Telecom had adopted the AT&T/GTE interconnection agreement. (Tr. 118).

In approving both of the exchange acquisition transactions, the Commission recognized that there was in reality a single CenturyTel business enterprise and relied on that de facto single operating identity of the company. Further, CenturyTel specifically encouraged the Commission to view its operations as a single enterprise in order to obtain such approval. For example, Kenneth Matzdorf, the individual who put the transactions together, testified that the first acquisition demonstrated CenturyTel's abilities and qualifications, thereby justifying approval of the second transaction. (Tr. 62-64, 73-74 and Exhibit 14). Mr. Matzdorf testified on behalf of CenturyTel that: "CenturyTel has demonstrated its ability to operate newly-acquired properties through its acquisition of similar properties in Missouri in 2000." (Exhibit 14)(emphasis added).

Additionally, CenturyTel represented and the Commission relied upon the fact that CenturyTel would be conducting its subsidiaries' operations, including computerized billing, customer service, facilities records, and trouble dispatch systems. (Tr. 67 and Exhibit 6, page 10). The subsidiaries touted their ability to get volume discounts as a part of the CenturyTel enterprise. (Tr. 67 and Exhibit 6, page 11). GTE employees were retained in both transactions. (Tr. 75). Service was to be continued without change. (Tr. 75). In short, the Commission relied on the overall ability of CenturyTel as a single national enterprise to "absorb" the acquired exchanges. (Tr. 66 and Exhibit 6, page 10).

In fact, even though the Spectra subsidiary was not formally a party to the proceedings before the Commission regarding the second transaction, Staff found it important to make sure that the stipulation that led to Commission approval addressed quality of service commitments for all the

CenturyTel exchanges in the state, including those acquired in the first transaction in the name of Spectra. Staff still believes that all the exchanges were subject to the commitment. (Tr. 76-77, 261-64).

CenturyTel's Missouri subsidiaries operate under separate tariffs, but offer the same services and make simultaneous and identical tariff revisions. (Tr. 80-81 and Exhibits 18 and 19). Many companies have multiple tariffs, both with and without different subsidiaries. (Tr. 123, 166).

CenturyTel has one set of systems for ordering services, both retail and wholesale. (Tr. 88-91 and Exhibit 23).

At the hearing, CenturyTel's witness confirmed that the subsidiaries are operated as a single entity through yet another subsidiary. (Tr. 201, 228).

CenturyTel's subsidiaries conduct themselves as a single party in proceedings before the Commission, including this one. (Tr. 82-83 and Exhibit 20). They provide a single point of contact to the Commission for regulatory purposes. (Tr. 83 and Exhibits 11 and 33).

CenturyTel's Missouri subsidiaries share bank accounts, including for security deposits to be held for wholesale customers like Socket. (Tr. 84-85 and Exhibit 21).

As indicated above, in both of the transactions whereby CenturyTel acquired all the former exchanges of GTE in Missouri, it agreed to conditions regarding interconnection agreements. (Tr. 67-68, 73 and Exhibits 9 and 12). In the first transaction, it agreed to "enter into agreements which have the same rates, terms and conditions as those previously negotiated with GTE." (Exhibit 9, page 5). In the second transaction, it made the same agreement and further expressly agreed that it would be bound by the AT&T/GTE agreement as adopted by other CLECs like Socket Telecom "for one year after the closing of the sale of the telephone properties referenced herein [and] if any particular interconnection agreement has not been replaced through negotiation or arbitration within one year, that agreement will continue in force on a month-to-month basis until so replaced." (Exhibit 12,

Attachment 1, page 4-5). The adopted AT&T/GTE agreement remains in effect between Socket and CenturyTel in accordance with these provisions. (Tr. 26-27, 92, 125-27, 158, 213).

