

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

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

**SOCKET TELECOM’S RESPONSE TO CENTURYTEL’S MOTION FOR
EXPEDITED RULING AND MOTION FOR SUMMARY DETERMINATION
AND SOCKET TELECOM’S CROSS MOTION FOR SUMMARY
DETERMINATION**

COMES NOW Socket Telecom, LLC (“Socket”) pursuant to 4 CSR 240-2.117 and submits its Response to CenturyTel’s Motion for Expedited Ruling on Respondents’ Pending Motion to Dismiss and Motion for Summary Judgment; further Socket submits its Cross Motion for Summary Determination pursuant to 4 CSR 240-2.117.

As demonstrated herein, the Commission should not only deny CenturyTel’s Motion to Dismiss and Motion for Summary Determination, but also based on the facts and law presented should grant summary determination in favor of Socket. For all the reasons stated herein, Socket hereby moves the Commission to summarily rule that CenturyTel must port the specific numbers in dispute for Socket and its customers, and that CenturyTel must fulfill any similar port orders submitted in the future.

Introduction

Socket’s Complaint seeks relief as to two specific port orders submitted on behalf of two specific customers that want to retain their telephone numbers as they change

providers from CenturyTel to Socket. Socket's Complaint also seeks a determination that in addition to these specific orders, similar future orders should be fulfilled. As demonstrated herein, CenturyTel is required by law to port such numbers, and further is required by the interconnection agreement between the parties to port such numbers in accordance with industry practices. Contrary to CenturyTel's suggestion, this case involves a dispute between two carriers; other carriers need not be involved. As a matter of practicality, given that other carriers fulfill similar port orders for Socket (as discussed below), once the Commission directs CenturyTel to do so, there is no reason to expect any further dispute on the topic from other carriers.

Pursuant to 4 CSR 240-2.117, CenturyTel was required to identify purported undisputed material facts with particularity in separately numbered paragraphs. CenturyTel failed to comply with that rule, but as best Socket can determine it appears that CenturyTel intended paragraphs 1-17 of the section labeled "Pending Motion to Dismiss" of its Motion pleading at least in part to address the required statement of purported undisputed facts. Unfortunately, in most instances, these paragraphs are either solely or partially legal arguments rather than statements of fact. Further, paragraphs 18-23 (labeled "Motion for Summary Judgment") solely present argument. Nonetheless, in an effort to meet the requirements of the Commission's rule as best it can under such circumstances, for its required response, Socket will follow CenturyTel's paragraph numbers. Further, in the interest of keeping repetition to a minimum, Socket will rely upon its response to provide the basis for its Cross Motion for Summary Determination.

Response and Support for Cross Motion

1. Socket admits that Respondents filed their Motion to Dismiss, Answer and Affirmative Defenses on April 2, 2007 and that Respondents mistakenly assert therein that Socket's Complaint fails to state a claim upon which relief may be granted. Socket fully responded to Respondents' Motion to Dismiss on April 9, 2007 and incorporates that response herein by reference. Socket does not contend that Respondents filed their Motion to Dismiss late. The Commission has not yet ruled on Respondents' Motion to Dismiss, and the Commission should deny that motion for the reasons stated in Socket's prior response and this additional response.

2. Socket admits that it has filed direct testimony and Respondents and Staff have filed rebuttal testimony in accordance with the Commission's ordered case schedule, as amended. Socket admits that the hearing is set for July 11 and 12, 2007.

3. While paragraph 3 of CenturyTel's pleading makes legal argument instead of identifying purported undisputed material facts, Socket does not dispute the general legal contention that certain cases before courts and the commission may be disposed of prior to hearing either by dismissal or summary disposition. Socket's Complaint does state claims upon which relief may be granted and should not be dismissed, as explained in Socket's prior response and this response. The Commission should resolve the case on a summary basis in Socket's favor for the reasons stated in these materials, to achieve the benefits identified by CenturyTel (reduction of expense and delay, preservation of resources). Socket demonstrates herein that it is CenturyTel's position that is without merit.

