

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

CenturyTel of Missouri, LLC, et al)	
)	
Complainants,)	Case No. IC-2008-0068
)	
vs.)	
)	
Socket Telecom, LLC)	
)	
Respondent.)	

**SOCKET TELECOM’S REPLY TO CENTURYTEL’S JOINT LEGAL
MEMORANDUM REGARDING SUMMARY JUDGMENT**

Comes Now Socket Telecom, LLC (“Socket”) pursuant to 4 CSR 240-2.080(15) and for its Reply to CenturyTel’s February 13, 2008 Joint Legal Memorandum regarding summary judgment states to the Commission:

1. The Commission has received extensive pleadings from both parties regarding their cross-motions for summary judgment. Socket will not belabor points already addressed in its prior pleadings, but seeks to help the Commission resolve this matter by replying briefly to several points raised in CenturyTel’s responsive Legal Memorandum.¹ Because of the sequence of the motions, CenturyTel was able to not only respond to Socket’s motion, but also in conjunction therewith was able to reply to Socket’s response to CenturyTel’s own motion. Hence, this brief reply is an appropriate means of closing out the summary judgment pleading cycle and is in any event expressly permitted under 4 CSR 240-2.080(15).

2. CenturyTel persists in asserting, in direct contradiction to the face of the Agreement, that “there is no provision in the Agreement whatsoever applying reciprocal

¹ Socket separately responds to CenturyTel’s motion to strike affidavits.

compensation to either the exchange of Local Traffic or to the transport and termination of Local Traffic.”² CenturyTel would have the Commission ignore the language of the various contract sections identified by Socket, including for example Section 9.7.2 that states: “Termination rates are set forth in Article VIIA.” But the declarative statement about “termination rates” being “set forth” points to the rates and has the same meaning as “Rates for termination are set forth.”³ This text expressly applies compensation rates for the terminating function, which the same section defines as accomplishing termination of Local Traffic.

3. Moreover, CenturyTel admits that it originally intended that the numerous sections cited by Socket would accomplish the imposition of reciprocal compensation for termination of Local Traffic.⁴ CenturyTel argues that it proposed these provisions in the context of its “out-of-balance” trigger. But it also admits that the Commission rejected that trigger.⁵ What CenturyTel apparently cannot grasp (or at least publicly concede) is that without that trigger, these provisions that the parties left in the agreement they submitted for Commission approval impose an immediate and constant reciprocal compensation regime.

4. CenturyTel wants to split hairs about whether it refused to remove reciprocal compensation provisions or simply silently allowed them to remain.⁶ It makes no difference. As Mr. Kohly and Ms. Smith discuss in their affidavits, the parties were actively revising these sections of the agreement during their final negotiations, and in the

² CenturyTel Joint Legal Memorandum, p. 5.

³ Magness Affidavit, para. 9.

⁴ CenturyTel Joint Legal Memorandum, p. 12-13. See also Smith Affidavit, p. 3-4.

⁵ CenturyTel Joint Legal Memorandum, p. 12-13. See also Smith Affidavit, p. 3-4.

⁶ CenturyTel Joint Legal Memorandum, p. 13.

end the reciprocal compensation provisions were left in.⁷ (Kohly Affidavit, para. 17; Smith Affidavit, para. 10).

5. CenturyTel continues to describe the pertinent contract provisions (which again it admits were originally intended by it to apply reciprocal compensation to Local Traffic) as being “inert” contract clauses.⁸ But even after Socket cited authority in its summary judgment materials⁹ demonstrating the well-established proposition that all contract provisions are presumed to have meaning, CenturyTel provided no contrary authority. Instead, CenturyTel attempts to use the same proposition against Socket.¹⁰ The contract means what it says, and reciprocal compensation applies.¹¹

6. CenturyTel asserts that the Commission did not decide the issue of reciprocal compensation in the arbitration.¹² But that is not the issue. Rather, the issue is whether the Commission-approved interconnection agreement that was prepared and submitted by the parties applies reciprocal compensation to Local Traffic. And the Agreement does apply reciprocal compensation to Local Traffic, as shown by all of Socket’s Summary Judgment materials, including this Reply.

7. CenturyTel erroneously suggests that Socket has contended that the Agreement is silent about reciprocal compensation and should be interpreted by law as implying that

⁷ CenturyTel also admits the Commission did not direct the parties to delete these provisions. (CenturyTel Joint Legal Memorandum, p. 10, Smith Affidavit, p. 2).

⁸ CenturyTel Joint Legal Memorandum, p. 10.

⁹ Phillips v. American Nat. Assurance Co., 58 SW2d 814, 816 (Mo App 1933).

¹⁰ CenturyTel Legal Memorandum, p. 12, n. 29.

¹¹ Likewise, Socket offers an interpretation of Section 9.8 that is consistent with the other clauses that expressly apply reciprocal compensation, whereas CenturyTel classifies it as just another meaningless “vestige” of its out-of-balance plan. CenturyTel Joint Legal Memorandum, p. 12.