CenturyTel has held itself out to Socket as a single enterprise. (Tr. 98, 121, 149, 190). It accepted its obligations pursuant to Socket's adoption of the AT&T/GTE interconnection agreement, as a successor to GTE by means of acquiring the exchanges of GTE in two transactions. It did not ask that Socket obtain any further approvals from the Commission beyond the approval of Socket's original adoption of the agreement. (Tr. 175). It sent correspondence that confirmed that a single interconnection agreement applied to dealings with all CenturyTel subsidiaries, which is not an unusual arrangement in the industry. (Tr. 123-24, 166-67, 176-77 and Exhibit 32). CenturyTel described one particular letter as a "formal notice under the terms of **the** interconnection agreement governing the provision of services between your company [Socket] and the applicable CenturyTel Operating **Company(s)**." (Exhibit 32)(emphasis added). CenturyTel did not attempt to make Socket aware of any purported distinction between exchanges depending upon when they were acquired by CenturyTel. (Tr. 180-81, 101, 197).²

After acquiring all the GTE exchanges, CenturyTel conducted business with Socket in its exchanges pursuant to the adopted GTE/AT&T agreement without regard to whether an exchange was acquired in the first transaction or in the second transaction. Initially, Socket used a manual ordering process to obtain facilities and services under its interconnection agreement with CenturyTel. It recently confirmed that CenturyTel's new electronic ordering systems also work. Neither the manual system nor the electronic system makes any distinction with regard to whether an exchange was acquired in the first or second transaction. (Tr. 90-92, 95 and Exhibit 23).

² Other carriers also believe that the agreement still applies to all former GTE exchanges. (Tr. 138-47). While CenturyTel may have sent letters inviting discussions about new agreements, that does not mean that CLECs believed such discussions were required. (Tr. 207-08, 226). There is no basis for the assertion that GTE or Spectra had a right to terminate the agreement in connection with the first sale of exchanges.

Socket began the process of ordering facilities from CenturyTel in the spring of 2003. Subsequently, in the fall of 2003, local interconnection facilities between the companies were turned up in Columbia, Missouri (an exchange acquired in the second transaction).

Socket experienced a variety of problems getting CenturyTel to process its orders. But as required by CenturyTel, Socket submitted forecasts of its facility needs. One such forecast was provided in February 2004. That particular forecast pertained to facilities needed in exchanges that CenturyTel acquired in the first transaction. There were discussions between the companies about this forecast both before and after it was sent in writing by Socket. CenturyTel acknowledged receipt of the forecast in writing and raised issues about it, but none that concerned the fact that the exchanges were acquired in the first transaction or that concerned any purported lack of an interconnection agreement. Never during these forecast, planning and implementation discussions did CenturyTel personnel raise any issue regarding a purported lack of an interconnection agreement. (Tr. 174-83, 196-97 and Exhibits 25P and 31). To the contrary, its correspondence expressly confirmed application of the agreement to the exchanges in question. (Exhibit 31).

When it confirmed receipt of the aforesaid forecast from Socket, CenturyTel followed its standard business practices and confirmed in writing that the AT&T/GTE interconnection agreement applied to Socket Telecom and the February 18, 2004 forecast regarding exchanges that CenturyTel acquired in the first transaction. (Tr. 230-31, 251-52 and Exhibits 25P and 31).

CenturyTel also provisioned interoffice facilities for the routing of local traffic pursuant to the interconnection agreement to Socket, including in exchanges that were acquired in the name of Spectra in the first transaction, pursuant to Socket's forecasts. These particular facilities pertain to service in rural areas in the northeast part of the state, including the exchanges of Monroe City, Perry, Shelby, Licking, Van Buren, Birch Tree, Eminence, Winona, Canton, Lewistown,

Monticello, and LaGrange.³ Hundreds of DSO facilities are involved. CenturyTel has passed more than two million minutes of traffic over these facilities to Socket and continues to do so. Most of the facilities were turned up by CenturyTel in August 2004, but some were provisioned as recently as the day before the hearings in this case. (Tr. 93-96, 137, 198).

Most revealing is the fact that some of the interoffice facilities connect exchanges acquired in the name of Spectra in the first transaction to exchanges acquired in the name of CenturyTel in the second transaction. Yet, interoffice facilities are not normally available to connect exchanges operated by separate ILECs. (Tr. 96).

