BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

PETITION OF SOCKET TELECOM, LLC FOR COMPULSORY ARBITRATION OF INTERCONNECTION AGREEMENTS WITH CENTURYTEL OF MISSOURI, LLC AND SPECTRA COMMUNICATIONS, LLC PURSUANT TO SECTION 252(b)(1) OF THE TELECOMMUNICATIONS ACT OF 1996	)))))))	**CASE NO. TO-2006-0299**

POST-HEARING BRIEF OF SOCKET TELECOM, LLC

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COMES NOW Socket Telecom, LLC ("Socket") and files its post-hearing brief in this arbitration proceeding with CenturyTel of Missouri, LLC ("CenturyTel - Missouri") and Spectra Communications Group, LLC d/b/a CenturyTel ("CenturyTel – Spectra"), both of which are wholly owned subsidiaries of CenturyTel, Inc., and are collectively referred to herein as "CenturyTel." Each is a wholly owned subsidiary of CenturyTel, Inc. By agreement of the parties, Socket's brief will address the remaining disputed issues in the order they were addressed at the hearing on the merits held April 11-13, 2006.

INTRODUCTION

This proceeding comes before the Commission pursuant to the process for negotiation and arbitration of interconnection agreements ("ICAs") under Sections 251 and 252 of the federal Telecommunications Act of 1996 (the "Act"). Socket has operated under a Commission-approved ICA with CenturyTel since 2002.[1] Socket attempted to negotiate a successor ICA with CenturyTel in 2005 pursuant to the Section 252 process, and filed its petition for arbitration on January 13, 2006. Socket identified 227 disputed issues in its arbitration petition. Since that time, Socket and CenturyTel have agreed to contract language that has resolved the disputes

[1] Socket Ex. 1, Direct Testimony of R. Matthew Kohly on Behalf of Socket Telecom ("Kohly Direct") at 8.

regarding 164 issues. Socket has continued to negotiate since the hearing, recently resolving several resale issues, as reflected in the parties' revised Decision Point Lists ("DPLs") filed on May 1, 2006. The number of issues for which a Commission resolution is being requested now stands at 63.

While each of the disputed issues must be addressed on their individual merits, certain overarching facts emerged from the evidentiary record that Socket urges the Commission to be mindful of as it considers resolution of the individual disputes.

First, neither CenturyTel's size nor the nature of its service territory in Missouri justify the departures it seeks from settled interpretations of the Act or FCC Rules, nor from its obligation to provide meaningful access to industry standard Operational Support Systems ("OSS"). CenturyTel is the second-largest incumbent local exchange carrier ("ILEC") in Missouri, serving just under a half-million lines.[2] CenturyTel is not a local ILEC somehow "stuck" with its rural service territory. Just the opposite: CenturyTel came to Missouri beginning in the year 2000 specifically to purchase the territories it now operates.[3] In terms of access lines served, Missouri is now the second largest state in CenturyTel's national footprint. The business plan of acquiring less densely populated exchanges that CenturyTel has pursued for several years is clearly paying off: by the end of 2006, CenturyTel will have returned approximately $1.58 billion to its shareholders in the form of stock buybacks and dividends.[4] Many of the exchanges purchased by CenturyTel in the last few years are experiencing tremendous population growth,

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[2] CenturyTel Ex. A, Direct Testimony of William E. Avera ("Avera Direct"), at WEA-1.

[3] Kohly Direct at 5-7.

[4] Socket Ex. 2, Rebuttal Testimony of R. Matthew Kohly on Behalf of Socket Telecom ("Kohly Rebuttal") at 8-9; Tr. at 340:6-21 (Avera).

making once rural exchanges into suburban or increasingly industrial locations.[5] In addition, CenturyTel is compensated for serving rural exchanges by substantial payments from state and federal Universal Service Funds.[6]

The significance of these facts in this case can be simply stated. It is true that CenturyTel is "not AT&T," but it is also true that CenturyTel has not demonstrated it should be excused from basic unbundling or interconnection obligations because of its size or the nature of its service territory or operations. For example, as Mr. Cadieux testified, other independent ILECs around the country much smaller than CenturyTel have implemented electronic OSS that provides a dramatically more efficient ILEC-CLEC interface than that offered by CenturyTel.[7] Moreover, CenturyTel failed to show that anything about its company makes it unable to comply with prior Commission decisions regarding interconnection and reciprocal compensation that are applicable to AT&T, Sprint, and other Missouri ILECs. In particular, CenturyTel has wholly failed to demonstrate why the Commission should depart from the very recent decisions it made in the M2A successor arbitration[8] concerning the very same issues. CenturyTel's size simply does not change the requirements under the Act or the FCC's rules nor justify altering this Commission's recent determinations.

Second, CenturyTel did not provide credible evidence of its purported costs. The evidence showed that CenturyTel's cost studies are fundamentally flawed and fail the FCC's

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5 Tr. at 330:6-335:23 (Avera); Socket Exhibits 8 – 11 (Census data and local government reports regarding growth in various locations in CenturyTel's Missouri service territory).

6 Kohly Rebuttal at 10-11.

7 Tr. at 300:23-303:14 (Cadieux).

8 Case No. TO-2005-0336, *Southwestern Bell Telephone, L.P. d/b/a SBC Missouri's Petition for Compulsory Arbitration of Unresolved Issues for a Successor Agreement to the Missouri 271 Agreement ("M2A")*.

tests for what constitutes an acceptable TELRIC study.[9] In addition, the evidence demonstrated that CenturyTel consistently exaggerated its cost estimates for complying with interconnection requests made by Socket. It is clear that no matter whether the cost estimate involved something as substantial as establishing automated OSS interfaces[10] or setting unbundled loop rates,[11] or as minor as setting up an email notification list,[12] CenturyTel without exception came up with estimates so high as to be completely incredible. Socket urges that the Commission reject CenturyTel's flawed cost information as the basis for establishing any rates, terms, or conditions in the parties' ICA.

Third, the facts do not bear out CenturyTel's rhetorical attacks on Socket's proposed ICA language. CenturyTel's inflammatory and unfounded attacks on Socket's business plans are part of a studied effort to characterize Socket as interested only in "arbitrage" and cost-shifting to CenturyTel. CenturyTel urges the Commission to believe that Socket is staking its future on the dwindling business of dial-up Internet access, in spite of Socket's focus on establishing the necessary means to grow its integrated voice/data services through the use of DS1 loops. As the record demonstrated, CenturyTel's rhetoric is not based on facts, and should not form the basis of Commission legal or policy decisions.

Fourth, the evidence in this case makes abundantly clear why the ICA should provide clear direction to the parties on critical issues. It is not sufficient to leave key contract terms subject to unspecified "agreement" between the parties. While the record demonstrated that

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[9] Socket Ex. 3/3HC, Rebuttal Testimony of Steven E. Turner ("Turner Rebuttal") at 25-31; Tr. at 300:23-303:14 (Turner).

[10] Socket Ex. 16/16HC, Rebuttal Testimony of Kurt Bruemmer on Behalf of Socket Telecom ("Bruemmer Rebuttal") at 17-18.

[11] Socket Ex. 4/4HC, Rebuttal Testimony of Steven E. Turner on Behalf of Socket Telecom ("Turner Rebuttal") at 39 – 46.

[12] CenturyTel Ex. N/N-HC, Direct Testimony of Pam Hankins on Behalf of CenturyTel ("P. Hankins Direct") at 8.

CenturyTel and Socket work together (as all ILECs and CLECs must) to establish mutually workable interconnection arrangements, it was also clear that the parties' divergent views on key issues does not inspire confidence that all issues can simply be "worked out" in the future.

In fact, Congress expressly provided for negotiation followed by arbitrated dispute resolution because of the inherently unequal bargaining power between ILECs and CLECs.[13] A CLEC like Socket must have, for example, interconnection facilities and ordering and provisioning arrangements in place before it can even enter the market competitively; by contrast, incumbents have no inherent incentive to facilitate competition in their service territories – especially in territories like CenturyTel's where competition has made few inroads. If ICAs do not include specific provisions directing outcomes consistent with the Act, FCC Rules, and Commission policy decisions, an ILEC's ability to take advantage of its bargaining power is simply too great.

Missouri companies like Socket, NuVox and others want to provide Missouri customers in CenturyTel's territory with competitive alternatives that have not reached them ten years after passage of the Act. Socket is not asking the Commission to approve new or untested interconnection provisions in this arbitration, and certainly is not asking the Commission to establish new policies that would put CenturyTel in a worse position than any other ILEC operating in Missouri. On the critical issues that remain in dispute, however, Socket needs contract language that fully implements existing Commission policies and long-standing FCC Rules. With such provisions in place, Socket can continue its effort to bring competitive services to many Missouri locations where local competition has not yet become a reality.

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[13] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 1996 WL 452885 (1996) (commonly referred to as the "*Local Competition Order*").

I. INTERCONNECTION AND INTERCARRIER COMPENSATION

Article V

A. Socket's proposed contract language is consistent with federal rules and judicial and administrative decisions.

Article V of the ICA sets forth each party's responsibilities to interconnect and defines intercarrier compensation obligations. Socket's goal in proposing its contract language is to make the interconnection process proceed as smoothly as possible and to prescribe intercarrier compensation for traffic exchanged between the parties. To support its positions, Socket sponsored the testimony of R. Mathew Kohly and Steven Turner on Article V Network Interconnection and Intercarrier Compensation issues.[14] CenturyTel generally opposes Socket's approach to interconnection and proposes to add unnecessary, unneeded, and unlawful conditions for establishing interconnection.[15] CenturyTel also inappropriately attempts to address interconnection and compensation issues through definitions rather than in contract language.[16]

The FCC rules pertaining to interconnection are clear and have been settled since 1996. Current law allows "direct or indirect" interconnection at "any technically feasible point" on a carrier's network.[17] A summary of CenturyTel's obligation to provide network interconnection is contained in a recent decision by the United States Court of Appeals for the Fifth Circuit:

> [A]n ILEC must provide a CLEC interconnection within its network at any technically feasible point. The FCC has determined that technical feasibility does not include consideration of economic, accounting, or billing concerns. Further, the FCC has stated that § 251(c)(2) allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination of traffic. Recognizing that ILEC networks were not designed to

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[14] Kohly Direct at 54-88; Socket Ex. 3/3HC, Direct Testimony of Steven E. Turner on Behalf of Socket Telecom ("Turner Direct") at 31-48; Kohly Rebuttal at 48-81; Turner Rebuttal at 10-19.

[15] Kohly Direct at 54.

[16] *Id.* at 28.

[17] 47 U.S.C. §§ 251(a)(1) and 251(c)(2).

> accommodate third-party interconnection, the FCC notes that ILECs are nevertheless required to adapt their facilities to interconnection or use by other carriers, and must accept the novel use of, and modification to, its network facilities to accommodate the interconnector.
>
> Section 251 of the Act, entitled "Interconnection," imposes on ILECs the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . at any technically feasible point within the carrier's network . . . on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. Meanwhile, § 51.703 of the FCC regulations, entitled "Reciprocal Compensation for Transport and Termination of Telecommunications Traffic," prohibits an ILEC from assessing charges on any other telecommunications carrier for telecommunications traffic that originates on the [ILEC]'s network.[18]

The Act and the FCC rules implementing it require ILECs to allow interconnection at any technically feasible point within the ILEC's network.[19] CenturyTel's proposed contract language and its testimony, however, ignore the technical feasibility standard (or attempt to twist that standard in ways prohibited by the FCC's Rules). CenturyTel cites no legal precedent allowing the Commission to ignore the technical feasibility standard, and the Commission's prior arbitration decisions have not ignored the federal standards.[20] Furthermore, the FCC has determined that technical feasibility does not include consideration of costs or economic concerns.[21] Although it focuses much of its interconnection testimony on economic issues,[22]

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[18] *Southwestern Bell Tel. Co. v. Public Utilities Comm'n*, 348 F. 3d 482, 486 (5th Cir. 2003) (citations omitted).

[19] *See* 47 U.S.C. § 251(c)(2)(B). Each incumbent LEC's duties include: "The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . at any technically feasible point within the carrier's network." *See also*, 47 C.F.R. 51.305(a)(2); Tr. at 109:14-18 (Turner); Tr. at 111:8-11 (Turner).

[20] *See, e.g.*, Case No. TO-2005-0336, Final Arbitrator's Report, at Section V – p. 6 (June 21, 2005) ("CLECs may interconnect at any technically feasible point on SBC Missouri's network. … SBC may not preclude a CLEC's interconnection at a customer's premise as long as the interconnection arrangement is acceptable to the customer and is technically feasible.")

[21] *See Local Competition Order* at ¶ 199. "We find that the 1996 Act *bars consideration of costs* in determining "technically feasible" points of interconnection or access." (Emphasis added). *See also, Local Competition Order* at ¶ 198. "We conclude that the term "technically feasible" refers solely to technical or operational concerns, rather than economic, space, or site considerations."; 47 C.F.R. § 51.5. "Interconnection, access to unbundled network elements, collocation and other methods of achieving

CenturyTel also fails to provide legal support to change the Commission's evaluation from one of technical feasibility to one where the Commission may consider the relative economics of interconnection.

Moreover, CenturyTel's proposed requirements often have the net result of increasing Socket's costs and creating a less efficient network.[23] Since the 1996 *Local Competition Order*, the FCC has emphasized that the interconnection obligation of Section 251(c)(2) "allows *competing carriers* to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination of traffic."[24]

The FCC established a standard of proof that applies to ILECs that deny a CLEC's request for a method of achieving interconnection. The FCC's rules are clear on this issue:

> An incumbent LEC that denies a request for a particular method of obtaining interconnection or access to unbundled network elements on the incumbent LEC's network must prove to the state commission that the requested method of obtaining interconnection or access to unbundled network elements at that point is not technically feasible.[25]

CenturyTel failed to meet its burden of proof as to the methods of interconnection requested by Socket. CenturyTel did not even attempt to show the Commission that Socket's

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interconnection . . . shall be deemed technically feasible absent technical or operational concerns that prevent the fulfillment of a request by a telecommunications carrier for such interconnection, access, or methods. *A determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns* . . . . The fact that an incumbent LEC must modify its facilities to respond to such request does not determine whether satisfying such request is technically feasible. An incumbent LEC that claims it cannot satisfy such request because of adverse network reliability impacts must prove to the state commission by clear and convincing evidence that such interconnection, access, or methods would result in specific and significant adverse network reliability impacts." (Emphasis added).

[22] *See, e.g.*, Tr. at 174:9-11 (Simshaw) ("[I]t could probably become feasible, but that's very costly. So the issue becomes who bears the cost, and that's determined by where is the point of interconnection?")

[23] *See* Kohly Direct at 26, 55, and 56.

[24] *Local Competition Order* at ¶ 172. (Emphasis added).

[25] 47 C.F.R. § 51.321(d).

proposed methods of interconnection are not technically feasible; CenturyTel objected only to the costs purportedly associated with Socket's proposed interconnection arrangements.

CenturyTel also fails to recognize that it benefits from Socket's proposed interconnection. The interconnection trunks between the parties will carry traffic both ways.[26] Mr. Turner testified that the FCC has generally recognized that there is a mutual benefit to both parties that interconnect because the end users of both the ILEC and CLEC have the ability to originate and terminate traffic to end users of the other party.[27] In support of this, Mr. Kohly testified that Socket is aggressively marketing its voice products throughout Missouri and that its originating minutes of use are growing.[28] The interconnection agreement will apply to the fastest growing segment of Socket's business.[29] Socket and CenturyTel will continue to exchange calls in the future and both companies' customers will benefit from the ability to call subscribers of the other company's services.

