

**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 ) Case No. TO-2006-0299  
Communications, LLC pursuant to Section 252(b)(1) of )  
the Telecommunications Act of 1996. )

**RESPONSE TO MOTION FOR ADMINISTRATIVE NOTICE**

On January 27, 2006, Socket Telecom, LLC (“Socket”) filed its Motion for Administrative Notice, asking the Commission to take administrative notice of the complete Report and Order, as well as “any orders on rehearing or orders modifying or clarifying that Report and Order,” in Case No. TO-97-63. Although CenturyTel of Missouri, LLC and Spectra Communications Group, LLC (collectively, “CenturyTel”) would ordinarily have ten days to timely respond to Socket’s motion, on January 30, 2006 the Arbitrator issued an Order Shortening Time for Response, requiring CenturyTel to file its response by February 1, 2006, three business days after the motion was filed. Pursuant to that Order, CenturyTel now timely files its instant Response, noting that its arguments in opposition to Socket’s motion are necessarily preliminary due to the limited time to respond and that it will be prepared to more fully discuss this matter during the Initial Arbitration Meeting scheduled for Friday, February 3, 2006.

Because Socket fails to identify with particularity the facts subject to its request for administrative notice and it is not clear that any such facts are relevant or material to the disputed issues in this proceeding, CenturyTel respectfully asks the Arbitrator to deny Socket’s motion. First, Socket’s request to take administrative notice of a 1997 arbitration decision and related orders is improper because administrative notice is not a vehicle for en masse introduction of

unspecified material. To the contrary, pursuant to RSMo § 536.070(6), the Commission may take official notice of “all matters of which courts may take judicial notice,” as well as

scientific or technical facts, not judicially cognizable, within their competence, if they notify the parties, either during a hearing or in writing before a hearing, or before findings are made after hearing, of the facts of which they propose to take such notice and give the parties reasonable opportunity to contest such facts or otherwise show that it would not be proper for the agency to take such notice of them.

As for those matters about which courts may take judicial notice, Federal Rule of Evidence 201 provides that judicial notice may be taken of facts that are “either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Importantly, state and federal principles both speak of the tribunal taking judicial/official notice of specific *facts*. Neither Federal Rule of Evidence 201 nor RSMo § 536.070 contemplates taking notice of the entirety of voluminous filings. Since Socket has not asked the Commission to take administrative notice of *facts*, its request is improper and should be denied.

Similarly, RSMo § 536.070(6) requires specific identification “of the facts of which they propose to take such notice.” Further, RSMo § 536.070(6) also provides that parties shall have a reasonable opportunity “to contest such facts or otherwise show that it would not be proper for the agency to take such notice of them.” Accordingly, for Socket to properly request that the Commission take administrative notice, it must indicate the specific facts that make up its request. Here, Socket does not do so, failing to specifically identify the facts of which it asks the Commission to take notice and failing to provide CenturyTel reasonable notice and an adequate opportunity to contest the specific facts at issue. Therefore, until such time as Socket specifically identifies the facts subject to its request for administrative notice, the Arbitrator should deny Socket’s request.

Second, independent of Socket's failure to identify the facts subject to its motion for administrative notice, Socket also fails to demonstrate that any such facts or material are relevant or material to the instant proceeding. Relevance and materiality are threshold standards governing the admissibility of evidence in this proceeding:

If any information contained in a document on file as a public record with the commission is offered in evidence, the document need not be produced as an exhibit unless directed otherwise by the presiding officer, but may be received in evidence by reference, provided that the particular portions of the document shall be specifically identified and are relevant and material.

4 CSR 240-2.130(2). Here, Socket does not show relevance. Shortly after passage of the Federal Telecommunications Act on February 8, 1996, this Commission arbitrated an interconnection agreement between GTE and AT&T under 47 U.S.C. § 252. That arbitration proceeding culminated in the Commission's July 31, 1997 Report and Order, the entirety of which Socket now asks the Commission to take administrative notice. The ostensible reason for taking such notice is Socket's assertion that it "provides background information and insight into the contents of the GTE/AT&T agreement." However, this proceeding, as framed by Socket in its Petition for Arbitration, is about developing a successor ICA between Socket and CenturyTel. Moreover, Socket's proposed contract language, as evidenced by its preliminary position statements in the issues matrices attached to its Petition, is derived in large part from the Commission's recent decision in the M2A Successor arbitration (Case No. T0-2005-0336), not on language from the 1997 GTE/AT&T agreement. As such, the relevance and materiality of the Commission's 1997 Report and Order has not been shown at this time.

While it may be entirely appropriate for the Commission to take administrative notice of facts from prior proceedings, it should do so only when the specific facts are identified and those facts are shown to be relevant and material. Socket has not satisfied those requirements with its

instant Motion for Administrative Notice. Therefore, the Arbitrator should deny Socket's motion at this time.

Respectfully submitted,

FISCHER & DORITY, P.C.

/s/ Larry W. DORITY

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

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ATTORNEYS FOR  
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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](mailto:gencounsel@psc.mo.gov)), the Office of the Public Counsel (at [opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov)), and counsel for Socket Telecom, LLC (at [clumley@lawfirmemail.com](mailto:clumley@lawfirmemail.com); [lcurtis@lawfirmemail.com](mailto:lcurtis@lawfirmemail.com); and [b.magness@phonelaw.com](mailto:b.magness@phonelaw.com)) on this 1<sup>st</sup> day of February, 2006.

/s/ Larry W. Dority

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Larry Dority