CenturyTel's witness testified that she was personally responsible for directing the company in August 2004 to turn up the facilities in the exchanges acquired in the first transaction. She said she was unaware of where the exchanges were located and apparently did not see any need to make such a determination. She simply determined that CenturyTel's refusal to provide the facilities was improper. (Tr. 215-16, 231-34). At hearing, she attempted to characterize CenturyTel's actions as a mistake, but then she could not explain how such actions were allowed to continue after the commencement of this action, with facilities being turned up as recently as the day before hearing. (Tr. 252). Moreover, what CenturyTel now wants to pass off as a one-time mistake was actually conduct that occurred regularly between the companies over the course of more than six months, as forecasts were discussed, sent in writing, discussed more, confirmed back in writing, discussed more, planned around, and ultimately implemented with facilities being turned up and traffic being exchanged.

Socket relied on CenturyTel's conduct, devoting resources to the process of implementing these facilities, investing in connecting facilities, and making commitments to its customers. (Tr.

³ Socket's tariff covers these exchanges. (Tr. 111, 161 and Exhibit 38),

121-22, 133-34, 137, 169).⁴ It was not aware of any purported distinction between the exchanges and believed it was engaged in the normal course of business with CenturyTel. (Tr. 129). CenturyTel had to make expenditures as well to get the facilities into place. (Tr. 137-38).

Until recently CenturyTel did not deny any of Socket's orders based on the purported lack of an interconnection agreement, although Socket had other problems getting orders processed. (Tr. 92, 95-96, 175-76, 178). However, on September 9, 2004, CenturyTel abruptly asserted that Socket did not have an interconnection agreement that applied to the exchanges acquired in the first transaction. It did so out of the blue, in connection with Socket's attempt to invoke dispute resolution regarding CenturyTel's ongoing improper use of forecasts in general and even then did not mention the facilities that it had provisioned. (Tr. 97, 130-32, 167-68). Specifically, it did not assert that any mistakes had been made regarding the provisioning of facilities or exchange of traffic. (Tr. 130).

CenturyTel continues to recognize that the interconnection agreement applies to the exchanges that it acquired from GTE in the second transaction. (Tr. 26-27, 92, 125-27, 158, 213). But it asserts now that the agreement does not apply to the exchanges it acquired in the first transaction. Contrary to this assertion, the prior adoption by Socket of the GTE/AT&T agreement applies to all the exchanges, as confirmed by the terms of the agreement, by the Commission's orders in Case Nos. TM-2000-182 and TM-2002-232, and by the conduct of the parties and documents exchanged in the process of planning for and turning up facilities.

To eliminate the issues raised by CenturyTel's abrupt change in position, Socket filed this action. Socket herein seeks confirmation of the applicability of its adopted interconnection agreement in all CenturyTel exchanges in Missouri, without regard to when CenturyTel acquired them and without regard to the CenturyTel subsidiary that is formally certificated to provide service therein. Socket needs the continued availability of the agreement in all the former GTE exchanges in

⁴ Likewise, Socket's customers have relied on the facilities to make their own commitments. (Tr. 169).

order to continue to serve its customers. (Tr. 97). CenturyTel's commitment to leave currently provisioned facilities in place is not sufficient, as it would not even allow Socket to continue to meet the needs of customers that are already being served. (Tr. 31-37, 109, 135, 162-63, 218-20, 237). Socket remains willing to negotiate a successor agreement between the parties once the FCC (hopefully) eliminates the tremendous uncertainty that currently clouds such matters by issuing its anticipated order regarding unbundled network elements. (Tr. 168-69).⁵

When the agreement was originally made between AT&T and GTE, it applied to all the GTE exchanges in the state of Missouri. On its face, it is binding on GTE's successors. (Exhibit 5, General Terms and Conditions, Section 23.4). Staff agrees that successors include companies that purchase exchanges. (Tr. 266). CenturyTel acquired all of the GTE exchanges in a series of two transactions. In the second transaction, it expressly agreed to be bound by GTE's interconnection agreements, which it agrees included Socket's adopted version of the AT&T/GTE agreement. In the first transaction, it agreed that it would make new agreements on the same terms and conditions as the AT&T/GTE agreement. Thus, CenturyTel reassembled the GTE exchanges, agreed to be bound by the AT&T/GTE interconnection agreement which applies to all those exchanges, and has provisioned facilities to Socket and exchanged traffic with Socket pursuant to the agreement without regard to whether an exchange was acquired in the first or second transaction. (Tr. 153, 170-71).