The FCC rules also provide that CenturyTel may prove to the Commission by clear and convincing evidence that an interconnection request "would result in specific and significant adverse network reliability impacts" before it meets its burden to reject an interconnection request on network reliability grounds.[30] CenturyTel did not provide any evidence that Socket's requests for interconnection would result in any specific and significant adverse network reliability impacts.

On the intercarrier compensation issues in Article V, Socket's position is a straightforward one. Socket has proposed that all local, FX (including VNXX), and ISP-Bound

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26 Tr. at 120:5-9 (Kohly).

27 Turner Direct at 31-33.

28 Tr. at 220:22-221:8 (Kohly).

29 Tr. at 221:10-221:14 (Kohly).

30 47 C.F.R. § 51.5.

traffic be exchanged on a bill-and-keep basis, the same way traffic is exchanged in MCA areas today. By proposing bill-and-keep, Socket gives up its statutory right to receive compensation from CenturyTel for terminating traffic originated by CenturyTel customers. Moreover, Socket gives up any possible "arbitrage" opportunity associated with charging CenturyTel for termination of ISP-Bound traffic.

Nevertheless, CenturyTel continues to claim Socket is trying to improperly shift costs to CenturyTel. CenturyTel's allegations, however, are not supported by the facts. All of the costs CenturyTel claims it incurs under Socket's proposals are associated with transport mileage. Those costs are related entirely to the location of POIs rather than to the services Socket will offer under the ICA. The law and the evidence in this case demonstrate that Socket's contract proposals do nothing to impermissibly shift the costs of terminating ISP-Bound, VNXX, or any other type of traffic. CenturyTel's arguments are nothing more than a smokescreen intended to mask its efforts to increase Socket's costs and decrease its ability to efficiently serve new customers.

B. Both parties should designate qualified people to oversee the establishment of interconnection and CenturyTel should provide information to allow Socket to achieve interconnection.

Article V, Issue No. 5(A)[31]

Socket's language includes requirements that each party designate a qualified person to oversee the establishment of the requested interconnection and for CenturyTel to provide technical information about its network facilities to allow Socket to achieve interconnection.[32] CenturyTel characterizes these details as "onerous burdens" and claims that its language

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[31] Kohly Direct at 54-61; Turner Direct at 30-37; Kohly Rebuttal at 55-62; Turner Rebuttal at 10-11. This issue is partially resolved, as to Section. 2.2.

[32] Article V §§ 2.1, 2.3, 2.4, 2.5.1, and 2.5.2.

proposes "mutual cooperation and agreement in the deployment of interconnection facilities."[33] Because of the many technical and operational details that must be attended to when establishing interconnection between carriers, it is appropriate for each party to designate a qualified person to oversee and serve as the coordinator of the project. Assignment of qualified personnel to interconnection tasks generally promotes efficiency and helps minimize disputes. As Mr. Kohly testified, a defined process for coordinating interconnection is standard practice with other Missouri ILECs, and is a practice that fosters efficiency and cooperation for both the ILEC and CLEC:

> When Socket establishes interconnection with Sprint or SBC, there is a single point of contact who facilitates the project. If it is a new interconnection (as opposed to an augment) that person coordinates among the various departments within their company, just as I do within Socket, to schedule a Network Interconnection meeting. At that meeting, the details and responsibilities are worked out between the parties. If Sprint or SBC were to ever assert that they lacked capacity to support Socket's interconnection request, I would expect that we would address at the Network Interconnection meeting the details of when capacity would be available. These meetings generally take less than an hour and the parties are able to begin placing orders. This process benefits both parties as everyone understands what will occur, who needs to order what, and when it will be accomplished. If an order is not received, the parties know to expect an order and can contact the other party to determine why the order was not received.[34]

The "Network Interconnection Team" meeting process established between Socket and other Missouri ILECs is in no way "onerous" or "overly burdensome" as CenturyTel alleged.

What the evidence showed does qualify as "onerous" is the existing process CenturyTel forces CLECs like Socket to endure to put even simple interconnection arrangements in place. As Mr. Kohly testified:

> In contract to this cooperative process with other ILECs, when we use CenturyTel's e-mail ordering systems for LSRs, Socket has experienced lost

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[33] CenturyTel Ex. C, Direct Testimony of Guy E. Miller, III on behalf of CenturyTel ("Miller Direct") at 6-7.

[34] Kohly Rebuttal at 56.

> orders because the orders were captured by CenturyTel's spam filter or CenturyTel changed the e-mail address with no notice. As there had been no Network Interconnection Team ("NIT") meeting or other contact, the order was missing for several weeks and CenturyTel did not know to expect the order. … In establishing interconnection with CenturyTel, the process is not defined and has changed over time. Currently, we submit orders via an ASR. When CenturyTel receives the order, it is sent to Carrier Relations where Susan Smith reviews the order in what CenturyTel has called the "Regulatory Review." If she is out of the office, the order sits until she returns. Our understanding of the Regulatory Review is that Socket's order is checked to see if Socket has an approved forecast and whether the order matches the forecasted amount. If the order is greater than the forecasted amount or requests two-way trunks when one-way trunks are reflected on the forecast, the order is rejected. I believe that there is no check to determine whether capacity is available.[35]

The evidence demonstrated that CenturyTel provides minimal cooperation to a competitor seeking interconnection. Socket's testimony documents numerous instances where CenturyTel either delays or simply refuses reasonable interconnection requests from Socket.[36] Given CenturyTel's historical resistance to competitive entry, the ICA should include, wherever it is practical, specific details and requirements. Key contract terms that vaguely call for "mutual agreement" sometime in the future will delay Socket's ability to interconnect and inevitably lead to unnecessary disputes before this Commission.[37]

Mr. Kohly explained that CenturyTel opposes the use of account managers or single points of contact for interconnection and proposes only escalation lists for use by the parties.[38] Socket's proposal is designed to reduce the utilization of escalation and crisis management as the primary avenue of communication between the parties and requires a primary point of contact for

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35 Kohly Rebuttal at 56-57 & n.69.

36 *See* Kohly Rebuttal at 48-49; *see also*, Kohly Rebuttal at 55. "Open-ended language that requires mutual agreement or requires the parties to agree to a process in the future is simply not workable. This problem will be compounded if there is no single entity or person to work with to establish interconnection."

37 *Id.* at 49.

38 Kohly Direct at 55.

interconnection issues.[39] Socket has established account manager relationships at other ILECs as the regular and primary point of contact between the companies and to coordinate the process of establishing a point of interconnection ("POI").[40] In order to settle an issue in Article III, however, Socket agreed to CenturyTel's position that CenturyTel would not have to appoint an account manager who would act as an overall single point of contact for Socket for issues other than establishing and augmenting interconnection facilities.[41]

The fact that CenturyTel will not utilize an account manager in its day-to-day interactions with Socket makes the role of a single point of contact to establish interconnection even more important. Mr. Kohly testified that, in Socket's experience, many departments within an ILEC must coordinate the interconnection, so the use of a single point of contact makes completing the project much easier, much faster, and more efficient. This coordination is most efficiently handled by a central point of contact within the company.[42] In fact, CenturyTel witness Mr. Miller testified that the "project team" approach is exactly the way CenturyTel takes on network projects.[43] Yet CenturyTel strongly resists designating a member of its interconnection team to be the point of contact to coordinate its team's activities with the activities of Socket's team. Contract language that calls for an efficient means of project coordination is not by any means the "super-parity" CenturyTel claims, but rather a simple method for ensuring efficiency where inefficiency has previously been the norm.

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39 *Id*.

40 "A point of interconnection ("POI") is a physical location where one local exchange carrier's ("LEC") facilities physically interconnect with another LEC's facilities for the purpose of exchanging traffic." Turner Direct at 39.

41 Kohly Direct at 55.

42 *Id*.

43 Miller Direct at 9 ("[A]s each project arises, CenturyTel selects appropriate project personnel form an available team of subject matter experts. These personnel coordinate network projects within individual areas of expertise and with an escalation capability in each area to address unforeseen issues.")

Socket proposes language in Section 2.3[44] based on the FCC rules to obtain information about CenturyTel's network facilities.[45] CenturyTel objects to Socket's proposal because it claims the information is neither necessary to establish interconnection nor legally appropriate.[46] When one compares the FCC Rule to Socket's proposed language, it appears that CenturyTel's objection is to the FCC's rule, not to Socket's proposed language. Socket's proposal ensures that Socket may request and obtain information in sufficient detail for to achieve interconnection consistent with the requirements of the FCC's rule. Moreover, CenturyTel raises unfounded objections about providing proprietary information to Socket.[47] Other language in the interconnection agreement provides safeguards to prevent the disclosure of proprietary information in this or any other context.[48]

Socket's proposal in Section 2.5 addresses situations that have occurred when CenturyTel has denied interconnection to Socket because CenturyTel did not believe Socket needed the additional capacity,[49] thus denying Socket the opportunity to serve a potential customer. CenturyTel's proposed language detrimentally limits Socket's ability to increase interconnection facilities. Mr. Kohly testified that Socket needs to know that CenturyTel will respond to a request for interconnection facilities when even a single large customer requires additional interconnection facilities.[50]

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44 Article V, Section 2.3: "Upon Request, CenturyTel shall provide to Socket technical information about CenturyTel's network facilities **in sufficient detail to allow Socket to achieve interconnection**." (Bold language is proposed by Socket and opposed by CenturyTel.)

45 *See* 47 C.F.R. 51.305(g). "An incumbent LEC shall provide to a requesting telecommunications carrier technical information about the incumbent LEC's network facilities sufficient to allow the requesting carrier to achieve interconnection consistent with the requirements of this section."

46 Article V DPL, Issue No. 5(A) at 14.

47 Article V DPL at 3.

48 Kohly Direct at 57. *See also*, Article III, Section 14.

49 *See* Kohly Rebuttal at 57.

50 Kohly Direct at 60.

CenturyTel proposes language in Section 2.3 that imposes limits on the information that CenturyTel will provide and requires trunk sizes to be mutually agreed upon and based upon traffic studies. The FCC rule contains no such limitations. As Mr. Kohly testified, in areas where Socket will enter new markets, there will be no traffic studies upon which to base trunk sizes.[51] Socket fears that this proposal gives CenturyTel a tool to further delay and obstruct Socket's interconnection with CenturyTel.

Although CenturyTel claims in its DPL that it has never denied a request for lack of facilities,[52] Mr. Kohly testified that on several occasions, CenturyTel has refused to establish interconnection arrangements on the grounds that it lacked the capacity.[53] Mr. Kohly also testified that other carriers with whom Socket interconnects have never claimed that they lacked capacity.[54] CenturyTel's past rejection of interconnection requests, therefore, raise concerns that Socket believes should be addressed in the new interconnection agreement with CenturyTel.

Socket's language in Section 2.4 establishes a reporting process that requires CenturyTel to provide to Socket and the Commission the details about why it cannot meet the request for interconnection, information about whether CenturyTel is retaining facilities for its own use, and an indication of when it will have the requested capacity available.[55] Not only is it beneficial for the Commission to know about capacity concerns that affect interconnection, requiring CenturyTel to provide a report to the Manager of the Telecommunications Department of the PSC Staff is consistent with § 51.305(e), which requires CenturyTel to demonstrate to the

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51 *Id.* at 57.

52 Article V DPL, Issue No. 5(A) at 13.

53 Kohly Direct at 58.

54 *Id.* at 102.

55 Kohly Direct at 58.

Commission that any denial of a request for interconnection is based upon the fact that interconnection at that point is not technically feasible.

The FCC's definition of "technically feasible" does not include any reference to lack of capacity as proof that the requested interconnection is not technically infeasible. If an ILEC must make the Commission, as well as the requesting CLEC, aware that the ILEC is refusing to interconnect, the ILEC will certainly think twice about using capacity concerns as a means of delaying a competitor's interconnection.[56]

In Sections 2.4 and 2.5, CenturyTel proposes to require Socket to pay for construction of facilities to provide additional capacity. This proposal contradicts the rationale underlying the Act and the FCC's interconnection Rules, namely that interconnection is mutually beneficial to both parties and that each party is responsible for facilities on its side of the POI.[57] Requiring Socket to pay for the construction of facilities effectively moves Socket's selected POI to a CenturyTel-selected location.[58] Socket must be permitted to select its point of interconnection with CenturyTel and each party should be required to be responsible for the facilities on its side of the POI.

In Section 2.5, CenturyTel also proposes language that would allow it to refuse Socket's proposed interconnection on grounds of technical feasibility but to then impose unreasonable engineering fees because it refuses the request.[59] If CenturyTel rejects a Socket interconnection request on grounds that it is not technically feasible, or because there are no traffic studies, or because CenturyTel claims it does not have sufficient facilities, CenturyTel should not be

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56 *Id.* at 59.

57 *Id.*

58 *Id.*

59 Kohly Direct at 57.

allowed to charge Socket for saying "no" to Socket's request.[60] Finally, the language proposed by CenturyTel that requires Socket to bear all costs of the interconnection violates the principle memorialized in the FCC's Rules that each party should be responsible for paying a reasonable portion of their own costs.[61]

Socket needs to ensure that disputes regarding utilization of interconnection facilities will not hold up provisioning of interconnection orders. CenturyTel should not be able to hold hostage the deployment of interconnection facilities because it believes that at some point in its network there are facilities that are being underutilized by Socket.[62] The Commission should approve Socket's propose language to maximize the interconnection and growth of competition in the CenturyTel territory.

C. Socket should not be required to establish additional POIs in a LATA until its traffic reaches an OC3 level.

Article V, Issue No. 7[63]

Socket requests that the Commission approve its language regarding establishment of additional POIs because it comports with the FCC's rules and decisions, judicial decisions, and the Commission's decisions in the M2A Successor Arbitration. CenturyTel proposes that Socket be required to establish additional POIs in each local calling area where Socket exchanges more than a DS1 level of local traffic with CenturyTel.[64] This proposal is contrary to current law and public policy and violates the principle that, subject to technical feasibility, Socket has the right to determine how it will interconnect with CenturyTel. Moreover, the evidence showed that CenturyTel's proposal would be unduly expensive, preclude Socket's entry into parts of

60 *Id*.

61 *Local Competition Order* ¶ 553; *see also*, Turner Direct at 33-34.

62 Turner Direct at 37.

63 *Id.* at 38-42; Turner Rebuttal at 11-15.

64 CenturyTel's proposed contract language at Article V, 4.2.

CenturyTel's territory, and unreasonably require Socket to construct a new POI every time it wins a small business customer served by a DS1 loop.[65]

CenturyTel's proposed requirement is contrary to current law and public policy. The FCC has stated that "Section 251, and our implementation rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. This means that a competitive LEC has the option to connect at only one technically feasible point in each LATA."[66]

The FCC's Wireline Competition Bureau reinforced this point in its Virginia arbitration order: "Under the Commission's rules, competitive LECs may request interconnection at any technically feasible point. This includes the right to request a single point of interconnection in a LATA."[67] The FCC staff also decided that ILECs may not impose charges for delivering local

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65 Tr. at 74:6-7 (Kohly); Tr. at 117:15-118:23 (Turner).

66 *In the Matter of Application by SBC Communications, Inc., Southwestern Bell Tel. Co. and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order at ¶ 78 (rel. June 30, 2000) ("SBC Texas 271 Order").. The FCC made a similar pronouncement in a January 2001 Order granting in region interLATA authority to SBC for Kansas and Oklahoma. *Memorandum and Order*, FCC 01-29, Joint Application by SBC Illinois Communications Inc., Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc. d/b/a/ Southwestern Bell Long Distance for Provision of In-region, interLATA service in Kansas and Oklahoma, CC Docket No. 00-217 (January 22, 2001)("Kansas and Oklahoma Order").

