

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION**

Socket Telecom, LLC,	)	
	)	
Complainant,	)	
	)	
v.	)	<b>Case No. TC-2007-0341</b>
	)	
CenturyTel of Missouri, LLC dba	)	
CenturyTel and Spectra Communications	)	
Group, LLC dba CenturyTel	)	
	)	
Respondents.	)	

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

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

1. Socket filed its Complaint in tempered response to CenturyTel’s misconduct. Socket’s Complaint is in no way “virulent”, although CenturyTel’s conduct and pleadings are openly hostile to Socket.
2. CenturyTel concedes that the Commission has jurisdiction over this matter pursuant to the dispute resolution provisions of the Interconnection Agreements between the parties. (CenturyTel Motion to Dismiss, Answer and Affirmative Defenses, p. 2-3).

3. Socket is entitled to expedited action in this matter. As alleged in the Complaint, Article III, Section 18.4 of the Interconnection Agreements between Socket and CenturyTel calls for expedited resolution procedures “if the issue to be resolved ... directly and materially affects or threaten to materially affect service to either Party’s end-user customers or the ability of one Party to provide service to an end-user customer....” As alleged in the Complaint, CenturyTel’s actions preclude end-user customers from obtaining service in the desired manner from Socket and likewise preclude Socket from providing service in the desired manner. From the adoption of the Telecommunications Act of 1996, it has been uniformly recognized that “the ability to change service providers is only meaningful if a customer can retain his or her local telephone number.”<sup>1</sup> In this case, CenturyTel refuses to provide number portability when a customer seeks to change providers while retaining their local number, thereby affecting both the customer and Socket. Expedited resolution is called for by the dispute resolution provisions of the Interconnection Agreements.

4. Socket is not engaged in any form of subterfuge.<sup>2</sup> Socket Internet is a separate corporate entity and customer of CenturyTel that seeks to change providers. Further, as indicated in the Complaint, the example of CenturyTel’s refusal to provide number portability in the Ellsinore exchange involves a different ISP that is not affiliated with Socket Telecom. (Complaint, para. 17 et seq.). Thus, this dispute concerns CenturyTel’s violations, not the identity of the end user.

---

<sup>1</sup> House of Rep. Comm. On Commerce Report on HR 1555 at 72 (July 24, 1995)(House Report).

<sup>2</sup> CenturyTel’s use of such a pejorative description of the relationship between Socket Telecom and Socket Internet is particularly ironic given the lack of any true separation between CenturyTel of Missouri and Spectra. However, the Commission has made it clear that it will regard separate legal entities as being separate. *Report and Order*, MoPSC Case No. CO-2005-0066, p. 13 (Dec. 2004).

5. Socket's Complaint states a claim upon which relief may be granted. It describes its rights and CenturyTel's violations, and seeks relief there from. 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).

6. Socket is entitled to "service provider portability" under the provisions of the Telecommunications Act of 1996 and FCC regulations. 47 USC 251(b)(2) requires CenturyTel to provide number portability to Socket in accordance with FCC regulations. 47 USC 153 (46) defines "number portability" as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." The FCC regulations at 47 CFR 52.21 define "number portability" and "service provider portability" in exactly the same way as the statute.

7. The FCC has ruled that so long as calls to the telephone number will be rated to the same rate center and calling routing would be same whether the number is ported or new service provider assigns the customer a new number, there is not a change in location under the applicable statutes and rules. When examining porting from wireline to wireless carriers, the FCC stated:

We conclude that porting from a wireline to a wireless carrier that does not have a point of interconnection or numbering resources in the same rate center as the ported number does not, in and of itself, constitute location portability, because the rating of calls to the ported number stays the same. As stated above, a wireless carrier porting-in a wireline number is required to maintain the number's original rate center designation following the port. As a result, calls to the ported number will continue to be rated in the same fashion as they were prior to the port. As to the routing of calls to ported numbers, it should be no different than if

the wireless carrier had assigned the customer a new number rated to that rate center.

*In the matter of Telephone Number Portability*, FCC CC Docket No. 95-116, para. 28 (Nov. 10, 2003). The FCC has made clear that there is no change in location under its rules so long as the rate center remains the same and call routing is no different than if the new service provider had assigned the customer a new number rated as local for that exchange, even when the new service will be provided to a traveling wireless customer, much less an end user that will be served at a fixed wireline location as in the situations involved in this proceeding.

8. As alleged in the Complaint, industry custom and practice also demonstrates that there is no change in location under the FCC rules so long as the rate center remains the same and call routing is same whether the number is ported or the new service provider assigns a new number rated as local for that exchange. Thus, in Socket's experience CenturyTel is the only provider that refuses to provide number portability in the circumstances described in the Complaint. (Complaint para. 26).

9. As alleged in the Complaint, the internet service providers want to change their local service providers while retaining their local numbers. The calls will continue to be rated to the same rate center. Likewise, calls will be routed between CenturyTel and Socket in exactly the same manner whether the customer ports their number to Socket or Socket assigns the customer a new number. It is irrelevant where the ISP modems will be located or whether foreign exchange or remote call forwarding service will be used. Likewise, voice customers should be able to make similar changes. CenturyTel improperly seeks to establish artificial distinctions that are not allowed under applicable law, in its continuing efforts to obstruct competition by Socket in the ISP market.

10. As shown, contrary to CenturyTel's assertions, under these circumstances there is no change in location and no location/geographic port, but rather there is simply another example of service provider portability which CenturyTel is obligated to provide under the Interconnection Agreements and applicable law.

11. CenturyTel's protestations about traffic congestion are irrelevant under the FCC's number porting rules. See *In the matter of Telephone Number Portability*, FCC CC Docket No. 95-116, para. 28, n 75 (Nov. 10, 2003). But in any event, as is made plain by the Complaint, there is a factual dispute on such points that cannot be resolved by motion to dismiss. See *supra* para. 5.

12. Socket denies each and every allegation of CenturyTel's Answer and Affirmative Defenses other than those that admit or confirm facts as alleged in the Complaint.

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

Respectfully submitted,

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

/s/ Carl J. Lumley

---

Carl J. Lumley, #32869  
Leland B. Curtis, #20550  
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 9th day of April, 2007, by email and 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

Charles Brent Stewart  
STEWART & KEEVIL, LLC  
4603 John Garry Drive, Suite 11  
Columbia, MO 65203  
Stewart499@aol.com