

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

Socket Telecom, LLC,)	
)	
Complainant,)	
)	
v.)	Case No. TC-2008-0225
)	
CenturyTel of Missouri, LLC dba)	
CenturyTel and Spectra Communications)	
Group, LLC dba CenturyTel)	
)	
Respondents.)	

**SOCKET TELECOM’S RESPONSE TO CENTURYTEL’S JOINT MOTION TO
DISMISS**

COMES NOW Socket Telecom, LLC (Socket Telecom), pursuant to 4 CSR 240-2.080(15) and for its Response to the Joint Motion to Dismiss submitted by CenturyTel of Missouri, LLC dba CenturyTel and Spectra Communications Group, LLC dba CenturyTel (“CenturyTel”) regarding Socket Telecom’s Complaint against CenturyTel for its refusal to interconnect with Socket Telecom in compliance with applicable statutes and rules and the interconnection agreements (ICAs) in effect between Socket Telecom and CenturyTel, states to the Commission as follows:

1. CenturyTel concedes that the Commission has jurisdiction over this matter. (Joint Motion to Dismiss, Answer, Affirmative Defenses, and Counterclaim, para. 5).

2. Socket Telecom’s Complaint states a claim upon which relief may be granted. It describes its rights and CenturyTel’s violations, and seeks relief. For purposes of a Motion to Dismiss, the allegations of the Complaint must be taken as true. See, e.g., Eastwood v. North

Central Missouri Drug Task Force, 15 SW3d 65, 67 (Mo. App. 2000); *Order Denying Motion to Dismiss*, MoPSC Case No. TC-2007-0111 (Dec. 2006).

3. As alleged in the Complaint (para. 9-10), as of October 13, 2006, Socket Telecom was entitled to interconnect and exchange traffic with CenturyTel pursuant to the terms and conditions of the new interconnection agreements that the Commission had just approved, rather than the prior interim arrangements that were established between Socket Telecom and CenturyTel “pending completion of their negotiations of a new interconnection agreement and any related mediation, arbitration or litigation that precedes the effective date of such interconnection agreement.” Likewise, as alleged in the Complaint (para. 13), CenturyTel refused to change arrangements from those in place under the interim agreements to those called for under the new agreements.

4. CenturyTel’s motion, as well as its conduct, ignores the provisions of the new agreements regarding initial arrangements and only considers provisions regarding future additions and deletions of arrangements after the initial arrangements have been established. As a result, CenturyTel continues to fail to address a main point of dispute with Socket Telecom.

5. As alleged in the Complaint (para. 16), there is no provision in the new agreements that call for pre-existing interim arrangements to be treated as if they were just established as initial arrangements under the new agreements. To the contrary, the new agreements expressly provide that Socket Telecom is entitled to initially choose where to interconnect, including by interconnecting at a single point of interconnection (POI) in each LATA (Article V, 4.0 et seq) and that Socket Telecom is entitled to choose to interconnect indirectly through third parties including in lieu of direct interconnection (Article V, 4.0, 7.0).¹ The new agreements do not in

¹ CenturyTel’s assertion at para. 3 of its motion that indirect interconnection results in no connection at all is nonsensical, and contrary to the approved agreements which expressly allow indirect interconnections.

any way limit Socket Telecom's rights to start anew under these provisions in lieu of the prior interim arrangements. As explained in the Complaint, the POI commissioning and decommissioning provisions of the agreements do not apply to the initial direct interconnection arrangements, but rather are the means by which direct arrangements change over time after initial arrangements are established. And such measures do not apply at all to indirect interconnection arrangements.

6. As indicated, the new agreements allow Socket Telecom to choose to initially interconnect at as few points as it wants including at a single point per LATA. Section 4.4 of Article V states; "Subject to this Article V and, in particular, Section 4.1-4.3.4, the Parties agree that Socket has the right to choose a single POI or multiple POIs within the LATA." In the arbitration, Socket Telecom expressly advocated to have the right to start with a single POI per LATA under the new agreements, notwithstanding any existing arrangements, and then add more over time based on traffic levels, based on prior FCC, court and Commission decisions. (Socket Post-Hearing Brief, Case No. TO-2006-0299, p. 17-29). Socket Telecom expressly explained that the right to select a single POI per LATA was not restricted to "CLECS just entering the market". (Id. p. 19). Socket Telecom reminded the Commission that it had rejected claims similar to CenturyTel's in the M2A Successor Arbitration, and allowed existing market participants to have a single POI per LATA at the start of their successor agreement. (Id. p. 22). The Commission accepted Socket Telecom's proposed language on this point in the arbitration (Final Commission Decision, Case No. TO-2006-0299, p. 17), and in their final negotiations the parties then added the reference to the other provisions required by the Commission that call for adding additional direct POIs over time based on actual traffic, again consistent with the structure of Socket Telecom's arbitration proposal. Notwithstanding the express language of the

new agreements and the underlying Commission decision, as stated in the Complaint CenturyTel has refused to allow Socket Telecom to choose its initial POIs at the start of the new agreements.