67 *Petition of WorldCom, Inc. Pursuant to Section 252(e) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket No. 00-218, Memorandum Opinion and Order, ¶ 52 (2002) ("*Virginia Arbitration Order*"). *See also* Kansas Docket No. 05-BTKT-365-ARB, Petition of the CLEC Coalition for Arbitration Against Southwestern Bell Telephone, L.P. d/b/a CenturyTel Kansas under Section 252(b)(1) of the Telecommunications Act of 1996, Order No 13: Commission Order on Phase I at 18 (May 16, 2005) ("*Kansas Commission Order on Phase I*") where the Kansas Corporation Commission, in supporting the Arbitrator's determination in the K2A successor proceeding approving the Coalition's position, agreed with the Wireline Competition Bureau that CLECs have an incentive to move to direct end-office trunking when such a move is cost effective and found it reasonable to allow CLECs to determine their network design.

traffic to a POI that happens to be outside a particular ILEC calling area.[68] The *Virginia Arbitration Order* provides clarity and guidance for the Commission in deciding this issue.[69]

Furthermore, the U.S. District Court, and then the U.S. Court of Appeals for the Fifth Circuit, made clear that CLECs may choose as few as one point of interconnection per LATA and that each party is obligated to transport its originating traffic to the POI. In its decision, the District Court found that

> [The CLEC] has the statutory right under the Act to select the location of a technically feasible point of interconnection, and that the regulations of the Federal Communications Commission ('FCC"), including in particular 47 C.F.R. § 51-703(b) prohibits [the ILEC] from imposing charges for delivering its "local" traffic originating on its network to the point of interconnection selected by [CLEC] even when that point is outside of a local calling area of [the ILEC].[70]

The Texas Commission supported this decision as the correct interpretation of the FCC's rules during the appeal to the Fifth Circuit. The Texas Commission has implemented, in Docket 28021, the Fifth Circuit Court of Appeal's decision supporting CLECs' right to a single POI per LATA.[71] Neither the Fifth Circuit decision, nor the Texas Commission's decision on remand, restricted the "single POI per LATA" right to CLECs just entering the market. Moreover, these

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68 *Virginia Arbitration Order* at ¶ 58.

69 The Bureau was acting under delegated authority from the full Commission and spoke as the FCC. The order is important and provides explicit direction to state commissions because the very staff who promulgated the FCC's rules interpreted them and applied those rules in the Virginia arbitration case. Also, the Bureau had been designated by the Commission to decide these issues on its behalf. Thus, the Bureau's decisions are relevant and cannot be ignored.

70 *Southwestern Bell Tel. Co. v. Texas Public Util. Comm'n.,* Not Reported in F.Supp.2d., 2002 WL 32066469 (W.D. Tex. 2002).

71 *Remand of Docket No. 22315 (Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications, Inc. Pursuant to Section 251(b)(1) of the Federal Telecommunications Act of 1996),* Texas PUC Docket No. 28021; Arbitration Award (2004). "The Arbitrators must turn away SBC Texas' proposed § 1.1 as inconsistent with the District Court's order, FTA § 251(c), and FCC Rule 51.305(a), all of which agree that a CLEC may choose to interconnect at any technically feasible point, a right that includes selecting a single POI per LATA."

decisions recognize that requiring multiple POIs would result in the ILEC charging the CLEC to terminate traffic originated by the ILEC, in direct violation of the federal Act.[72]

In the M2A Successor Arbitration, SBC Missouri also proposed that an additional POI should be established when traffic reached a particular threshold.[73] The Commission affirmed the CLEC's ability to interconnect at a single POI, rejecting SBC Missouri's proposal for a POI traffic threshold. The Commission held that establishment of an additional POI in a LATA could be required by the ILEC only "when it can establish that the CLEC's use of a single POI is no longer technically feasible."[74] The Commission determined that "[a] CLEC may designate a single POI per LATA, . . . subject to SBC Missouri's refusal by establishing that the choice of POI location or method of interconnection . . . is technically infeasible."[75]

With respect to CenturyTel, the Staff Report in Case No. TO-2006-0068, *FullTel, Inc. v. CenturyTel of Missouri, LLC*, provided the same conclusion. Specifically, the Staff Report states:

> FullTel requests a single POI to serve Ava, Mansfield, Willow Springs and Gainesville. With respect to this request and only addressing these four exchanges, federal rules and the Commission in its M2A order indicate FullTel can establish one POI within CenturyTel's service territory as long as it is "technically feasible." CenturyTel would have the

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[72] In addition, in the Kansas 271 Successor Arbitration, the Kansas Corporation Commission similarly held that a CLEC may choose to interconnect at any technically feasible point, a right that includes selecting a single POI per LATA. *See* Kansas Corporation Commission Docket No. 05-BTKT-365-ARB, Petition of the CLEC Coalition for Arbitration Against Southwestern Bell Telephone, L.P. d/b/a CenturyTel Kansas under Section 252(b)(1) of the Telecommunications Act of 1996, Order No 13: Commission Order on Phase I at 18 (May 16, 2005) ("*Kansas Commission Order on Phase I*"). The Kansas Commission noted its agreement with the FCC Wireline Competition Bureau's conclusion in the Virginia arbitration that CLECs have an incentive to move to direct end-office trunking when such a move is cost effective, and found it reasonable to allow CLECs to determine their network design.

[73] Tr. at 95:24-96:2 (Kohly).

[74] Case No. TO-2005-0336, Final Arbitrator's Report, Section V at 6 (June 21, 2005).

[75] *Id*.

> burden to show why it is technically infeasible for FullTel to only establish one POI.[76]

Socket's specific proposal for a traffic threshold for establishing additional POIs also is rooted in Commission precedent. In the M2A Successor Arbitration, Charter Communications proposed a threshold for establishing a second POI at an OC12 level of traffic. The Commission approved this proposal in Charter's ICA. In the Missouri CLEC Coalition's final, approved contract language (which is in Socket's ICA with SBC – now AT&T – Missouri), the parties incorporated that same threshold rather than the Arbitrator's language regarding a single POI and technical feasibility.[77]

Although Socket is entitled to establish only one POI per LATA, it followed the approach taken in the M2A by Charter Communications, proposing contract language that would require Socket to establish an additional POI when its traffic exceeds an OC3 level.[78] The OC3 level Socket has proposed for additional POIs in CenturyTel territory is dramatically lower than the OC12 level approved in the M2A proceeding for AT&T ICAs. Mr. Kohly's testimony explains that Socket is trying to avoid future arguments about whether its proposed interconnection is "technically feasible" or not. If CenturyTel makes such argument in the future, it could cost Socket precious time in establishing interconnection arrangements, even if Socket was ultimately successful in dispute resolution in having such arguments dismissed. To foster efficiency, Socket proposed a traffic threshold so Socket would know that it would be required to establish an additional POI at an OC3 level of traffic.[79]

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[76] Case No. TO-2006-0068, *FullTel, Inc. v. CenturyTel of Missouri, LL,* Staff Report at 8.

[77] Case No. TK-2006-0071; *Interconnection Agreement between Southwestern Bell Tel., L.P. d/b/a SBC Missouri and Socket Telecom, LLC, Arbitrated as a Successor to the Missouri 271 Agreement ("M2A")*; Attachment 11 Network Interconnection Architecture at 229 (2005).

[78] Kohly Rebuttal at 32; Tr. at 60:22-61:1 (Turner).

[79] Tr. at 95:24-96:24 (Kohly).

As Socket witness Mr. Turner testified: "applying the interconnection language that this Commission established for AT&T to CenturyTel is not unfairly targeting CenturyTel with the requirements of a larger company. Instead, CenturyTel is simply being held to the same standard (the FCC's regulations implementing the federal Telecommunications Act) that any other incumbent carrier operating in Missouri would be expected to meet."[80] While CenturyTel attempts to emphasize its "differences" with AT&T, it advances the same legal theories for forcing Socket to establish additional POIs that the Commission rejected when those theories were advanced by AT&T. For example, CenturyTel's misguided arguments about limits on "expensive" interconnection and its claims that only "new" market entrants can establish one POI per LATA were (for good reason) not persuasive when AT&T made the same arguments in the M2A Successor Arbitration.[81]

While the law and Commission precedent are clear that CenturyTel has no right to demand additional POIs when technical feasibility is not an issue, the Commission should not lose sight of the practical aspects of this issue as well. As Socket witness Mr. Turner explained, there are economically sound business reasons for adding POIs. For example, when a CLEC establishes a new collocation in a CenturyTel central office, it may make sense for the CLEC to establish a new POI so that it picks up traffic from CenturyTel at that location rather than a more distant POI.[82] Mr. Kohly noted that establishing a POI in that circumstance can lower the CLEC's costs of provisioning Enhanced Extended Links ("EELs"), which Socket needs to serve DS1-level small business customers.[83] A new POI also makes economic sense when a CLEC

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80 Turner Rebuttal at 12.

81 *See* Case No. TO-2005-0336, Final Arbitrator's Report, at V-3 to V-8 (June 21, 2005) (rejecting AT&T requests for rights to require additional POIs).

82 Tr. at 116:17-21 (Turner).

83 Tr. at 91:6-10 (Kohly).

establishes sufficient traffic from a location that it wants to establish diverse routes for that traffic to ensure network reliability.[84] In addition, additional POIs can facilitate simpler trunking arrangements with the ILEC, or result in reduced reciprocal compensation obligations in certain circumstances.[85]

Thus the determination of when to establish an additional POI is one a CLEC makes as an economic matter as it grows its business; the evidence shows that, despite CenturyTel's various conspiracy theories, what drives the establishment of additional POIs is not a scheme to shift costs to the interconnecting carrier. A regulatory requirement to establish a new POI before traffic volumes and business needs justify it, however, can significantly harm the CLEC. The evidence showed that establishing a new POI requires Socket to incur substantial additional recurring expenses.

For example, for Socket to establish a POI in Branson would require Socket to build or lease new fiber-optic transport facilities from its switch in St. Louis all the way to Branson (144 miles that, if the facility is leased, is subject to per mile charges). In order to ensure the facility had sufficient capacity, Socket would build or lease a facility with at least DS3 capacity (with associated costs much higher than a DS1 level facility).[86] In order to make the new POI economically viable, Socket would also establish a new collocation at the CenturyTel central office in Branson. This would require Socket to incur collocation charges payable to CenturyTel for collocating in its central office, as well as equipment and maintenance costs associated with installing the facilities capable of terminating the incoming DS3 facility from St. Louis.[87] As noted above, if Socket is doing sufficient business to justify this significant additional network

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84 Tr. at 117:5-10 (Turner).

85 Tr. at 116:17-117:5 (Turner).

86 Tr. at 112:3-12 (Turner).

87 Tr. at 112:13-25 (Turner).

investment, the POI in Branson will recover its costs. If, however, Socket is forced to incur such investment to support a location where it has a small amount of business, the results could be financially disastrous.

If Socket attracts a single business customer in Branson who wants the integrated T1 voice/data service that is the focus of Socket's marketing, Socket would provision that business customer's service over a DS1 loop. If that one customer "filled up" his DS1 loop with 24 voice phone calls in the busy hour, or 12 voice phone calls and a broadband (rather than dial-up) Internet connection, Socket would have reached the DS1 threshold for establishing a new POI demanded by CenturyTel. Therefore, for each customer served on a DS1 loop, Socket would have to not only establish the DS1 loop connection (through an EEL arrangement), but also make the investment DS3 fiber-optic facility and collocation investment necessary to establish a new POI. This would, as Mr. Turner put it, "effectively would double the transmission cost each time you pick up a customer behind a wire center, because you're going to establish a DS1minimum to connect to the customer, as well as a DS1 minimum to connect to … CenturyTel's switch."[88] Moreover, if Socket lost its single business customer in that exchange, it would still have the DS3 fiber-optic facilities and collocation expenses it was forced to incur by the additional POI requirement.[89]

The disproportionately large investment required of a CLEC to establish an additional POI – as well as the significant business risk involved – explains why the Courts, the FCC, and this Commission have consistently resisted ILEC appeals for more ILEC authority to demand

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[88] Tr. at 118:9-14 (Turner).

[89] Tr. at 118:15-23 (Turner). *See* also, Tr. at 111:12-114:3 (Turner). By contrast, CenturyTel has to do no more than run a 100 foot cable within its Branson central office if Socket establishes a POI there. The large scale investment is all on Socket's side of the ledger. CenturyTel has trunking facilities in place as part of its existing network, as well as long-haul transport facilities that Socket would have to build or lease at significant expense.

additional POIs. A requirement to establish numerous POIs forces a CLEC to make potentially debilitating capital investments in collocation and transport facilities just to enter a market as a facilities-based CLEC. That in turn reduces the likelihood that CLECs who own their own switches (like Socket) will enter smaller markets (like many of those served by CenturyTel). The FCC explicitly recognized this problem when it established the interconnection rules in the *Local Competition Order* that are still in effect today:

> Because an incumbent LEC currently serves virtually all subscribers served in its local serving area, an incumbent LEC has little economic incentive to assist new entrants in their efforts to secure a greater share of that market. An incumbent LEC also has the ability to act on its incentive to secure a greater share of that market. *An incumbent LEC also has the ability to act on its incentive to discourage entry and robust competition by not interconnecting its network with the new entrant's network or by insisting on supracompetitive prices or other unreasonable conditions for terminating calls from the entrant's customers to the incumbent LEC's subscribers*.[90]

The POI requirements proposed by CenturyTel in this proceeding are just the type of "unreasonable condition" the FCC referenced in the *Local Competition Order*. The DS1/24 DS0 traffic threshold proposed by CenturyTel is absurdly low, and would have an extremely detrimental impact on Socket. As discussed above, a DS1 threshold would go into effect if Socket had even one small business customer using a T1 service to its full capacity. The threshold similarly would be met if 24 simultaneous phone calls were generated by Socket customers. This traffic level is absurdly low, particularly in the fast growing Branson and St. Charles County areas served by CenturyTel. Even in the most rural areas, the re-location of a few businesses to the area could make CenturyTel's proposed threshold a barrier to Socket entering the market economically.

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[90] *Local Competition Order* at ¶ 10 (emphasis supplied).

CenturyTel witness Mr. Simshaw testified that CenturyTel developed its proposed DS1 threshold by looking at an agreement it reached with MCI.[91] As the Commission is aware, however, MCI has been acquired by one of the nation's largest ILECs (Verizon) and is not pursuing a competitive local entry strategy in CenturyTel's Missouri territory. What an inactive company agrees to in a negotiated ICA is irrelevant to: (a) how the law and FCC rules should be interpreted in an arbitrated context; and (b) the business needs of a Missouri CLEC who actually intends to compete for customers in CenturyTel's service territory.

Mr. Simshaw also points to Socket's agreement to establish direct end office trunking at the DS1 level as additional support for using the same threshold for additional POIs.[92] Mr. Simshaw's argument in this respect should be filed under "no good deed goes unpunished." Socket agreed to the DS1 direct end office trunking threshold in negotiations with CenturyTel, primarily to address CenturyTel's stated concerns regarding tandem exhaust.[93] The evidence showed that direct end office trunking is important to preventing CenturyTel tandem switches from reaching capacity prematurely.[94] In fact, Socket's agreement to direct end-office trunking will prevent from occurring many of the facilities exhaust scenarios that CenturyTel poses as justifications for additional POIs. Direct trunking facilities, however, are on each party's side of the POI and because each party is responsible for facilities on its side of the POI, do not require the major facilities investment from Socket that is required to establish a new, additional POI. Socket's agreement to a direct end-office trunking threshold (which most directly benefits

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91 Tr. at 169:24-170:2 (Simshaw).