Socket was entitled to adopt the agreement under Section 252(i) of the Telecommunications Act of 1996. That is why the Commission approved the adoption. The agreement does not require any amendment based on the addition of exchanges and on its face applies to all the former GTE exchanges. CenturyTel agreed to be bound by the agreement as a

⁵ Absent confirmation of the applicability of the agreement in all the exchanges, Socket's options will likely be limited prior to further action by the FCC. Contrary to the representations of its witness at the hearing (Tr. 236, 252), CenturyTel has argued to the Commission that it is not currently required to accept adoption of any agreement that contains the unbundled elements that Staff acknowledges (Tr. 267) are required by Socket to serve the rural exchanges at issue with its own switch. See Joint Response to Order Directing Filing of CenturyTel of Missouri, LLC and Spectra Communications Group, LLC dba CenturyTel, p. 3-4, Case No. TK-2005-0079 (filed November 29, 2004).

condition of obtaining Commission approval of its acquisition of the second set of GTE exchanges in Case No. TM-2002-232. As a result of the second transaction, CenturyTel recombined the former GTE exchanges into a single enterprise. Thus, the exchanges it acquired in the first transaction were made subject again to the interconnection agreement (even assuming that CenturyTel was not already bound therein as a successor). Such action was consistent with CenturyTel's endorsement of the agreement as reasonable in connection with the first transaction and its commitment to apply the same terms and conditions of interconnection.

Socket understands that, pursuant to Section 252(i) and 47 CFR 51.809(b), CenturyTel is not required to provide a particular interconnection, service or element where it proves to the state commission (i) that the costs of providing it would be greater than the cost of providing it to the carrier that originally negotiated the agreement, or (ii) that it would not be technically feasible. But CenturyTel has not asserted such issues in this case. (Tr. 97).

The Commission should confirm that the agreement applies to all of the exchanges that CenturyTel acquired from GTE, regardless of which transaction or which subsidiary was involved. On top of its obligations under 252(i), the Commission's Orders in the exchange acquisition cases, and the express terms of the agreement, CenturyTel has itself confirmed the applicability of the agreement by its own actions. Whether the Commission views the application of the agreement to all the exchanges as a matter of express agreement (including by reason of the terms of the written agreement itself and CenturyTel's correspondence confirming the application of the agreement to the exchanges in question, Exhibit 31), or as an agreement implied in fact arising from the conduct of the parties, there is no distinction under the law and the agreement is binding upon CenturyTel. See, e.g., Bailey v. Interstate Automotive, 219 SW2d 333, 338 (Mo. 1949). Regardless of the manner in

which the parties made manifest their mutual assent, either way, it is a true and binding agreement. Id.⁶ See also Marro v. Daniels, 914 SW2d 16, 19 (Mo. App. 1995).

CenturyTel's protestations regarding the agreement are not made in good faith, but rather are part of its ongoing effort to impede faculties-based competition in its rural markets. Whenever it has suited its needs, CenturyTel has been quick to assure the Commission that it is a single and reliable enterprise. The Commission should not allow CenturyTel to pretend now that its subsidiaries operate separately as an artifice for skirting its self-confirmed contractual obligations to Socket Telecom.

WHEREFORE, Socket Telecom respectfully requests the Commission to confirm the applicability of the adopted AT&T/GTE interconnection agreement between Socket Telecom and CenturyTel in all the former GTE exchanges pursuant to its authority to regulate telecommunications carriers in the State of Missouri, its orders in Case Nos. TM-2000-182 and TM-2002-232, and 47 USC 252(i).

⁶ Socket does not seek equitable relief. It does not seek to establish a quasi-contract implied in law or equity. It seeks confirmation that there is in fact a written agreement between the parties that applies to all the CenturyTel exchanges in the state, without regard to paper subsidiaries, as confirmed in writing and by the conduct of the parties.

Respectfully submitted,

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Certificate of Service

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