

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION**

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

**SOCKET TELECOM'S RESPONSE TO CENTURYTEL'S  
APPLICATION FOR REHEARING**

COMES NOW Socket Telecom, LLC ("Socket") pursuant to 4 CSR 240-2.080(15) and for its Response to CenturyTel's Application for Rehearing states to the Commission:

1. The Commission fully considered CenturyTel's arguments and correctly rejected them in its Report and Order issued March 26, 2008. CenturyTel's Application for Rehearing is totally baseless and should be denied.

2. The ports at issue in this case are not location porting requests, as discussed in Socket's Application for Rehearing. But regardless of that point of contention, the Commission correctly determined that CenturyTel must provide the requested ports pursuant to the interconnection agreement.

3. The Commission did not violate any constitutional principal or procedural requirement in rendering its decision in this case. Specifically, the Commission did not enact any *ex post facto* law.<sup>1</sup> No aspect of the Commission's decision is retroactive and CenturyTel was

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<sup>1</sup> The prohibition against *ex post facto* laws is "directed to the legislature rather than to other branches of government." It also applies "to an agency's duly-promulgated substantive regulations." It does not apply to dispute resolution by the judiciary and agencies. See, e.g., Miller v. Mitchell, 25 S.W.3d 658, 663 (Mo. App. 2000).

not sanctioned or penalized in any way for its prior failure to comply with industry practices and guidelines. The Commission simply directed CenturyTel prospectively to provide the requested number ports.

4. The evidence shows, and the Commission correctly found, that CenturyTel's refusal to port the numbers as requested by Socket was contrary to industry agreed-upon practices and guidelines in effect when the case commenced (i.e. as demonstrated by Socket's dealings with other carriers) and as formalized by the LNPA-WG during the course of the case. (Report and Order, p. 12). The Commission correctly rejected CenturyTel's arguments and determined that the LNPA-WGs actions are in effect for purposes of determining the current status of industry practice and guidelines. (Report and Order p. 16, n. 59).<sup>2</sup> CenturyTel continues to admit that the "Best Practices" document does reflect the agreement of the industry. (Application, p. 13).

5. As the Commission correctly found, CenturyTel voluntarily agreed to a contract that requires ongoing compliance with industry practices and guidelines beyond minimum legal requirements. (Report and Order, p. 11). CenturyTel admits in its Application for Rehearing that such voluntary agreements are permissible. (Application, p. 9). The agreement unmistakably requires compliance with those practices and guidelines as they evolve over time. The Commission correctly considered the most current status of those practices and guidelines together with the rest of the evidence concerning those practices and guidelines as they existed when the case commenced.

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<sup>2</sup> The Commission also correctly discounted CenturyTel's obvious orchestration of support by rural carriers that do not face competition or provide number portability.

6. Understandably, CenturyTel cites no authority that would restrict the Commission from considering the most current facts as it makes a prospective determination to resolve an ongoing dispute.

7. The agreement's incorporation of industry practices and guidelines does not result in an incorporation of changes in laws, but rather simply incorporates ongoing changes in such practices and guidelines. It is a contractual requirement, not an independent legal mandate. CenturyTel's arguments concerning "change in law" provisions of the agreement are not on point.

8. The Commission's enforcement of CenturyTel's obligations to comply with the specific provisions of its contracts does not discriminate against CenturyTel. The Commission requires all companies to comply with the terms and conditions of their interconnection agreements. There is nothing anticompetitive or unjust about enforcement of these voluntary contractual obligations.

9. CenturyTel cannot escape the plain meaning of the contractual terms and conditions to which it previously agreed. Nor can it limit those obligations by trying to erase words from the agreement or placing artificial limits on the plain meaning of words, including by reference to headings that are to be disregarded according to the express terms of the agreement. The Commission more than adequately addressed this and other aspects of its decision in its written findings and conclusions.

10. No matter how hard it tries to deceive the Commission, CenturyTel cannot avoid the truth. The industry as a whole regularly completes number ports of the type at issue. Embarq concurs with the LNPA-WG Best Practices and provides the ports for Socket. (Report and Order p. 15-16).

11. Just like network capacity, intercarrier compensation arrangements are independent of number portability. The FCC has repeatedly made the points that no obstruction or delay in the porting process is to be tolerated, and that contract issues are not a basis to deny a port. (See, e.g., *Interconnected VOIP LNP* decision, para. 2, 16, 32, 42 *et seq.*)

12. CenturyTel had every opportunity to offer any and all evidence that it chose to - none of its offered evidence was excluded at hearing.

13. Socket received no procedural favors in this case. CenturyTel's allegations of Commission bias are totally unfounded.

14. CenturyTel raised issue 3 as a purported reason not to complete Socket's porting requests. The Commission properly resolved the issue. There is no record basis for CenturyTel's assertion that issue 3 is pending in another case, there is in fact not another number portability case pending between the parties, and in any event, there is nothing wrong with the Commission resolving an issue in the first case that presents it.

WHEREFORE, Socket Telecom requests the Commission to deny CenturyTel's Application for Rehearing.

Respectfully submitted,

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

/s/ Carl J. Lumley

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document was emailed to the parties listed below on this 14th day of April, 2008.

/s/ Carl J. Lumley

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