92 Tr. at 169:24-170:11 (Simshaw).

93 Mr. Kohly testified that Socket agreed to the lower thresholds to establish direct end office trunking in response to CenturyTel's concerns about tandem exhaust. Tr. at 108:6-16 (Kohly). "We have agreed to direct trunking that would alleviate tandem exhaust. That would be on CenturyTel's side of the POI, so they'd be responsible for it. . . ." *See also*, Tr. at 119:5-19 (Kohly).

94 Tr. at 108:12-16 (Kohly).

CenturyTel rather than Socket) is not related in any way to the traffic threshold or costs related to forcing Socket to build a new POI.

CenturyTel also willfully misreads the FCC's Rules regarding the meaning of "technical feasibility" in a last ditch attempt to legally justify its position on additional POIs. As discussed above, lack of technical feasibility is the one permissible reason for an ILEC to refuse a CLEC's interconnection request. The FCC long ago rejected ILEC arguments that ILEC costs are a factor in "technical feasibility." In the *Local Competition Order*, the FCC addressed the issue directly, holding that interconnection requirements "may require some build-out of facilities by the ILEC," and that such costs "constitute an accommodation of interconnection" required by the 1996 Act.[95] Rather than being tied to amorphous standards related to an ILEC's costs, the FCC's view of "technical feasibility" has always been tied directly to actual interconnection methods. Under the FCC's Rules, the key determinant of technical feasibility is the question of whether the particular interconnection method has been utilized successfully in other contexts.[96]

Against this backdrop, CenturyTel seeks to inject uncertainty and impermissible consideration of its costs into the question of "technical feasibility." While the FCC Rules provide clear guidance regarding what constitutes "technically feasible" interconnection, CenturyTel witness Mr. Simshaw opined that technical feasibility is "in the eye of the beholder almost."[97] Mr. Simshaw also ignored the FCC's conclusion that technical feasibility and ILEC costs are not related, when he mused at hearing: "[m]y thought is, if you throw enough money at

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95 *Local Competition Order* at ¶ 553. The FCC's rulings on this issue are discussed in depth in Mr. Turner's direct testimony at pages 31-34.

96 *See* 47 C.F.R. § 51.305(c) and (d) (previously successful uses of an interconnection method "constitute substantial evidence" that such method is technically feasible; ILECs must overcome such substantial evidence to demonstrate otherwise).

97 Tr. at 173:20 (Simshaw).

something, almost anything becomes technically feasible."[98] CenturyTel's effort to smudge the legal and policy lines drawn by the FCC should be rejected. Moreover, the testimony made clear that the reason CenturyTel is so intent on expanding the proper scope of technical feasibility is that it cannot, in any instance, identify any interconnection method Socket is requesting that comes close to constituting a technical feasibility issue.

At hearing, no party could provide an example of an interconnection method at issue here that would not be technically feasible.[99] The evidence showed that traffic volume at a single POI does not constitute a "technical feasibility" problem. As Mr. Turner testified in response to questions from the Regulatory Law Judge and Ms. Dietrich, the question of when to add a new POI is not one of "technical feasibility" as the FCC Rules use the term.[100] Whether a CLEC interconnects with an ILEC at one, two or three points in the ILEC's network is not a question of technical feasibility in that, from a technical standpoint, any of those options are possible and have been used successfully. Technical feasibility is simply not relevant to a request that a new POI be established, despite CenturyTel's appeals to the concept in its testimony.

Finally, CenturyTel's proposal also fails because it imposes an unfair portion of the trunking costs on Socket. The 1996 Act states that a CLEC cannot be required to pay for termination of the ILEC's traffic.[101] CenturyTel's proposal that Socket be required to pay for circuits over which CenturyTel's traffic terminates is directly in violation of the FCC's rules[102]

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98 *Id.*

99 *See* Tr. at 95:9-10 (Turner). S*ee also,* Tr. at 96:5-8 (Turner); Tr. at 173:18-20 (Simshaw).

100 Tr. at 95:9-20 (Turner).

101 47 C.F.R. 51.703(b) prohibits one LEC from assessing charges on another carrier for transporting telecommunications traffic that originates on the LEC's network.

102 *Id*.

and is contradictory to the FCC's *Virginia Arbitration Order*[103] because it forces Socket to bear the costs of terminating CenturyTel-originated traffic to the Socket POI.

Federal law and decisions of this Commission are clear: Socket is entitled to select a single point of interconnection in each LATA, so long as its proposed interconnection is technically feasible. CenturyTel failed to provide any technical feasibility support for its proposed level of traffic and complains only about the costs associated with the proposed interconnection. Because Socket wants to avoid future disputes about technical feasibility, it is willing to establish additional POIs in a LATA when traffic to or from a tandem serving area or wire center is greater than an OC3 level of traffic.[104] Because there is no support in the Act or the FCC Rules for CenturyTel's proposal forcing additional, uneconomic POIs, Socket urges the Commission to approve Socket's compromise language as the best embodiment of the FCC rules and Commission precedent. Socket urges that the Commission adopt the more detailed and definitive provisions proposed by Socket. Socket's proposal is modeled on contract language approved in prior Commission arbitrations, and includes provisions that implement policies and legal requirements applicable to CenturyTel.

D. Socket's contract language on indirect interconnection is legally correct and consistent with Commission precedent.

Article V, Issue No. 8[105]

CenturyTel's language in Section 7 seeks to impose unlawful restrictions on when CenturyTel will permit indirect interconnection. First, CenturyTel proposes to require mutual agreement before permitting indirect interconnection. Second, CenturyTel proposes to limit

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103 *Virginia Arbitration Order* at ¶ 53. "The petitioners' proposals, therefore, are more consistent with the Commission's rules for section 251(b)(5) traffic, which prohibit any LEC from charging any other carrier for traffic originating on that LEC's network."

104 Article V, Section 4.3.

105 Kohly Direct at 61-63; Kohly Rebuttal at 62-63.

indirect interconnection only to de minimus amounts of Local Traffic. Third, it proposes to impose requirements regarding when the indirect connection will be converted to a direct connection.[106] The FCC rules provide that the CLEC has the right to determine the method of interconnection. Socket wishes to have the option to interconnect indirectly with CenturyTel. Indirect connection promotes efficient use of facilities and provides carriers with beneficial alternative routing options.

The evidence showed that indirect interconnection existed prior to the Telecommunications Act of 1996 when ILECs indirectly interconnected with each other to exchange traffic among multiple carriers.[107] Socket and CenturyTel are currently indirectly interconnected in the Springfield MCA.[108] When a CenturyTel customer in the Ozark exchange places a call to a Socket customer located in the Springfield exchange, that call will pass from CenturyTel's facilities to SBC Missouri's facilities and then to Socket's facilities. Like ILECs, Mr. Kohly testified, CLECs also have a need for indirect interconnection in order to exchange traffic.[109]

The Act requires carriers to interconnect directly or indirectly with other carriers to exchange traffic.[110] Because Socket is permitted to interconnect at any technically feasible point within the incumbent LEC's network,[111] Socket's proposed indirect interconnection should be allowed so long as Socket's requested indirect interconnection is at a technically feasible point within the ILEC's network. The federal Act does not require Socket to request permission from

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106 Kohly Direct at 61-62.

107 *Id.* at 62.

108 *Id*.

109 *Id*.

110 47 U.S.C. § 251(a).

111 47 U.S.C. § 251(c)(2)(B)

CenturyTel as is contemplated by CenturyTel's proposed language in Section 7.1. Only if CenturyTel can prove to the Commission that a proposed method of interconnection is not technically feasible should it be allowed to reject a request for interconnection by Socket.

CenturyTel proposes improper traffic level and transiting requirements to force Socket to convert from an indirect interconnection to a direct interconnection.[112] These requirements are not consistent with the federal Act's requirement that CenturyTel permit direct or indirect interconnection for the exchange of traffic. CenturyTel's proposed requirements to convert to a direct connection when traffic exceeds a DS-1 also is contrary to the requirements of the MCA plan, which specifically contemplates local MCA traffic being routed via an indirect interconnection between LECs. The MCA plan does not set forth any provisions that would let one carrier dictate when a direct connection would be made.[113]

CenturyTel attempts to justify this unwarranted restriction on Socket's interconnection rights by claiming Socket's language could result in CenturyTel being exposed to millions of dollars of transiting costs.[114] CenturyTel's claims are inaccurate and are made without a factual basis. First, CenturyTel ignores the fact that in MCA areas, indirect interconnection is handled on a bill-and-keep basis in Missouri. CenturyTel would not be subject to any transiting charges resulting from indirect interconnection in the MCA areas, thus dramatically reducing any potential exposure.[115]

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[112] Article V, Section 7.3.

[113] Kohly Direct at 63.

[114] *See* CenturyTel Ex. D, Rebuttal Testimony of Guy E. Miller, III on behalf of CenturyTel ("Miller Rebuttal") at 43.

[115] As Mr. Kohly testified at hearing: "There's really no basis for the de minimus language. In the MCA areas, the Commission has already determined that parties will transit traffic, will be indirectly interconnected under a bill and keep arrangement. There is no threshold that will suddenly trigger direct connection. And so CenturyTel's language would be inconsistent with that, and there is no cost because it's all done under bill and keep." Tr. at 121:19 – 122:1 (Kohly).

Second, CenturyTel once again attempts to convince the Commission it will be exposed to wildly inflated costs if not allowed to restrict indirect interconnection. CenturyTel referenced "a prior study of a similar type of CLEC [that] showed a potential of almost a half million dollars per year in transiting costs to CenturyTel for each LATA-wide indirect interconnection to a single ISP-CLEC."[116] CenturyTel did not attach this "study" to its testimony, or even provide a footnote reference to it so that the "study" could be reviewed by the parties or the Commission. At hearing, CenturyTel's Mr. Miller admitted that the study was conducted in Michigan using transiting arrangements and rates that are not applicable in Missouri (in particular the MCA bill-and-keep arrangement prevalent in Missouri).[117] This "study" and the cost claims it supports, which CenturyTel uses to support its view that the sky is falling but fails to present to the Commission, should be disregarded as evidence of CenturyTel's potential costs in Missouri.

Socket should be permitted to interconnect directly or indirectly with CenturyTel; CenturyTel's demands that the indirect interconnection be limited to de minimus levels of traffic should be rejected as improper and inconsistent with federal law and the MCA plan.

E. Each party should take responsibility throughout the agreement to bring its facilities to the POI.

Article V, Issue No. 9[118]

The parties agree to language in Section 8.1, whereby each party is responsible for bringing its facilities and trunks to the POI. Socket supports the concept that each party should take responsibility to bring its facilities to the POI but maintains that the language proposed by CenturyTel in Sections 8.2 and 8.3 is unnecessary and adds confusion to the issue.[119]

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116 Miller Rebuttal at 43.

117 Tr. at 168-69 (Miller).

118 Kohly Direct at 63-66; Kohly Rebuttal at 63-64. This issue is resolved in part, as to Section 8.1.

119 Kohly Direct at 63.

CenturyTel proposes language in Section 8.2 that states that when a POI is at a collocation, however, Article XVI: Collocation terms will apply in addition to the terms of the Interconnection Article. CenturyTel's language in Section 8.3 requires that, if an interconnection facility is used for both local and non-local traffic, the undefined non-local traffic shall be billed in accordance with "the party's applicable access tariff."

CenturyTel's reference to Article XVI in Section 8.2 is incorrect; Article XVI is the Article that contains the terms and conditions applicable to White Pages.[120] The approved agreement should not include internal references that are incorrect and contribute to disagreements between the parties. On its face, the inaccurate reference should be sufficient reason to reject CenturyTel's proposed language.

Socket also objects to CenturyTel's proposed language in Section 8.2 because it attempts to address a POI located at a collocation arrangement but does not address the situation that arises when a POI is not located at a collocation arrangement. Socket is concerned that this failure to address both situations raises additional ambiguity that is unnecessary and that may be used as a vehicle for CenturyTel to continue its practice of charging two special access channel termination charges if the POI is not at a collocation arrangement. CenturyTel previously has taken the position that Socket was required to interconnect on CenturyTel's switch, rather than within its network.[121] In order to interconnect at the switch, CenturyTel assessed non-cost based special access channel termination charges[122]. This is also inconsistent with the FCC's rules regarding interconnection and general industry practices in which a CLEC's POI is at its collocation cage on the ILEC's central office premises. Rather than introduce collocation-related

120 *Id.* at 64.

121 Kohly Direct at 65.

122 Kohly Direct at 64.

ambiguity into the contract language addressing interconnection facilities compensation, it is self-evident that the terms and conditions for collocation apply to collocation arrangements, even when used for a point of interconnection. This is clearly stated in of Article XVII – Collocation, Section 1.1 which states, "CenturyTel will provide Collocation to Socket for purposes of interconnection or access to UNEs on a nondiscriminatory basis pursuant to the terms and conditions of CenturyTel's Local Network Access Tariff and Applicable Law." There is no need for a cross-reference in this section, especially when the reference is incorrect and raises the potential for ambiguity.

In Section 8.3, CenturyTel seeks to apply access charges (presumably special access charges) to "non-local traffic." CenturyTel does not define non-local traffic.[123] Although Socket does not dispute that access charges should be assessed for intraLATA traffic, the agreement should not use the undefined term, "non-local traffic." This section of the ICA addresses Interconnection Facilities Compensation; there is no need to include additional extraneous language with undefined terms. The Interconnection Facilities Compensation language should make it clear that each party is responsible for bringing its facilities and trunks to the POI and the other party is responsible for facilities and trunks on its side of the POI. There is no need to add additional language that, as Mr. Simshaw states, "incorporates the terms and provisions of otherwise applicable tariffs."[124]

CenturyTel's proposed language refers to the White Pages article rather than the Collocation article and attempts to apply "otherwise applicable tariffs" to language that addresses

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123 *Id.*

124 CenturyTel Ex. E, Direct Testimony of Calvin Simshaw on behalf of CenturyTel ("Simshaw Direct") at 36.

compensation for interconnection facilities. The Commission should reject CenturyTel's proposed language.

F. Bill-and-Keep is the appropriate method of reciprocal compensation.

Article V, Issue No. 10[125]

Socket proposes language that would apply bill-and-keep for the transport and termination of all MCA and non-MCA Section 251(b)(5), ISP-Bound, and FX Traffic, including VNXX Traffic.[126] Socket's proposal reflects its attempt to move closer to CenturyTel's position by responding to CenturyTel's stated concerns about Socket's original proposal. The original Socket proposal provided for Bill and Keep but included a means to change to an alternative method of handling reciprocal compensation. In its direct testimony, CenturyTel expressed concern about this aspect of Socket's proposal and Socket's possible ability to exit the bill and keep arrangement.[127] To address CenturyTel's concerns, Socket made a final offer that it will accept Bill and Keep for all MCA and Non-MCA Traffic, including Section 251(b)(5) Traffic, ISP Traffic, and FX Traffic, including VNXX Traffic without exception. Socket's proposal would ensure bill-and-keep is the reciprocal compensation mechanism in the ICA unless the parties mutually agree to negotiate a new compensation agreement and amend the ICA at a later time.

Socket's proposal is consistent with the Commission's MCA plan, which establishes bill-and-keep as the reciprocal compensation method applicable to all the types of traffic Socket identifies in its proposed contract language. In addition, Socket's language is consistent with the language approved in the M2A Successor Agreements, which provide bill-and-keep as the

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125 Kohly Direct at 66-69; Kohly Rebuttal at 64-68.