4. It is certainly true that Socket's Complaint was generated by CenturyTel's illegal denial of several specific porting orders that Socket submitted in connection with efforts to serve specific customers. As stated on page 13 of the Complaint, the first order was submitted on October 30, 2006 for 573-322-8421 and the second order was submitted on February 23, 2007 for 417-469-9090 and 417-469-4900. And indeed, Socket has requested that the Commission direct CenturyTel to complete these porting orders. The customers involved are both internet service providers and one is not an affiliate of Socket. Mr. Voight's rebuttal testimony discusses these two porting orders, among many other things.

CenturyTel provides no factual support for its description of Staff as being an objective, neutral party only "in theory". Socket suggests that the Commission take notice of the entirety of its records and experience as evidence that Staff is, in fact, an objective and neutral party. Certainly, Mr. Voight's rebuttal testimony in this case demonstrates Staff's continued objectivity and neutrality. Although Socket does not agree with all of Mr. Voight's testimony, unlike CenturyTel Socket does not find in such disagreement any basis for an assertion of bias or unfairness.

To the extent CenturyTel seems to imply in paragraph 4 that Socket's Complaint only concerns the two specific porting orders, it is plainly mistaken. At page 14 of the Complaint, Socket asks the Commission to "rule that CenturyTel must provide number portability to Socket under the circumstances described [in the Complaint] both as to the specific numbers **and generally**". The body of the Complaint also without ambiguity seeks relief regarding both the specific orders and future orders. See, e.g., paragraph 21. Mr. Voight recognizes the request for general relief in his testimony. See

Voight Rebuttal at 15. Socket's Direct Testimony identifies additional porting orders that have been similarly illegally denied by CenturyTel. See, e.g., Kohly Direct, p. 23-28. Given CenturyTel's professed concern for the Commission's "scarce resources" (Motion, para. 3), it is hard to fathom how CenturyTel could in any way not expect the Commission to strive to address the two specific orders that gave immediate rise to the complaint, to address orders that have been illegally denied since the complaint was filed, and also to eliminate the need for additional complaints about similar future porting orders. Socket is seeking a final resolution of this dispute, both as to the specific numbers and generally, as stated in its Complaint.

5. As it does throughout its pleadings and testimony, in paragraph 5 CenturyTel clouds the issues by misusing technical terms in a colloquial manner. What is uncontested is that the customer who wants to port 573-322-8421 from CenturyTel to Socket, so that it can change providers but retain its telephone number, has a modem bank in Willows Springs now while it is being served against its will by CenturyTel and will have a modem bank in St. Louis once it is being served as it desires by Socket. It is also uncontested that once the customer is being served by Socket, it will retain the Willow Springs local calling scope and calls will still be rated and routed accordingly. See, e.g. Kohly Direct, p. 37-40. What remains for the Commission to resolve is whether, per FCC regulations and/or industry practices, under such circumstances the customer's "location"/"physical location" has changed (or as CenturyTel restates it in paragraph 5, whether the customer is "physically relocating"). As explained further elsewhere herein, the Commission is in a position to resolve that question summarily in Socket's favor. But for purposes of responding to paragraph 5 of CenturyTel's pleading, that paragraph

misuses the phrase “physically relocating”, engages in erroneous legal argument, and does not state an uncontested material fact.

6. The response to paragraph 6 is essentially the same as the foregoing response to paragraph 5. The specific circumstances (customer, telephone number, exchange) are different. There are two telephone numbers involved, and only one goes to an internet access modem bank while the other is used for voice service. (Kohly Direct, p. 15). Nonetheless, the analysis of CenturyTel’s averment is the same; to wit, paragraph 6 misuses the phrase “physically relocating”, engages in erroneous legal argument, and does not state an uncontested material fact.