¹² CenturyTel Joint Legal Memorandum, p. 6. (See also Smith Affidavit, p. 5). In conflict with its position that the Commission did not decide the issue, CenturyTel also asserts that there may be a “drafting error” in the Commission’s arbitration decision (to be addressed by a CenturyTel 252(e)(6) appeal? CenturyTel does not explain how). But again, the issue is not what the Commission did or did not decide in arbitration, but rather what it ultimately approved in terms of an agreement submitted by the parties.

reciprocal compensation applies.¹³ To the contrary, Socket repeatedly demonstrates that the Agreement expressly applies a reciprocal compensation regime, and then further demonstrates that such a regime is consistent with federal law. There is no need for Socket to pursue CenturyTel's suggestion of an appeal under Section 252(e)(6) in order to enforce the express terms of an interconnection agreement. As CenturyTel concedes, such an appeal would be directed at changing the approved agreement, not enforcing it.¹⁴

8. CenturyTel tries to explain away its agreement to include the reciprocal compensation provisions in the Agreement by asserting that the parties were not able to resolve the matter any other way.¹⁵ But that is simply a backhanded way of saying the parties agreed to include the provisions in the Agreement. Furthermore, CenturyTel's purported explanation of its refusal to accept Socket's proposal to revise the final version of the Agreement (prior to submittal to the Commission for approval) makes no sense. CenturyTel now asserts¹⁶ that it rejected Socket's proposal to include a provision that expressly called for the exchange of all local traffic on a bill-and-keep basis because Socket was somehow trying to pull a fast one to avoid reciprocal compensation on certain types of traffic.¹⁷ But the traffic that CenturyTel purportedly was concerned about (FX) was already expressly to be subject to bill-and-keep by Commission order.¹⁸ The Commission repeatedly ruled in the arbitration that the agreement would not address non-

¹³ CenturyTel Joint Legal Memorandum, p. 3-4. CenturyTel's effort to ignore all of Socket's pleadings and set up as a straw man this supposed "core argument" is pure obfuscation.

¹⁴ CenturyTel Joint Legal Memorandum, p. 4.

¹⁵ CenturyTel Joint Legal Memorandum, p. 8-10.

¹⁶ CenturyTel does not provide any evidence suggesting that it contemporaneously explained to Socket this newly identified rationale for rejection of the bill and keep regime.

¹⁷ CenturyTel Joint Legal Memorandum, p. 9-10.

¹⁸ Per section 9.2.3, all traffic – including FX - involving calls to Socket customers with a service address normally associated with one rate center who are assigned NXX codes of another rate center are subject to bill-and-keep.

local traffic.¹⁹ But it also ruled that FX/VNXX traffic, which is addressed by the Agreement, would be “deemed” (i.e. treated as) non-local and subject to bill-and-keep.²⁰ So CenturyTel’s new assertion that it objected to including a reference to one specific form of bill-and-keep traffic in a general bill-and-keep provision lacks any credibility.

9. Finally, while Socket is confident the Commission can sort out all the allegations about admissions and purported admissions of the parties, it does seem appropriate to observe that CenturyTel wants to excuse all of its contradictory prior conduct and statements as “mistakes”, and yet wants Socket to be estopped from enforcing the express terms of the Agreement due to statements that Socket made prior to the final development of the approved contract language.

10. CenturyTel cannot overcome the express content of the Agreement. The contract provides that certain traffic (MCA, FX/VNXX) is subject to bill-and-keep, and all other Local Traffic is subject to reciprocal compensation. As Socket demonstrates in its preceding summary judgment pleadings, CenturyTel clearly wanted to impose reciprocal compensation on Socket at the time the Agreement was submitted for approval, and now seeks to escape that decision after receiving (and paying) Socket’s invoices. (See, e.g., Socket Legal Memorandum, p. 11).

WHEREFORE, Socket Telecom moves the Commission as expeditiously as possible to: 1) deny CenturyTel’s Motion for Summary Determination; 2) grant Socket’s

¹⁹ See, e.g., Final Commission Decision, TO-2006-0299, p. 28.

²⁰ Final Commission Decision, TO-2006-0299, p. 27-29, see also Interconnection Agreement, Article II, Section 1.46 and 1.131, Article V, Section 9.2.3. CenturyTel’s contention that Section 9.2.3 only applies to VNXX traffic and not FX traffic (Legal Memorandum, p. 15-16) does not withstand scrutiny. The contract language discusses NXX code assignment, not traffic type. (Headings do not apply per Article III, Section 25.0). And it is not possible to provide FX service without making the described NXX code assignment (see definition of FX at Article II, Section 1.46). Given these other decisions by the Commission, its decision to remove text regarding FX from Section 9.4.2 (CenturyTel Legal Memorandum, p. 9, n. 21), was clearly designed to make the definition of bill-and-keep generic, not to exclude FX from bill-and-keep.

Motion for Summary Determination; and 3) grant such other and further relief to Socket as the Commission deems just and proper in the premises.

Respectfully submitted,

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Certificate of Service

A true and correct copy of the foregoing was served upon the parties identified on the attached service list on this 25th day of February, 2008, by email or by placing same in the U.S. Mail, postage paid.

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