126 Kohly Rebuttal at 67.

127 Simshaw Direct at 37.

compensation mechanism for traffic, including FX and VNXX traffic, in MCA and non-MCA areas.[128]

Socket's bill-and-keep proposal is also consistent with the direction set by the FCC in the *ISP Remand Order*.[129] In the *ISP Remand Order*, the FCC expressed a preference for bill-and-keep as a means of promoting economic efficiency in reciprocal compensation arrangements:

> We are concerned that viable, long-term competition among efficient providers of local exchange and exchange access services cannot be sustained where the intercarrier compensation regime does not reward efficiency and may produce retail rates that do not reflect the costs of the services provided. … [W]e believe that a compensation regime, such as bill and keep, that requires carriers to recover more of their costs from end-users may avoid these problems.[130]

Both the FCC and this Commission, in its MCA decisions, have noted that bill-and-keep offers efficiencies that should be encouraged in the intercarrier compensation context.

Moreover, bill-and-keep arrangements, by definition, prevent any "arbitrage" opportunities associated with reciprocal compensation. If bill-and-keep was not in place, Socket would be legally entitled to receive reciprocal compensation payments when it terminates traffic originated by CenturyTel's retail customers. The Act explicitly provides that the termination of another carrier's traffic does not have to be done for free. Rather, the terminating LEC is entitled to compensation from the originating LEC. When a bill-and-keep framework is in place, however, both parties recover their own costs, and neither charges the other for the termination services they provide for one another. No matter how many minutes, for example, Socket terminates for CenturyTel customers calling Socket ISP customers, Socket collects nothing for terminating those calls.

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128 Kohly Rebuttal at 20, n.25.

129 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and CC Docket No. 99-68, Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 96-98, Order on Remand and Report and Order at ¶ 1 (April 27, 2001) ("*ISP Remand Order*").

130 *Id.* at ¶ 74.

CenturyTel recognizes that bill-and-keep is a legally appropriate means of addressing reciprocal compensation. In fact, CenturyTel complained vociferously about Socket's original proposal, which would have permitted either party to opt out of bill-and-keep if certain thresholds were met.[131] The evidence made clear that CenturyTel has no objection to bill-and-keep *per se*, and agrees that its implementation would prevent arbitrage related to reciprocal compensation.[132]

What CenturyTel demands, however, is that bill-and-keep only be permitted for reciprocal compensation if CenturyTel gets its way on the POI issue related to interconnection.[133] As discussed in detail above regarding Article V, Issue No. 7, CenturyTel seeks the contractual right to force Socket to construct and establish additional POIs to an extent not permitted by the Act and the FCC's Rules. CenturyTel's proposed language would "require Socket to establish a POI at every CenturyTel end office in order for VNXX traffic to be exchanged on a bill-and-keep basis."[134] In essence, CenturyTel seeks to hold the use of the sensible, efficient bill-and-keep alternative for reciprocal compensation hostage to its overreaching position on additional POIs.

While CenturyTel certainly has convinced itself that the existing FCC Rules on POI create "arbitrage" problems, its arguments have been unavailing in previous cases before this Commission, as well as at the FCC. CenturyTel's arguments regarding "transport arbitrage" have been aired extensively in prior proceedings, but have not persuaded the FCC to change its long-standing interconnection policies. CenturyTel correctly notes that the FCC is considering

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131 Simshaw Direct at 37-38.

132 At hearing, CenturyTel witness Mr. Simshaw conceded that "[b]ill-and-keep removes the arbitrage concerns with regard to recap comp." Tr. at 164:2-3 (Simshaw).

133 Tr. at 164-65 (Simshaw).

134 Kohly Rebuttal at 64.

proposals that could result in changes to the rules related to POIs and reciprocal compensation.[135] Those proposals – along with numerous other conflicting proposals – have been awaiting action since the FCC issued its first Notice of Proposed Rulemaking ("NPRM") on reciprocal compensation issues in 2001. The FCC issued a second NPRM on the same issues over a year ago, and the various proposals to change intercarrier compensation are still being hotly debated. CenturyTel's speculation that it will ultimately prevail on the issue is no reason for this Commission to disregard the current legal framework in the CenturyTel-Socket ICA.

CenturyTel threatens that if Socket does not agree to CenturyTel's POI demands, it "reserves the right to revert to its advocacy position on this issue which is that access charges do apply to all ISP-bound traffic that terminates to a physical ISP location outside of the local calling area."[136] Although there is nothing in the Act, the FCC Rules, or Commission precedent that supports "tying" the outcome of the specific disputes regarding POIs and bill-and-keep, CenturyTel explicitly states that it will abandon its advocacy of bill-and-keep if it does not obtain its preferred outcome on POIs, and instead advocate a draconian approach to reciprocal compensation issues.

Socket urges the Commission to reject CenturyTel's position for three reasons. First, it is not for CenturyTel to decide if the Commission's decision on one issue will affect the Commission's decision on another issue. If the Commission follows the appropriate course on POI issues and Socket retains the right to determine when additional POIs will be established

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135 *See, e.g.*, Simshaw Direct at 34

136 Article V DPL, Issue No. 10, p. 62 (CenturyTel Language column). Prior to this arbitration, CenturyTel and Socket entered into an addendum to their current agreement that addressed related issues. Socket was willing to operate under the addendum only on a temporary basis, in order to keep its traffic moving in CenturyTel territory until a permanent ICA could be arbitrated in this proceeding. Socket made clear in negotiations and in testimony in this case that the terms of the addendum are unacceptable as going-forward contract language.

(subject to the traffic threshold Socket has offered), it does not foreclose the Commission from following prior decisions and policy determinations finding that bill-and-keep should be used for reciprocal compensation.

Second, CenturyTel's position puts it in conflict with the Commission's prior rulings that all intercarrier compensation for calls within MCA areas shall be pursuant to bill-and-keep arrangements. CenturyTel's proposed language does not include an exception for MCA traffic, so Socket must assume CenturyTel would attempt to apply access charges in MCA areas.[137]

Third, CenturyTel's "advocacy position" that access charges apply to all ISP-Bound Traffic raises problematic numerous issues not addressed by CenturyTel. For example, how would the ISP-Bound traffic be identified? A call to an ISP looks no different, from a network perspective, than a call to any other end user. CenturyTel provides no proposals for how the parties would "segregate" ISP-Bound traffic so that it could be subject to access charges.[138]

The Commission must bear in mind that when CenturyTel claims it will apply "access charges" to calls to Socket customers, it is attempting to charge tariffed access rates that usually apply to interexchange carriers ("IXCs") to an interconnected LEC. In the normal situation in which access charges apply, there is a LEC on the originating end of the call, and IXC carrying traffic to the terminating LEC, and a terminating LEC who completes the call. Access charges apply to the access services the LECs on either end of the call provide to the IXC. Without the LECs involved, the IXC can neither originate nor terminate its customers' call. The situation is quite different for 251(b)(5), ISP-Bound, or FX/VNXX traffic. In that scenario, the originating LEC hands the call directly to the terminating LEC at their POI. There is no IXC in the middle,

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137 Tr. at 88:8-17 (Kohly).

138 *See* Kohly Rebuttal at 65.

and both the originating and terminating LECs incur network costs for the completing the portion of the call they jointly carry.

The LEC-to-LEC call completion scenario is generally governed by the Act's provisions on reciprocal compensation, not by IXC switched access tariffs. Even assuming that CenturyTel could charge originating access, for example, on a VNXX call that terminates outside the local calling area of the originating customer, Socket still performs the call termination function. Just as CenturyTel incurs origination costs, Socket incurs termination costs (e.g., local switching as well as transport). Therefore, if CenturyTel could assess originating access charges on such a call, Socket could assess terminating access to CenturyTel. Socket is performing no less of a "termination" function for CenturyTel than CenturyTel is performing an "origination" function for Socket, and Socket deserves no less than CenturyTel to be compensated. As Mr. Kohly noted in his rebuttal testimony, intrastate terminating access rates are higher than intrastate originating access rates, so the party terminating more of this traffic would come out ahead.[139] Even if access charges rather than reciprocal compensation were applied to these calls, the balance of payments would remain in Socket's favor as the terminating party on such calls.

As Mr. Kohly testified, Socket could take the "advocacy position" that only terminating access charges should apply to such calls, just as CenturyTel asserts only originating access should apply. Moreover, Socket would stand to gain by accepting an access charge regime that results in it receiving a net benefit due to the difference between originating and terminating access charges.[140] That outcome, however, is not in Socket's view either good public policy or a legally sound outcome. Rather, Socket urges the Commission to adopt a bill-and-keep approach that: (a) eliminates disputes over which rate applies; (b) prevents potential schemes by either

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139 Kohly Rebuttal at 65.

140 *Id.*

party to generate "arbitrage" through intercarrier compensation; (c) is consistent with the direction identified by the FCC in the *ISP Remand Order*; (d) is consistent with the approach taken by the Commission in MCA areas, and with negotiated and approved provisions of the M2A successor agreements.

G. Socket's Proposed Contract Language and Definitions Regarding Bill-and-Keep as the Intercarrier Compensation Mechanism for FX-Type Traffic and ISP-Bound Traffic is Consistent with the Law and With Sound Commission Policy.

Article V, Issue No. 32[141]
Article V, Issue No. 33[142]
Article V, Issue No. 34[143]

The numerous disputes over FX or VNXX and ISP-Bound traffic boil down to two legal questions. First, is FX or VNXX (for short, "FX-type" traffic) subject to reciprocal compensation under Section 251(b)(5)? Second, to what extent is the federal interim compensation regime for ISP-Bound Traffic limited to traffic that originates and terminates in the same local calling area?

Socket will address the legal issues below. At the outset, however, it is important to note that under Socket's proposed contract language, bill-and-keep would be the intercarrier compensation mechanism for 251(b)(5), FX, FX-type, and ISP-Bound Traffic (as discussed in detail above with regard to Article V, Issue 10). That approach would make the issues essentially moot, by requiring both parties to pay their own costs of terminating calls originated by the other party's customers. Bill-and-keep, as discussed in detail above with regard to Article V, Issue No. 10, and as recognized by the FCC in the *ISP Remand Order,* eliminates any potential opportunities for "arbitrage" by any party, eliminates the need to engage in

141 Kohly Direct at 84-86; Kohly Rebuttal at 78-80.

142 Kohly Direct at 86-88; Kohly Rebuttal at 80-81.

143 Kohly Direct at 88-89; Kohly Rebuttal at 81.

cumbersome processes for identifying and segregating FX-type traffic for treatment different from other traffic exchanged between Socket and CenturyTel, and provide consistency with the general bill-and-keep treatment for MCA traffic in Missouri.

Socket also urges the Commission to carefully consider the different issues raised by FX-type and by ISP-Bound Traffic. CenturyTel bases its attacks on Socket almost exclusively on the incorrect presumption that Socket will primarily terminate ISP-Bound traffic that originated on CenturyTel's network. Socket's testimony, as well as general industry trends, make clear that this will not be the case. As Mr. Kohly testified at hearing:

> The dial-up Internet market is dying. Those minutes are dropping. Socket, instead, is aggressively marketing its voice products throughout Missouri. That is a market that's expanding. If you look at it, we had our first voice customer, according to CenturyTel's testimony, in February. The traffic in Columbia is already 65 [percent terminating]/35[percent originating]. ISP traffic would be 100 percent terminating. … So as you can see, our originating minutes are growing. Our terminating is tanking.
> Q: And is this decline in dial-up ISP traffic an industry-wide phenomenon?
> A (Kohly): Yes, it is. … People are converting from dial-up Internet to broadband access. … If they convert to broadband, they would have a dedicated 24-hour-a-day, 7-day-a-week connection. They would not be placing dialed calls [for Internet access].[144]

Therefore, the importance of dial-up ISP traffic as part of Socket's operations in CenturyTel territory is dramatically shrinking.

This is an important point, because the issues surrounding compensation for FX-type traffic and ISP-Bound traffic are not identical. As discussed below, even if CenturyTel prevails on its views regarding ISP-Bound traffic, FX-type services still qualify for reciprocal compensation (and thus for bill-and-keep arrangements) when used to serve the growing voice and broadband market that is the focus of Socket's competitive efforts in Missouri. CenturyTel's testimony attempts to lump these categories together in a way not supported by the FCC's Order

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144 Tr. at 220:23 – 222:1. (Kohly)

and Rules, nor by the FCC's recently-stated views regarding its prior rulings.

1. FX-type traffic is subject to reciprocal compensation under Section 251(b)(5).

FX and VNXX traffic is "telecommunications" traffic subject to reciprocal compensation under 47 U.S.C. Section 251(b)(5). While FX traffic does cross the boundary of an ILEC-defined local calling area, the traffic is not and has never been classified as "exchange access," either under the 1996 Act or the rules that preceded it. If an FX-type call constitutes internet-bound traffic, it is information access delivered to an information service provider and is subject to the FCC's determinations in the *ISP Remand Order* regarding reciprocal compensation.

While this Commission did not squarely face this issue in the M2A Successor Arbitration (because SBC Missouri and the participating CLECs agreed to a bill-and-keep solution), the question was litigated in the recent Kansas and Texas "271 Agreement" arbitrations. In Texas, the Public Utility Commission ruled that all FX-type traffic is subject to bill-and-keep:

> The Commission finds bill and keep to be the appropriate method of inter-carrier compensation for voice FX traffic. The Commission notes that it recently ruled that bill and keep is the appropriate method of inter-carrier compensation for ISP-bound FX traffic in Docket No. 24015. Therefore, a bill and keep inter-carrier compensation scheme for voice FX-traffic in this proceeding will create a consistent inter-carrier compensation method for both FX-ISP and FX-voice traffic.[145]

The Kansas Corporation Commission reached a similar conclusion in its arbitration of the Kansas "271 Agreement" successor. The Kansas Commission's arbitration award outlined the appropriate steps to take in the legal analysis of FX-type traffic (the same analysis that is fleshed out below for this case):

> The Arbitrator concludes that FX traffic does not fall with[in] section 251(g) [of the Act], nor is it singled out for any other special treatment. [FCC] Rule 51.701

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[145] Public Utility Commission of Texas, Docket No. 28821, *Arbitration of Non-Costing Issues for Successor Interconnection Agreements To The Texas 271 Agreement*, Arbitration Award – Track 1 Issues, at 26 (2005).

> governs reciprocal compensation for transport and termination of telecommunications traffic between LECs and other carriers, with exception of CMRS and 251(g) traffic. (The rule spells out the traffic listed in 251(g).) There is no evidence in the docket that convinces the Arbitrator that FX traffic falls within 251(g). The amendment of the rule to strike "local" makes it clear reciprocal compensation is not limited to traffic originating and terminating in the same local calling area.[146]

As the Kansas Commission's decision recognizes, the classification of FX-type traffic ultimately turns on two sections of the Act, 47 U.S.C. §§ 251(b)(5) and 251(g), as they have been interpreted by the FCC. Prior to the *ISP Remand Order*, FCC rules limited reciprocal compensation to "local telecommunications traffic" *i.e.*, calls originating and terminating in the same local calling area. In the *ISP Remand Order*, the FCC amended the § 51.701(e) definition. The amendment explicitly deleted the "local" limitation from the rule. The FCC rule now provides that reciprocal compensation applies to "telecommunications traffic."

The deletion of "local" as a qualifier extends throughout the FCC's amended reciprocal compensation rules. For example, § 51.701(b) formerly provided a definition of the "Local telecommunications traffic" subject to reciprocal compensation. It defined the term to include traffic "that originates and terminates within a local service area established by the state commission."[147] The FCC deleted that language from its rule. Subsection (b) now defines "Telecommunications traffic," as traffic "exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access (*see*

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146 Kansas Corporation Commission, Docket No. 05-BTKT-365-ARB, *In the Matter of the Petition of CLEC Coalition for Arbitration Against Southwestern Bell Telephone, L.P. d/b/a SBC Kansas under Section 252(b)(1) of the Telecommunications Act of 1996*, Arbitrator's Determination in Phase II on Interconnection, Subloop and 911 Issues, at 15 (2005).