7. CenturyTel makes a vague reference to purported provisions of its rebuttal testimony, but it violates rule 2.117 by not making any specific reference. Socket concedes that Mr. Voight states in his rebuttal testimony at page 3 that “Socket acknowledges that the customers in question are physically moving from one location to another outside the customer’s existing telephone exchange area.” However, Mr. Voight incorrectly (more specifically, imprecisely) uses the word “location” in this statement and as a result erroneously summarizes Socket’s testimony. Presumably, this is why CenturyTel chose to cite to Mr. Voight’s summary rather than Socket’s actual testimony. Thus, CenturyTel’s paragraph 7 adds nothing to the inaccurate arguments and averments of its paragraphs 5 and 6.

8. Socket fervently hopes that there actually is no dispute about CenturyTel’s obligation to port numbers when the customer is moving from one site to another within an exchange area. Certainly, Susan Smith has testified that “CenturyTel would process such a port [for Socket] because CenturyTel would allow its own customers to keep a

number if moving within an exchange.” (Smith Rebuttal p. 5). Socket may have to provide contrary testimony in surrebuttal if a new situation is not immediately resolved, but at present the prefiled testimony does not present such an additional dispute. Again, however, CenturyTel seeks to cloud the issue by using the word “relocate” incorrectly and for the reasons stated above Socket disputes the mischaracterization of a customer that moves from one site to another within an exchange area as “relocating” under FCC rules and industry practices.

9. Socket agrees that it has cited 47 USC 251(b)(2) and related FCC rules and decisions in support of its Complaint, but contrary to CenturyTel’s implication, that is not the full extent of the legal basis for Socket’s Complaint. Socket also refers repeatedly to its legal rights under its interconnection agreement with CenturyTel, including in the paragraphs cited by CenturyTel in support of its incomplete averment. (See, e.g., Complaint para. 27). CenturyTel ignores this point in its Motion, but concedes it in its Legal Memorandum (p. 2).

10. CenturyTel states an inapposite legal conclusion in paragraph 10, rather than identifying purported undisputed material facts. The question presented to the Commission is not whether federal law requires CenturyTel to provide “location portability” or “geographic portability” to Socket, but rather whether federal law requires CenturyTel to port numbers for Socket under the circumstances at issue because such ports qualify as “local number portability” and “service provider portability” as those terms are used in the federal rules.

11. Socket agrees that CenturyTel has accurately quoted the definition of “location portability” from 47 CFR 52.21(j) in paragraph 11. As indicated in response to

paragraph 10, CenturyTel again misstates the legal proposition at issue. Further, Socket disagrees that this definition and the related definitions of local number portability and service provider portability are unambiguous absent further interpretive decisions. Specifically, even the evidence submitted by CenturyTel demonstrates that the word “location” and the phrase “physical location” as used in these definitions are ambiguous absent further legal interpretation, presenting the related questions of what constitutes a "location" under the rules and when has a "change in location" occurred under the rules.

The Crab Nebula is a location and physical location in the universe, seen from Earth in the constellation Taurus. If one does a Google search, one learns that it is over 6000 light years away and some 10-11 light years in diameter (and expands at a rate of about 1,500 kilometers per second).

On the other hand, the head of a fairly standard pin would have a diameter of about 1.5 millimeters (again, Google gets us to the information for purposes of discussion). Noticeably smaller in size than the Crab Nebula to be sure, yet nonetheless also a location and a physical location.

CenturyTel’s witness Furchtgott-Roth testifies that, in his view, the “three and most relevant definitions of location” for purposes of this case are a town, a house, and a mine. (F-R Rebuttal, p. 8, note 4). It is not clear whether the mine he has in mind is bigger than a town, smaller than a house, or somewhere in-between.

Getting to the point, the words “location” and “physical location” are indisputably imprecise and must be interpreted in context to gain understanding of the meaning of the rules. And the FCC is the agency with primary jurisdiction (subject of course to court review and Congressional action) to put the otherwise imprecise words of its definitions (and the statute from which they are derived – i.e. copied) into context.