7. Likewise, as stated in the Complaint, CenturyTel has refused to allow Socket Telecom to select indirect interconnection in lieu of direct interconnection, in violation of the express language of the agreements and the underlying Commission arbitration decision. Section 7.1 of Article V of the agreements expressly authorizes the use of indirect interconnection instead of direct interconnection. In its arbitration decision, the Commission expressly endorsed this language. The Commission stated: “Section 251(a)(1) requires each telecommunications carrier to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers. Socket’s language, which allows a party to choose indirect interconnection, is most consistent with this requirement.” (Final Commission Decision, Case No. TO-2006-0299, p. 21). As the Commission recently confirmed in its Report and Order in Case No. TC-2007-0341, the provisions of the agreements regarding addition of more POIs over time based on actual traffic volumes do not even apply to indirect arrangements. “The interconnection agreements establish procedures for creation of additional points of direct interconnection based on actual traffic volumes, but under such contract provisions actual traffic volumes are to be determined over time after numbers are ported and are not to be estimated in anticipation of a number port. When the parties indirectly interconnect, their respective arrangements with the third party will determine whether additional POIs are needed.” *Id.* p. 18. Both the agreements and the Commission’s decisions show that Socket Telecom is entitled to interconnect indirectly in lieu of direct interconnections, as stated in the Complaint.

8. CenturyTel’s contentions regarding the proper means of determining actual traffic volumes are also erroneous. In its decision in Case No. TC-2007-0341, the Commission rejected

CenturyTel's attempts to use Erlang tables instead of actual traffic counts in the process of determining when additional direct POIs must be added in the future, finding that such Erlang tables "are not relevant." Id p. 18, note 70.

9. Thus, as shown in the Complaint, CenturyTel has violated the agreements and the underlying Commission arbitration decision by obstructing Socket Telecom's choices regarding interconnection methods and trying to force on Socket Telecom an interconnection structure that was expressly rejected in the arbitration and that is not contemplated under the agreements.

10. CenturyTel's motion does not even address the aspects of Socket Telecom's Complaint (para. 19 et seq.) regarding CenturyTel's refusal to comply with the decommissioning process and its other violations of the agreements.

11. On its face, CenturyTel's three-paragraph motion is frivolous. All CenturyTel really says is that it disagrees with Socket Telecom, which of course is fully acknowledged in the Complaint. Indeed, it is CenturyTel's refusal to abide by the agreements and applicable law that necessitated the Complaint. In its simplistic "motion", CenturyTel demonstrates its intentional disregard for the requirements of the agreements and the underlying arbitration decision. It is frankly hard to believe that CenturyTel considers its "motion" legitimate at all, as it fails to explain any basis under which the Commission could legitimately dismiss the Complaint. Its "motion" fails to meet the requirements of 4 CSR 240-2.080(7).

12. Socket Telecom denies that it has "tried to circumvent the terms of the ICAs" in the ways described by CenturyTel in its motion or otherwise and denies that it has failed to pay any appropriate billing regarding the disputed arrangements. As stated in the Complaint, Socket Telecom seeks to enforce the agreements, interconnect as allowed under the agreements, and pay

accordingly. In further support of this Response, Socket Telecom incorporates by reference its Complaint and its Reply to CenturyTel's Counterclaims and Affirmative Defenses.

WHEREFORE, the Commission should deny CenturyTel's joint motion to dismiss and move forward with resolution of this proceeding on the merits.

Respectfully submitted,

CURTIS, HEINZ,
GARRETT & O'KEEFE, P.C.

/s/ Carl J. Lumley

Carl J. Lumley, #32869
130 S. Bemiston, Suite 200
Clayton, Missouri 63105
(314) 725-8788
(314) 725-8789 (FAX)
clumley@lawfirmemail.com

Attorneys for Socket Telecom, LLC

Certificate of Service

A true and correct copy of the foregoing was served upon the parties identified on the attached service list on this 22nd day of September, 2008, by either fax, email or by placing same in the U.S. Mail, postage paid.

/s/ Carl J. Lumley

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102
gencounsel@psc.mo.gov

Office of Public Counsel
P.O. Box 2230
Jefferson City, Missouri 65102
opcservice@ded.mo.gov

CenturyTel of Missouri, LLC
Spectra Communications Group, LLC
d/b/a CenturyTel
c/o Larry Dority
Fischer & Dority
101 Madison, Suite 400
Jefferson City, Missouri 65101
lwdority@sprintmail.com