147 47 C.F.R. § 51.701(b)(1) (2004), *amended by* 66 Federal Register 26806 (May 15, 2001).

FCC 01-131, paragraphs 34, 36, 39, 42-43)."[148] Thus, whether a call originates and terminates within a "local service area established by the state commission," which was critical to the old rule, is not a determination that remains relevant to deciding if the call is subject to reciprocal compensation.

When the Commission today examines whether a type of traffic should be subject to reciprocal compensation, the relevant question, per the amended FCC rules, is whether the class of traffic constitutes "telecommunications traffic" as defined in the revised Section 51.701(b), not whether it is "local traffic." The FCC's *ISP Remand Order* accompanying the revised rules *repeatedly* makes *precisely* this point. For example:

- The FCC explicitly says it is modifying its "analysis and conclusion in the *Local Competition Order*." The nature of the modification is stated without qualification: "We now hold that the telecommunications subject to those provisions [FTA §§ 251(b)(5) and 251(d)(2)] are all such telecommunications not excluded by section 251(g). In the *Local Competition Order*, as in the subsequent *Declaratory Ruling*, use of the phrase 'local traffic' created unnecessary ambiguities, and we correct that mistake here."[149]

- The FCC defends its Order against charges that it is relying on the same reasoning that the D.C. Circuit rejected, explaining that "[h]ere the [FCC] bases its conclusion that ISP-bound traffic falls outside section 251(b)(5) on its construction of sections 251(g) and (i) B not, as in the previous order, on the theory that section 251(b)(5) applies only to 'local' telecommunications traffic and that ISP-bound traffic is interstate."[150]

In the *ISP Remand Order*, the FCC amended its rules to require state commissions to ask a different question when they determine whether traffic is subject to reciprocal compensation. In the *ISP Remand Order*, the FCC stated that its revised analysis of reciprocal compensation looks to the "interplay between" subsections 251(b) and (g).[151] As discussed above, the FCC

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148 47 C.F.R. § 51.701(b)(1)).

149 *ISP Remand Order*, at ¶ 46.

150 *Id.*, at ¶ 30, n. 56.

151 *ISP Remand Order*, at ¶ 45.

decided that compensation under § 251 no longer depends on whether traffic is "local." Rather, the FCC held that all telecommunications traffic is subject to reciprocal compensation unless it falls into a category excluded by § 251(g). In the amended version of 47 C.F.R. 51.701(b)(1), the FCC referenced several paragraphs of the Remand Order (¶¶ 34, 36, 39, 42-43) that explain the limits of the 251(g) exclusion.

Section 251(g) is reproduced in its entirety below for ease of reference.[152] The FCC begins its "discussion" of the § 251(g) exemption in paragraph 34 of the Remand Order:

> We conclude that a reasonable reading of the statute is that Congress intended to exclude the traffic listed in subsection (g) from the reciprocal compensation requirements of subsection (b)(5). Thus, the statute does not mandate reciprocal compensation for "*exchange access, information access, and exchange services for such access" provided to IXCs and information service providers*.[153]

In paragraph 34, the FCC interprets the language of Section 251(g) to exempt the enumerated classes of traffic "provided to IXCs and information service providers." It is notable that the FCC placed quotation marks around the classes of services, thus grouping them together for purposes of the second requirement, *i.e*., that the classes of service must be provided to certain categories of providers. The FCC did not limit the inquiry to the classification of traffic only; it did not hold that any traffic classified as "exchange access" is excluded. Rather, it held that the identity of the entity to whom the service is provided is equally determinative under Section 251(g).

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[152] 47 U.S.C. § 251(g): "On and after February 8, 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding February 8, 1996 under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after February 8, 1996. During the period beginning February 8, 1996 and until such restrictions and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission."

[153] *ISP Remand Order*, at ¶ 34 (footnote omitted, emphasis supplied).

The FCC reiterates its conclusion in each of the other paragraphs referenced in the amended reciprocal compensation rules. In paragraph 36, the FCC describes its interpretation of the statute as follows: "The interpretation we adopt here B *that section 251(g) exempts from section 251(b)(5)*[and thus from reciprocal compensation] *information access services provided to information service providers, as well as access provided to IXCs* and thus is fully consistent with the Commission's initial construction of section 251(g), in the Local Competition Order, as extending beyond the [Modification of Final Judgment] to our own access rules and policies."[154] The FCC made explicit in this paragraph that the category of carrier to whom a service is provided (information service providers an IXCs) is equally important as the classification of service provided (information access services and exchange access). As the FCC stated in ¶ 39, "subsection (g) was intended to preserve pre-existing regulatory treatment for the enumerated *categories* of carriers, rather than requiring disparate treatment depending upon whether the LEC involved came into existence before or after February 8, 1996."[155] In ¶¶ 42 and 43, the remaining paragraphs referenced in the amended rules, the FCC repeats its formulation of the Section 251(g) exemption. In both paragraphs, it again includes the category of carrier to whom service is provided in its explanation of the exemption.[156]

In addition to the paragraphs cited in the amended rules, the FCC stated in other parts of the Remand Order that the category of carrier is integral to its Section 251(g) analysis. For example, at paragraph 89, note 177, the FCC describes its 251(g) analysis as follows:

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154 *ISP Remand Order*, at ¶ 36, n.64 (emphasis supplied).

155 *Id.*, at ¶ 39, n. 70 (emphasis in original).

156 Paragraph 42 identifies the "categories specified in section 251(g)" as "exchange access, information access, and exchange services for such access provided to IXCs and information service providers." Paragraph 43 states that "[s]ection 251(g) by its terms indicates that, in the provision of exchange access, information access, and exchange services for such access to IXCs and information service providers, various pre-existing requirements Y are preserved."

> Pursuant to the analysis we adopt above, section 251(b)(5) applies to telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that is not interstate or intrastate access traffic *delivered to an IXC or an information service provider*, and to telecommunications traffic between a LEC and a CMRS provider that originates and terminates within the same MTA.

The FCC even more succinctly summarized its rationale at paragraph 30: "The exemption focuses not only on the nature of the service, but on to whom the service is provided."

For reciprocal compensation purposes, the FCC interpreted § 251(g) as a "carve-out provision," which "preserves the requirements" of pre-FTA orders and rules.[157] In paragraph 36 of the Remand Order, the FCC explained its rationale:

> We believe that the specific provisions of section 251(g) demonstrate that Congress did not intend to interfere with the Commission's pre-Act authority over "non-discriminatory interconnection obligations (including receipt of compensation)" with respect to "exchange access, information access, and exchange services for such access" *provided to IXCs or information service providers*. We conclude that Congress specifically exempted the services enumerated under section 251(g) from the newly imposed reciprocal compensation requirement in order to ensure that section 251(b)(5) is not interpreted to override either existing or future regulations prescribed by the [FCC].[158]

Thus, for the services listed in Section 251(g), the FCC found that "the standards and obligations set forth in section 251 are not intended automatically to supersede the [FCC's] authority over the services."[159] The FCC "may make an affirmative determination to adopt rules that subject [section 251(g)] traffic to obligations different than those that existed pre-Act."[160] "[U]nless and until the [FCC] by regulation should determine otherwise," however, the FCC held that

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157 *Id.* at ¶ 34, n. 64.

158 *Id.* at ¶ 36 (footnotes omitted).

159 *Id.* at ¶ 38. The FCC cited the Eighth Circuit's decision in *Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068, 1072 (8th Cir. 1997), as approving authority for this proposition.

160 *Id.* at ¶ 40.

"Congress preserved the pre-Act regulatory treatment of all the access services enumerated under section 251(g)."[161]

Therefore, the "carve-out" provided in section 251(g) applies only to regulatory classifications already in place when the Act became law in 1996. Put simply, Congress could not have intended to preserve regulatory rules or systems that did not exist when it acted to preserve them. As the FCC stated: "Subsection (g) preserves rules and regulations that existed at the time Congress passed the 1996 Act, and thus functions primarily as a 'backward-looking' provision."[162] Accordingly, when reviewing whether a service fits into the Section 251(g) carve-out from reciprocal compensation, the Commission must look back to the treatment of the service at the time the Act passed. If the service was not included in a Section 251(g) category prior to passage of the Act, the service cannot now be declared *post hoc* to fit in one of the categories solely for purposes of the exclusion from reciprocal compensation.

FX-type traffic was not classified as exchange access when the Act passed, and it is not exchange access today. The § 251(g) "carve-out" cannot be applied to make FX something it has never been. FX traffic is neither exchange access, nor is it provided to an interexchange carrier.

2. FX-type traffic has always been classified as telephone exchange service, not exchange access.

FX traffic historically offered by CenturyTel has always been classified as exchange service, not as exchange access. CenturyTel tariffs do not classify FX traffic as exchange access, but rather offer FX via General Exchange tariffs. The VNXX-type services CenturyTel provides

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161 *Id.* at ¶ 39.

162 *Id.* at ¶ 50.

also appear to be offered as local exchange offerings.[163] The classification of FX traffic as local exchange service is not limited to tariffs. In the interstate jurisdiction, the FCC=s separations rules direct carriers to account for various interstate revenues in particular accounts. The accounts include "basic local service revenue," "switched access revenue," and "special access revenue"[164] The rules provide that "interstate FX" revenues are to be attributed to the interstate "basic local service revenue" account.[165] The FCC obviously does not view FX traffic as "exchange access" under its own rules, even though all FX-type services have always originated and terminated in different local calling areas.

The historic classification of FX traffic outside the "exchange access" category is important for two reasons. First, FX traffic has always been classified as telephone exchange service, not exchange access. It would amount to a major change in the historic treatment of FX to subject it to the access charge regime. Second, the historical facts regarding treatment of FX are critical to the Section 251(g) analysis required by the *ISP Remand Order*. As discussed above, the FCC held that ' 251(g) "preserves rules and regulations that existed at the time Congress passed the 1996 Act, and thus functions primarily as a 'backward-looking' provision."[166] If neither CenturyTel, the FCC, nor this Commission have ever classified FX-type

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163 Tr. at 89:1-9 (Kohly). In response to cross-examination, Mr. Kohly testified that Socket has identified CenturyTel FX arrangements in MCA areas that are subject to bill-and-keep arrangements like all other MCA traffic: "Certainly currently Socket has found customers that are located outside of the MCA that have MCA codes assigned to them via an FX arrangement. Those always are passed into the MCA … with an originating code of an MCA number, and they're presumed to be bill and keep because we do not know the location of the customer. So I would assume [CenturyTel] can't differentiate between: is the customer physically located in the MCA or are they purchasing MCA with an FX arrangement."

164 47 C.F.R. Section 36.211(a)(2001).

165 *Id.*, at Section 36.212(b).

166 *ISP Remand Order*, at ¶ 50.

traffic as "exchange access," section 251(g) cannot now be invoked to "preserve" the treatment of FX-type traffic as exchange access.

3. FX-type traffic is not "exchange access" as defined by the 1996 Act.

The Act defines "exchange access" as follows:

> The term "exchange access" means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.[167]

FX-type traffic does not fit in this definition for two reasons. First, under the Act's definition, provision of "exchange access" is inextricably tied to the offering of "telephone toll services." The Act defines that term as follows:

> The term "telephone toll service" means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.[168]

FX-type services are not telephone toll services. In fact, a primary reason FX-type services exist is to permit a customer to give callers the opportunity to reach its number without incurring additional toll charges. In addition, FX service does not include a charge separate from exchange service. It is not a separate charge like a traditional long distance toll service, which is only incurred when certain types of calls are made. Second, "exchange access" constitutes the "offering of *access to* telephone exchange services," not the offering of actual end-user services. This is fitting, since traditionally exchange access has been offered to IXCs by LECs for the purpose of completing "telephone toll services." LECs offering FX-type services or service arrangements are not offering "access to" an exchange service. Rather, they are directly offering an end-user service. In this regard, it is instructive to contrast the exchange access definition=s

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167 47 U.S.C. § 153(16).

168 47 U.S.C. § 153(48)

use of "access to" services with the Act's definition of "telephone exchange service," which formulates the definition in terms of the "service" offered.

In examining whether traffic is "exchange access" and thus exempt from reciprocal compensation, the FCC's rules look to the statutory definition of "exchange access," and to the factual question of how traffic was treated prior to the passage of the Act. As discussed above: (i) FX-type traffic is not "exchange access" under the Act's definition; and (ii) when the 1996 Act passed, FX was offered as exchange service (not exchange access) by CenturyTel, and defined in CenturyTel's tariffs as a local exchange service. The definitional and historical facts should end the inquiry. Even if one determines that FX-type traffic looks, feels, or smells like another service that demonstrably is exchange access, that determination cannot convert FX-type traffic into exchange access for purposes of avoiding reciprocal compensation.

The final step in the analysis of whether traffic qualifies for reciprocal compensation under the FCC's *ISP Remand Order* Rules is to examine whether the traffic constitutes information access provided to an information service provider. In the *ISP Remand Order*, the FCC concluded that ISP-bound traffic falls within the category of information access "because it is traffic destined for an information service provider."[169] The FCC refrained from deciding whether ISP-bound traffic constitutes "exchange access."[170] "Having found that ISP-bound traffic is excluded from section 251(b)(5) by section 251(g)," the FCC held that it "has the authority pursuant to section 201 to establish rules governing intercarrier compensation for such

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169 *ISP Remand Order*, at ¶ 44.

170 *Id.* at ¶ 42 and n.76.

traffic."[171] The FCC further concluded that "ISP traffic is properly classified as interstate, and it falls under the [FCC's] section 201 jurisdiction."[172]

Therefore, the FCC held that ISP-Bound traffic falls out of the Section 251(b)(5) regime, and reverts to the way it was treated prior to the Act, pursuant to the Section 251(g) "carve-out." The question of whether all ISP-Bound traffic is subject to the FCC's jurisdiction is discussed below. If the FX-type traffic is *not* bound for an ISP (*e.g.*, the "voice FX" that Socket testified is a growing market), then it remains subject to reciprocal compensation under Section 251(b)(5), for the reasons discussed above. Namely, if FX-type traffic is "telecommunications" as defined in the Act and does not constitute "exchange access" delivered to IXCs or "information services" delivered to information service providers, then the FX-type traffic is subject to reciprocal compensation.

CenturyTel asserts that FX-type services nefariously convert traffic subject to access charges into traffic subject to reciprocal compensation. As discussed above, the facts simply do not bear this out. FX-type services historically have been treated as "local exchange" rather than "exchange access" services. When it worked in CenturyTel's advantage (*i.e.*, when there were no competitors offering FX-type services), CenturyTel had no problem with tariffing FX-type services under its General Exchange tariff. Moreover, the FCC's separations rules have long recognized that FX-type services – which have always originated and terminated in different local calling areas – generate local services revenues rather than access revenues.

FX-type services that do not involve traffic bound for information service providers are, under the analysis mandated by the FCC's *ISP Remand Order*, subject to reciprocal compensation. Socket does not request receipt of reciprocal compensation for FX-type traffic in

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171 *Id.* at ¶ 52.

172 *Id.* (footnote omitted).

its ICA with CenturyTel; rather, Socket advocates a bill-and-keep solution. By no means, however, would the imposition of access charges to FX-type traffic be legally permissible given the historic status of FX-type traffic as local exchange rather than exchange access.