In fact, the FCC has done just that. In 2003 (after Mr. Furchtgott-Roth returned to the private sector)¹, the FCC held that when the rating of calls to the ported number stays the same, and routing of calls to the ported number is no different than if a new number rated to the same rate center were assigned by the new provider, **there is not a change in location under its rules.** In other words, it determined that there is not a change in location under its rules when the original rate center designation is maintained after the port.² (Kistner Direct, p. 8-9, citing *In the matter of Telephone Number Portability*, FCC CC Docket No. 95-116 para. 28 (2003) (Intermodel Order)).

There is only one set of definitions concerning number portability, and the definitions use the word “location”. These definitions apply uniformly to all telecommunications carriers. Socket is entitled to number portability from CenturyTel under the circumstances presented in this case, pursuant to applicable law.

12. The meaning of the word “location” as used in the FCC’s number portability rules is not a question of fact, but rather a matter of law. The definitions at issue are only unambiguous to the extent that the FCC has interpreted the meaning of the

¹ See F-R Rebuttal at page 4.

² Thus, it is not a question of the geographic boundaries of the rate center, but rather assignment thereto. Nonetheless, it is interesting to note the correlation between the size of towns and rate centers (i.e. Voight Rebuttal, p. 3, 21), given Mr. Furchtgott-Roth’s acknowledgment that “town” is a relevant meaning for “location” under the FCC’s rules (F-R Rebuttal, p. 8 n. 4).

word "location". Socket respectfully submits that the Staff is mistaken in its understanding of the meaning of these rules (and in any event, Staff's opinion does not resolve the issue as CenturyTel implies).³ As explained in paragraph 11, the FCC's decision that there is not a change in location if there is not a change in rate center assignment applies uniformly to all carriers - as it must.

13. CenturyTel has accurately quoted isolated portions of the parties' interconnection agreement. However, CenturyTel errs when it contends that the terms and conditions of the agreement are such that its obligations are limited solely to those imposed by the Act. CenturyTel is obligated to meet all the terms and conditions of the contract, including those that impose obligations beyond the minimum requirements of the Act. Thus, not only is CenturyTel obligated to provide number porting to Socket in the circumstances at issue in this case due to the requirements of the Act and the FCC's rules and decision as described above, but it is also obligated by the additional provisions of the interconnection agreement including those provisions of Article XII, Local Number Portability, that require compliance with industry guidelines and practices (i.e. sections 3.2.1, 6.4.4, 6.4.5). (See Schedule MK-2). In particular, Section 6.4.4 states: "Industry guidelines shall be followed regarding all aspects of porting numbers from one network to another."

14. Socket and Staff have demonstrated that Socket is entitled to number porting in the circumstances presented in accordance with industry practices. (Kohly Direct, p. 43-45, Kistner Direct, p. 10-12, Voight Rebuttal, p. 8, 16-18). As Mr. Voight

³ Staff does find the FCC's interpretation of the word "location" in the Intermodel Order to be "instructive". (Voight Rebuttal p. 26). Staff also acknowledges that "it is the telephone rate center that forms the basis of legal and regulatory treatment, and for the associated intercarrier compensation scheme, not the physical end points of the telephone connection. (Voight Rebuttal, p. 14) Hence, the degree of disagreement on this legal issue between Staff and Socket appears to be very narrow.

observes (Rebuttal, p. 8), CenturyTel does not dispute the practices of the industry; rather, it seems to contend that there cannot be an established industry practice unless CenturyTel currently endorses it. But even CenturyTel has in some respects complied with these practices prior to this dispute. (Kohly Direct p. 25-28, 34). CenturyTel's unsupported and inconsistent disagreement should not deter the Commission from ruling in Socket's favor, but at worst could, as Staff suggests in its response to CenturyTel's motion, require a hearing to resolve the factual question concerning industry practices. But hearing is not required, because Socket is entitled to relief as a matter of law under the applicable regulations.