Nothing the FCC has said or done since the *ISP Remand Order* alters the conclusion that FX-type traffic qualifies for reciprocal compensation. As noted elsewhere in this brief and in the testimony of both parties, the FCC is mulling changes to the intercarrier compensation regime (including reciprocal compensation, access charges, and universal service payments).[173] None of those changes have altered what the FCC said in the *ISP Remand Order*. In fact, the FCC filed an *amicus curiae* brief on March 13, 2006 in the *Global Naps* reciprocal compensation litigation in the First Circuit Court of Appeals, in which the FCC stated: "The [FCC] itself has not addressed application of the *ISP Remand Order* to ISP-bound calls outside a local calling area. Nor has the [FCC] decided the implications of using VNXX numbers for intercarrier compensation more generally."[174] The directions in the FCC's Rules are therefore what the Commission should follow in examining the application of reciprocal compensation to FX-type traffic. The FCC's deletion of the "local" limitation on reciprocal compensation in the *ISP Remand Order* necessitates the analysis described above; the analysis leads to a definitive conclusion that non-ISP FX-type traffic (such as voice and broadband FX-type traffic) is subject to reciprocal compensation.

4. ISP-Bound Traffic is subject to the federal regulatory scheme set forth in the *ISP Remand Order*.

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173 *See generally, Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking ("FNPRM") at ¶ 141 (rel. March 3, 2005)

174 Brief for Amicus Curiae Federal Communications Commission, filed in *Global Naps, Inc. v. Verizon New England Inc.*, U.S. Court of Appeals for the First Circuit, No. 05-2657, at 10-11 (March 13, 2006) ("*FCC Amicus Brief*"). A copy of the *FCC Amicus Brief* is attached to this brief as "Attachment 1."

There is no dispute between the parties that telecommunications traffic consisting of dial-up calls to ISPs, where the originating caller and the terminating ISP are in the same local calling area, is not subject to reciprocal compensation under Section 251(b)(5) of the Act. Rather, pursuant to the FCC's *ISP Remand Order*, such traffic falls into the Section 251(g) "carve-out" category of information services delivered to an information services provider, and is thus carved out of the reciprocal compensation regime. The intercarrier compensation for such traffic is governed by the interim rates set forth in the *ISP Remand Order*. In Missouri, if such traffic is MCA traffic, the Commission's rulings dictate bill-and-keep as the appropriate compensation mechanism.

The controversy involves the treatment of dial-up ISP-Bound calls that originate and terminate in different local calling areas. As amply demonstrated by the cross-examination of CenturyTel's Mr. Simshaw at hearing, the various provisions of the *ISP Remand Order* and the cases interpreting it can be read in numerous conflicting ways.[175] The FCC itself agrees that its Order is less than clear on this issue, and does not provide a definitive answer. In the March 2006 *FCC Amicus Brief* filed with the First Circuit, the FCC stated its views:

> The Court asked us to address whether the *ISP Remand Order* was intended to preempt states from establishing the compensation regime that governs a call placed by an ILEC customer in one exchange to a CLEC-served ISP located in a different exchange using a VNXX number assigned to the ISP by the CLEC. *The ISP Remand Order does not provide a clear answer to this question.*
> ***
> *The ISP Remand Order thus can be read to support the interpretation set forth by either party in this dispute*. The [FCC] itself, however, has not expressed an opinion on the matter. Moreover, the [FCC] has not addressed the more general effects on intercarrier compensation of the use of VNXX numbers. *In the circumstances, it would not be possible for the [FCC]'s litigation staff to provide an official position on a matter that the Commissioners themselves have not yet directly confronted and addressed in a rulemaking or adjudicatory proceeding.*[176]

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175 *See* Tr. at 131-166 (Simshaw).

176 *FCC Amicus Brief* at 10, 13.

State commissions interpreting the *ISP Remand Order* on this issue have decided it various ways. As the Commission is aware, in the M2A Successor Arbitration, this Commission determined that SBC Missouri's ICAs should make clear that the FCC's interim rate regime for ISP-Bound traffic is applicable only to ISP-Bound traffic from end users to ISPs physically located in the same local calling area.[177] In the Texas 271 Agreement successor arbitration, however, the Texas Public Utility Commission reached a different outcome:

> The Arbitrators adopt the CLEC Coalition's proposed language without modification because it is consistent with the Commission's decision in Docket No. 24015 that the *ISP Remand Order* compensation regime applies to all ISP-bound traffic. The Commission finds that SBC Texas' proposed contract language limits the application of the *ISP Remand Order* to ISP traffic that originates and terminates within the local calling area, which is inconsistent with the Commission's decision in Docket No. 24015.[178]

Similarly, the Kansas Commission determined that the *ISP Remand Order* rate regime for ISP traffic extends to all ISP-Bound traffic in its Kansas 271 successor arbitration.[179] The Kansas and Texas commission were both convinced that the FCC took jurisdiction over *all* ISP-Bound traffic in the *ISP Remand Order*, a conclusion not terribly surprising given that the FCC itself said in the *FCC Amicus Brief* that its Order: "deemed *all* ISP-bound calls to be interstate calls subject to the jurisdiction of the FCC, and the language of the *ISP Remand Order* is sufficiently broad to encompass all such calls within the payment regime established by that Order."[180]

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177 Case No. TO-2005-0336, Final Arbitrator's Report, Intercarrier Compensation, at 10 (June 21, 2005).

178 Texas PUC Docket No. 28821; *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*; Order No. 45 at 16 ((2005).

179 Kansas Corporation Commission, Docket No. 05-BTKT-365-ARB, *In the Matter of the Petition of CLEC Coalition for Arbitration Against Southwestern Bell Telephone, L.P. d/b/a SBC Kansas under Section 252(b)(1) of the Telecommunications Act of 1996*, Arbitrator's Determination in Phase II on Interconnection, Subloop and 911 Issues, at 10 (2005).

180 *FCC Amicus Brief* at 10.

The decision of the Massachusetts Department of Telecommunications and Energy ("DTE") upheld in the recent First Circuit opinion in *Global Naps, Inc. v. Verizon New England, Inc.*[181] not only determined that the *ISP Remand Order* ISP rate regime applied only to "local" ISP calls, but it also determined that access charges would apply to "non-local" ISP-Bound calls. In its *Global Naps* opinion, the First Circuit was not faced with the question of whether access charges should be applied to NVXX ISP-Bound calls. Rather, the Court was addressing whether the Massachusetts DTE and other state regulatory commissions were pre-empted from setting compensation rates for ISP-Bound traffic by the *ISP Remand Order*. The Court held that "there is a lack of clarity about whether the *ISP Remand Order* preempts state regulation of access charges at issue here. Given the requirement of a clear indication that the FCC has preempted state law, the *ISP Remand Order* does not have the broad preemptive effect that Global Naps seeks to assign to it."[182]

Although the First Circuit's *Global Naps* decision is not directly binding on this Commission since this Commission is located in the Eighth Circuit, the decision does provide useful guidance. By finding no preemption, the First Circuit's essential holding is that state commissions have the authority to determine the appropriate intercarrier compensation mechanism to apply to ISP-Bound calls terminated via VNXX arrangements.

Socket urges the Commission to determine that bill-and-keep is the appropriate compensation solution, for three reasons. First, application of intrastate access charges to ISP-Bound calls will surely kill off competitive offerings of dial-up Internet service in rural areas. This would effectively turn calls to ISPs into long distance calls, and consumers are not going to stand for paying toll charges to reach a competitive ISP. Most likely, those customers will return

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181 U.S. Court of Appeals for the First Circuit, No. 05-2657 (April 11, 2006). ("*Global Naps*").

182 *Global Naps*, slip op. at 34.

to CenturyTel for their dial-up service, if CenturyTel even provides dial-up service in those rural areas. In those areas where CenturyTel does not offer dial-up Internet access, those customers will lose the ability to access the Internet without placing toll calls. Second, bill-and-keep is the compensation mechanism applicable to all MCA traffic, including ISP-Bound traffic. It would be consistent with practices in the MCA areas, as well as the treatment of this traffic in SBC Missouri's territory, to use bill-and-keep. Third, the application of access charges permits both CenturyTel as the originating carrier and Socket as the terminating carrier to apply access charges to ISP-Bound calls. As discussed in relation to Article V, Issue No. 10, Socket would "come out ahead" as a terminating carrier because of the differential between originating and terminating access rates. However, Socket believes it is better policy to promote the uniformity of treatment that would result from choosing bill-and-keep as the intercarrier compensation mechanism for ISP-Bound FX-type traffic.

H. Socket's Transit Traffic language is more consistent with Commission precedent and the requirements of Section 251 of the Act.

Article V, Issue No. 11[183]

CenturyTel must provide transit service as part of its Section 251 interconnection obligations. Issues regarding transit traffic were hard-fought in the M2A Successor Arbitration, and the Commission concluded that transit must be provided pursuant to Section 251 at TELRIC rates.[184] The Missouri Commission also decided this issue in a 2005 case preceding the M2A case.[185] The Commission has also previously determined that transit service is to be provided at no charge for MCA traffic.[186]

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183 Kohly Direct at 69-72; Kohly Rebuttal at 68-70.

184 Case No. TO-2004-0336, Final Arbitrator's Report, Section 1(C) at 2 (June 21, 2005).

185 Case No. TK–2005-0300, *Application of Chariton Valley Communications Corporation, Inc. for Approval of an Interconnection Agreement with Southwestern Bell Telephone, L.P. d/b/a SBC*

Socket's proposed language is consistent with these prior Commission determinations, and requires CenturyTel to provide transit service for non-MCA traffic at the TELRIC based rates set forth in Article VII, Schedule of Pricing. Socket's language is similar in most respects to the language found in Socket's ICA with SBC Missouri. Socket's proposed language requires the Transit Provider to pass the CPN, indemnifies the Transit Provider for any unlawful charges that any terminating carrier imposes or levies on the transiting Party for the delivery or termination of such traffic, and does not impose obligations on the terminating Party or the transit provider to function as a clearinghouse.[187]

CenturyTel's testimony criticizing Socket's proposal did not match the actual contents of Socket's contract language.[188] For example, CenturyTel witness Mr. Miller complains that Socket's proposed language does not require the originating party to be financially responsible for the traffic it originates.[189] Section 10.2.1 of Socket's proposed language specifically states, however, that "the Transit Rate is charged by the Transit Provider *to the originating Party* on a MOU basis."[190] Further, CenturyTel complains that Socket opposes CenturyTel's proposal that Socket establish its own agreements with third parties."[191] That obligation is already addressed in Article V, Issue 30 where the parties negotiated language regarding agreements with third parties.[192] Similarly, CenturyTel claims that Socket is attempting to use change in law provisions to somehow bind CenturyTel into unfavorable terms. Change of law issues, like the

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Missouri pursuant to Section 252(e) of the Telecommunications Act of 1996, Order Rejecting Interconnection Agreement (May 19, 2005).

186 *See* Kohly Direct at 70.

187 *Id.*

188 Kohly Rebuttal at 68.

189 Miller Direct at 31.

190 DPL, Article V, Issue 11, Socket Proposed Language column, p. 64.

191 Miller Direct at 31-32.

192 Kohly Rebuttal at 68-69.

third party agreement issue, are fully addressed elsewhere in the ICA and need not be repeated in the transit language in order to have effect on the entire agreement.[193] In sum, CenturyTel's concerns are not relevant to what Socket has actually proposed to address transit issues.

The evidence showed that CenturyTel's proposed transit language is nothing more than another attempt to impose unreasonable restrictions, costs, and burdens on Socket. First, CenturyTel's proposed language in Section 10.6.2 limits transit traffic to an amount of traffic below a DS1 level. CenturyTel has a statutory obligation under Section 251(c)(2) of the Act to provide transit service. It cannot evade that obligation and fail to transit Socket's calls based simply on an arbitrary determination that a traffic threshold will apply. Under CenturyTel's proposed limitation, CenturyTel would be permitted to refuse to allow Socket to interconnect. That is contrary to Section 251(c)(2), which requires CenturyTel to provide interconnection within CenturyTel's network at any technically feasible point. CenturyTel has never asserted that its proposed DS1 level threshold for transit traffic means that the interconnection is not technically feasible at volumes above a DS1.[194] CenturyTel attempts to justify its traffic threshold with the same arguments it makes regarding indirect interconnection. CenturyTel's arguments on that issue are not supported by the evidence or the law, and should be rejected in the transit context as well.[195]

Second, CenturyTel's language calling on Socket to establish agreements with third party providers does not recognize that in some instances a formal agreement is not necessary (*e.g.,* if all the transit traffic exchanged with a particular provider is MCA traffic subject to bill-and-keep). As noted above, Socket has agreed to establish such agreements where non-MCA transit

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193 *Id.* at 69.

194 Kohly Direct at 71. Related issues regarding CenturyTel's interconnection obligations are discussed in detail above in the section on Article V, Issue No. 7.

195 Indirect interconnection is discussed in detail above in the section on Article V, Issue No. 8.

traffic is actually an issue. CenturyTel would force Socket to go through the unnecessary and meaningless exercise of signing an agreement with a carrier even if there would be no exchange of transit traffic involved.[196]

Finally, CenturyTel's proposed Section 10.6.3 requires Socket to pay, in addition to the transit rate, any additional charges or costs imposed or levied upon CenturyTel for the delivery or termination of traffic transited via CenturyTel. However, the language imposes no requirement that CenturyTel dispute those charge in the event they are inappropriate. As a third party, Socket would most likely not be in a position to dispute those charges directly with the party imposing those charges upon CenturyTel. Socket has already indemnified CenturyTel for charges imposed by a third party and should not be exposed to additional financial risk that could be put upon it by CenturyTel.

Socket's proposed transit language is simple and straight-forward. It specifies that the transit rate must be cost-based (Section 10.2.2) except for MCA traffic which is exchanged on a bill-and-keep basis, requires the Transit provider to pass the CPN when one is provided (10.2.3), indemnifies the transit provider from lawful third-party charges (10.2.4), and requires that neither the transit provider or the terminating party be required to function as a billing intermediary (10.2.6). Moreover, Socket's language is consistent with what is in effect for other ILECs and CLECs in Missouri, as well as with recent Commission precedents on the issue.

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196 Kohly Rebuttal at 71.

I. The parties should be required to discuss trunking, forecasting, availability, and requirements and CenturyTel should be prohibited from imposing trunking restrictions on Socket that it does not impose on itself.

Article V, Issue No. 12[197]

The issues of trunking, forecasting, availability, and requirements have been a source of dispute between the parties in their current agreement. Mr. Turner's testimony described situations where CenturyTel will not make commitments as a result of planning meetings.[198] Mr. Kohly's testimony generally describes a relationship between Socket and CenturyTel as one in which Socket believes it has received minimal cooperation from CenturyTel and where CenturyTel delays or rarely agrees to Socket's requests.[199] With this past history, contract language that requires "mutual agreement" before Socket can exercise its interconnection rights may lead to unnecessary delays and to unnecessary dispute resolution proceedings.[200] CenturyTel proposes just this form of vague "mutual agreement" language in its proposed Section 11.1.

While CenturyTel contends that its language will maximize coordination and cooperation between the parties,[201] any language that requires the parties to agree on trunking, availability, or requirements for interconnection gives CenturyTel unacceptable control over Socket's expansion of its network and the development of competition in CenturyTel's territory. CenturyTel's past course of dealing with Socket has been one of disagreement, delay, and denial. It is for this reason that Socket reasonably proposes that the parties be able to begin exchanging traffic after they have discussed trunking, forecasting, and availability. It is not necessary for the parties to

197 Turner Direct at 41-45; Turner Rebuttal at 15-16.

198 Turner Direct at 44-45.

199 *See* Kohly Rebuttal at 48-49.

200 *Id*. at 49.

201 Miller Direct at 36-38; Miller Rebuttal at 49-52.

reach complete agreement on all future trunk forecasts and hypothetical facilities availability issues before beginning to exchange traffic. Such a limitation would unreasonably limit Socket's ability to operate under the interconnection agreement.