The industry practices described by Socket and Staff do not violate federal law. Even if the law did not require number porting as requested by Socket, it certainly does not prohibit it. Ultimately, CenturyTel's position boils down to the rather foolish contention that everyone else in the industry is engaged in illegal number porting. That is just not the case.

15. Socket does not dispute the content of 47 CFR 52.26(a), nor does Socket contend that this rule or any other rule requires location portability. Again, the ports at issue do not involve location portability. And perhaps CenturyTel would not be obligated to follow industry practices if it had not agreed to do so in the interconnection agreement. But it did so agree, and so it must, both pursuant to the terms and conditions of the contract and the requirements of the FCC.

16. As explained above, the facts show that the ports in question do not involve a change in location under FCC rules and decisions, and CenturyTel is obligated to port the numbers (and comply with future requests) both by law and by industry

practice in accordance with the interconnection agreement. Not only has Socket stated a claim, it is entitled to summary relief.

17. As indicated above, Socket has not questioned the timeliness of CenturyTel's motion to dismiss. Socket would welcome an immediate denial of that motion.

18. The Commission's rules do allow for summary disposition of cases under the appropriate circumstances. Socket has shown that CenturyTel's motions are without merit, and that it is Socket that is entitled to a summary disposition in its favor.

19. As explained above, CenturyTel is required by law and the interconnection agreement to port the numbers at issue and to fulfill similar port orders submitted in the future.

20. As explained above, the port requests at issue do not involve customers that are changing location (or physical location) as those terms are used in the FCC's rules. To the extent necessary to respond to CenturyTel's incorporation by reference of its prior purported statement of facts, Socket incorporates its foregoing response thereto.

21. CenturyTel keeps saying the same things over and over again, but that does not make them true. Socket incorporates its foregoing responses. The Commission should rule in favor of Socket on a summary basis.

22. Again, Socket incorporates its foregoing responses. Socket has also submitted a brief legal memorandum herewith.

23. Socket has no idea why CenturyTel could not have filed its motion for summary determination earlier, but that is now water under the bridge.

24. Network capacity issues (if any such issues legitimately arise) are not grounds for denial of a number porting order. See FCC's Intermodel Order at ¶ 28 n.75. Rather, the companies are obligated to work out such issues. Each company is required to have the necessary facilities in place to exchange traffic at the point of interconnection (POI) and is responsible for the costs of facilities on its side of the POI. (Kohly Direct p. 17, 20, 31-33; Kistner Direct, p. 12; Voight Rebuttal, p. 7, 23, 28-32).

25. In the circumstances at issue, as the evidence shows without dispute, porting a number in conjunction with a conversion from service at one site to foreign exchange service at another site that preserve the original rate center assignment does not result in a change in location under applicable law. Call rating remains the same. Call routing is no different than if a new number were assigned to the customer. (Kohly Direct 37-38, 40-43). Under FCC rules and decision, the port must be provided.

26. CenturyTel's actions harm the customers, depriving them of their right to retain their telephone numbers when changing service providers. (Kohly Direct p. 43-44). CenturyTel's actions contravene one of the most basic and essential features of competition as envisioned by Congress and the FCC under the Act. (Kistner, Direct, p. 4). Yet, once the Commission orders CenturyTel to fulfill the orders, there will be no impact on CenturyTel. Calls will be rated and routed the same, as compared to Socket winning the customers and assigning them new telephone numbers. (Kohly Direct, p. 38-4). CenturyTel illegally and selfishly holds the customers hostage by refusing to port their numbers, in violation of applicable law and its interconnection agreement with Socket.

WHEREFORE, for the reasons stated herein, Socket moves the Commission as expeditiously as possible to: 1) deny Respondents' Motion to Dismiss; 2) deny Respondents' Motion for Summary Determination; 3) grant Socket's Motion for Summary Determination; and 4) 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 22nd day of June, 2007, by email or by placing same in the U.S. Mail, postage paid.

/s/ Carl J. Lumley

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