Socket also proposes language that ensures nondiscriminatory treatment of Socket's traffic.[202] Socket's language ensures that CenturyTel may not impose trunking restrictions on Socket that CenturyTel does not impose on itself. This parity requirement is essential to maintaining efficient and equitable network interconnection arrangements.[203]

Socket's proposals best address the status of the relationship that exists between the parties and encourages the development of competition without either party gaining an unfair advantage. Socket's proposal would better minimize potential problems as Socket expands in CenturyTel's territory and as the parties begin to exchange traffic under the new interconnection agreement.

J. If technically feasible, CenturyTel shall provide two-way trunking on request.

Article V, Issue No. 13[204]

CenturyTel proposes to limit two-way trunking to where it says two-way trunking will be available. Socket proposes, consistent with FCC Rules, that the ICA provide that, if two-way trunking is available, it will be used.

Where available, two-way trunking architecture is the appropriate architecture for ILEC-CLEC interconnection. FCC Rule 51.305(f) requires that "if technically feasible, an incumbent LEC shall provide two-way trunking on request."[205] Two-way trunking is the most efficient method

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202 Article V, Section 11.1.

203 Article V DPL at 67.

204 Turner Direct at 44-45; Turner Rebuttal at 17-18.

205 47 C.F.R. § 51.305(f).

of trunking for the network to minimize the impact on tandem and end office trunk port capacity for both parties.[206]

CenturyTel's proposal to limit trunks to delivery of "Local Traffic" (as CenturyTel defines the term) is unprecedented. Under CenturyTel's definition and limitation, Socket would be prohibited from delivering ISP-Bound Traffic, FX Traffic, Transit Traffic and other types of traffic that are commonly delivered over local trunks by other ILECs in Missouri. CenturyTel's position is contrary to the Act and the FCC's rules regarding ILEC interconnection obligations. CenturyTel admits that, for purposes of Section 251(c)(2) of the Act, CLECs may interconnect to deliver ISP-Bound Traffic.[207] There are certainly disputes over how non-local traffic is compensated for reciprocal compensation purposes under Section 251(b)(5), but there should be no question that ISP-Bound Traffic, FX Traffic, and Transit Traffic are subject to the Section 251(c)(2) requirement that ILECs interconnect "for the transmission and routing of telephone exchange service and exchange access."[208] The Commission should approve Socket's proposal because it best incorporates the federal Act and FCC Rule's requirement that, if technically feasible, two-way trunks will be utilized between the parties and that interconnection is required for exchange of ISP-Bound, FX, and Transit Traffic.

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206 Article V DPL at 70.

207 Tr. 131:7-10: "Q: Is it CenturyTel's position that a CLEC may not interconnect for delivery of ISP-bound traffic? A (Mr. Simshaw): No."

208 47 U.S.C. § 251(c)(2)(A).

K. The agreement should contain definitive trunking requirements.

Article V, Issue No. 14[209]

Trunking arrangements are essential to efficient interconnection. Socket's proposed language definitively describes several typical types of service and identifies the trunking arrangements applicable to them. CenturyTel effectively suggests a "trust me" approach to how trunking requirements will be established between its network and Socket's network.[210]

Without the detailed requirements proposed by Socket, disputes may often arise about the appropriate use of various trunking arrangements. Socket's proposed language is taken from the trunking language approved in the M2A Successor Agreement. This level of detail has proven to be useful to establish interconnection between SBC and several CLECs in its territory in Missouri. There is nothing about this M2A language that is unique to SBC Missouri; it generically describes various network configurations that exist in CenturyTel's network today. The Commission should approve Socket's proposed language because it adds specificity to the agreement and minimizes the opportunities for disagreement in the future.

L. Socket should not be required to obtain CenturyTel's agreement to where it establishes a POI.

Article V, Issue No. 15[211]

CenturyTel demands language that requires the parties to agree on the location of a POI.[212] Socket opposes CenturyTel's demand because it is contrary to current law and public

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209 Turner Direct at 46; Turner Rebuttal at 18.

210 Turner Direct at 47.

211 Kohly Direct at 72; Kohly Rebuttal at 69-70; Turner Direct at 37-41; Turner Rebuttal at 11-15. *See also,* Socket's brief on Article V, Issue No. 7.

212 Article V, Section 11.1.3.1.

policy and violates the principle that, subject to technical feasibility, Socket has the right to determine how it will interconnect with CenturyTel.[213]

Section 251 of the Act and the FCC's implementing rules require an ILEC to allow a CLEC to interconnect at any technically feasible point within the ILEC's network. If CenturyTel denies a proposed interconnection, the FCC requires that CenturyTel prove that Socket's preferred method of interconnection is not technically feasible.[214] This issue is discussed in detail above in relation to Issue No. 7.

The Commission should reject CenturyTel's language as inconsistent with the federal Act because it is not necessary to require the parties to agree to a point of interconnection. If CenturyTel disagrees with a point of interconnection proposed by Socket, it must prove to the Commission that Socket's proposal is not technically feasible.

M. CenturyTel's superfluous language regarding joint planning criteria that is already included in Article III should not be repeated in Article V.

Article V, Issue No. 18[215]

CenturyTel proposes language that requires the parties to establish joint trunk planning criteria. Socket does not believe the language proposed by CenturyTel is appropriately included in Article V because the language is already included in agreed language in Article III.[216] Mr. Kohly testified that Socket is willing to discuss items that will facilitate provisioning and efficient use of the network.[217] The Commission should reject CenturyTel's proposal because it is unnecessary and repetitive language.

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213 *See SBC Texas 271 Order* at ¶ 78.

214 47 C.F.R. § 51.321(d).

215 Kohly Rebuttal at 70-71.

216 *Id.*

217 *Id*.

N. The Agreement should recognize that the terminating carrier may rely on terminating records for billing the originating carrier.

Article V, Issue No. 20[218]

The disputes on this issue were significantly whittled down since direct testimony was filed. Agreed contract language on the issue incorporates into the ICA explicit reference to the requirements of the Missouri Enhanced Records Exchange Rule.[219] The one remaining dispute concerns whether the parties can rely on Automatic Number Identification ("ANI") information to determine the jurisdiction of calls.

Socket's proposed language recognizes that throughout the industry, the jurisdiction of a call is determined by the originating and terminating NPA-NXX or Automatic Number Identification ("ANI") as that term is used in the PSC's Enhanced Records Exchange Rule. As the FCC explained in its 2005 Notice of Proposed Rulemaking on intercarrier compensation issues:

> It is standard industry practice for telecommunications carriers to compare the NPA/NXX codes of the calling and called party to determine the proper rating of a call. As a general matter, a call is rated as local if the called number is assigned to a rate center within the local calling area of the originating rate center. If the called number is assigned to a rate center outside the local calling area of the originating rate center, it is rated as a toll call. These local calling areas are established or approved by state commissions.[220]

The FCC cited to its 2003 decision in the *Starpower Communications*[221] case to support the proposition that calls are typically rated based on NPA/NXX codes. CenturyTel's testimony opposes Socket's language, but does not contest that calls are typically rated in the way the FCC describes.

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218 Kohly Direct at 73-75; Kohly Rebuttal at 71-73.

219 *See* Kohly Direct at 73-74; Kohly Rebuttal at 71-72.

220 FNPRM at ¶ 141 (footnotes omitted).

221 *Starpower Communications, LLC v. Verizon South Inc*., EB-00-MD-19, Memorandum Opinion and Order, 18 FCC Rcd 23625, 23633, para. 17 (2003), cited at FNPRM ¶ 141, n.399.

To CenturyTel, Socket's proposal to institute an "industry standard practice" for rating calls in the ICA is another "back door" attempt to engage in VNXX "arbitrage."[222] CenturyTel fails to note that CenturyTel's own FX or VNXX calls currently are rated in the same way as any other carrier's similar calls. Moreover, CenturyTel does not identify what method of rating calls it would put in place instead of examining the NPA/NXX codes of the calling and called parties. What Socket proposes is not a "new" arrangement, but merely the memorialization of current call rating methods in the ICA – to avoid unnecessary disputes like this one from arising once the ICA is in effect.[223]

O. Service ordering, provisioning, and maintenance standards should be included in the agreement.

Article V, Issue No. 21[224]

Socket has proposed comprehensive articles to the interconnection agreement that addresses Service Ordering and Provisioning, as well as detailed provisions regarding Billing.[225] CenturyTel proposes to have these issues excluded from the agreement, and thus from the Commission's oversight in dispute resolution proceedings.[226]

CenturyTel represents that its CLEC Service Guide is intended to cover the details of establishing interconnection arrangements and the ordering and provisioning of interconnection facilities, but also UNEs, resold services, 9-1-1 and every other aspect of entering local markets. These subjects are much too critical to ILEC obligations to open competitive markets to be left to

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222 *See* Miller Rebuttal at 60-62.

223 CenturyTel's position is based on its incorrect view that tariffed switched access charges should apply to calls terminated by Socket. That issue is discussed in more detail above in the section on Article V, Issue No. 10.

224 Kohly Direct at 75-78; Kohly Rebuttal at 73-74.

225 *See* Article XIII, OSS and Article III, General Provisions.

226 Article V DPL at 85.

unenforceable "service guides" that are not subject to negotiation and are completely under the ILEC's control.[227]

In addition, CenturyTel's CLEC Service Guide is lacking in detail, incomplete, and outdated. Mr. Kohly testified that the CLEC Service Guide consists of twenty pages in total[228] and that the contacts listed in the Service Guide are outdated. Seven of the twenty pages are devoted to a Customer Service Record example that is outdated.[229] Moreover, the Service Guide does not even mention establishing interconnection or making 911 arrangements.[230]

Socket's contract proposals provide necessary detail and information to properly define the parties' obligations as they interconnect. The Commission should approve Socket's language and reject CenturyTel's proposal to substitute its incomplete, outdated "service guide" for contract terms that have been reviewed and approved by the Commission.

P. A carrier that is unable to provide meet-point billing data should be held liable for the amount of unbillable charges that result from its inability to provide the data.

Article V, Issue No. 24[231]

Socket proposes continuation of language in the parties' current agreement that if a party fails to provide meet point billing data to the other party, that the party that failed to deliver the data will be liable for the amount of unbillable charges.[232] The requirement is reciprocal, applies equally, and is fair to both parties.[233] Socket proposes the language because CenturyTel has been

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227 *Id*.

228 Kohly Direct at 77.

229 *Id*.

230 *Id*.

231 Kohly Direct at 78-81; Kohly Rebuttal at 74-76.

232 Tr. at 85:18-22. "Q. So the language that you're proposing would be just on a going-forward basis from the effective date? A (Mr. Kohly): Yes. We currently have this language in our existing agreement and are using it."

233 Article V DPL at 90-91.

unable to provide the meet point billing data that is necessary for Socket to properly identify and bill IXCs that terminate traffic to Socket via CenturyTel's access tandems. Socket has been working to resolve this issue for a year and a half with no results. Each month that Socket does not receive proper call records is a month that Socket is unable to bill IXCs for calls terminated by Socket. This represents lost revenue to Socket.[234]

The Commission should approve the language proposed by Socket as it is in the parties' current agreement and will help resolve disputes about payment if a party is unable to provide meet point data that is necessary to bill originating carriers.

Q. Each party should be required to pass calling party number (CPN) information to the other party.

Article V, Issue No. 26[235]

Socket proposes language that comes directly from contract provisions approved by the Commission (and entered into voluntarily by Socket and SBC in the M2A Successor Arbitration).[236] CenturyTel objects that it should not be required to provide Calling Party Number ("CPN") that it does not receive from other carriers.[237] If Socket and CenturyTel are to accurately bill one another and other carriers, each party should be willing to, whenever technically feasible, transmit CPN information along with the traffic it passes to the other for termination. Neither party should be permitted alter or strip any CPN. If one party is unable to receive the necessary information, the parties should work together to resolve the problem.[238]

CenturyTel's proposed reliance on the Missouri Enhanced Records Exchange Rule does not fully address the issue as that rule does not, in any way, address IXC carried Feature Group

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234 Tr. at 195:18-197:4 (Kohly). *See also*, Article V DPL at 94.

235 Kohly Direct at 81 (mistakenly identified as Article V, Issue No. 25); Kohly Rebuttal at 76-77.

236 Article V DPL at 94.

237 Miller Direct at 59.

238 Article V DPL at 94-95.

D Traffic (See 4CSR 240-29.030(3) and (5)).[239] This is a major source of traffic that Socket feels must be addressed in this Agreement.

The Socket proposal comes directly from previous agreements approved by the Commission and properly incorporates the Commission's Missouri Enhanced Records Exchange Rule. The Commission should approve Socket's proposed language.

R. The agreement should include Socket's proposed language regarding the exchange of enhanced/information services traffic.

Article V, Issue No. 31[240]

Socket's proposed contract language on IP traffic recognizes the growing importance of enhanced services traffic, including VOIP. In the M2A Successor Arbitration, the Commission found it appropriate to include language addressing the increasingly important intercarrier compensation issues regarding this traffic. Socket's proposal tracks the Commission-approved language in the M2A Successor ICAs. Socket's proposal would have the Parties carry IP traffic for one another over interconnection trunks, to ensure that customer traffic flow is not interrupted. The proposal also creates a factoring approach to ensure that the Parties account for (and properly compensate one another) for enhanced services traffic. Moreover, the Socket proposal includes an audit provision that either CenturyTel or Socket could use to protect its interests if either company believes enhanced services traffic is not being accounted for properly.[241]

Socket's proposed language was taken directly from decisions made in the recent M2A Successor Arbitrations between CLECs and SBC (Case No. TO-2005-0336) and is identical to the language currently contained in Socket's Interconnection Agreement with SBC Missouri.

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239 *Id*.

240 Kohly Direct at 81-83; Kohly Rebuttal at 77-78.

241 Kohly Direct at 82.

This same language was originally proposed by MCI in TO-2005-0336, was and approved by the Arbitrator. In selecting this language the Arbitrator noted:

> MCI argues that its lanuage should be adopted because it is consistent with the FCC's pronouncements on enhanced service traffic. MCI does not propose that "IP in the middle" traffic be counted as an enhanced service in that the traffic undergoes no net protocol change. The IP-PSTN traffic, on the other hand falls squarely within the "net protocol change" portion of the FCC's multi-part enhanced service definition and is therefore appropriately charged at reciprocal compensation rates instead of switched access rates.[242]

After the Arbitrator issued his report, Socket requested that the Commission rule that MCI's language should be included in the Agreement between the CLEC Coalition (of which Socket was a member) and SBC. In its Final Arbitration Order, the Commission affirmed the Arbitrator's ruling and also ruled the language should be included in the CLEC Coalition's Agreement as well.[243] In doing so, the Commission found;

> [T]he Arbitrator held with respect to MCI RC Issue 15 that "[t]he IP-PSTN traffic, on the other hand falls squarely within the 'net-protocol change' portion of the FCC's multi-part enhanced service definition and is therefore appropriately charged at reciprocal compensation rates instead of switched access rates." The Commission agrees that this traffic should be treated consistently and the Final Arbitrator's Report is thus modified to provide that the Coalition's ICA will also provide that IP-PSTN traffic be charged under the reciprocal compensation regime rather than be subject to access charges.[244]

Consistent with the Commission reasoning that this traffic should be treated the same way in the various SBC ICAs, the Agreement between Socket and CenturyTel should also treat

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[242] Case No. TO-2005-0336, Final Arbitrator's Report, Appendix VI Intercarrier Compensation (June 21, 2005).

[243] The Arbitrator should be aware that this same language is also included in the interconnection agreement adopted by CenturyTel's affiliate, LightCore, in Case No. TO-LK-2006-0095.

[244] Case No. TO-2005-0336, Arbitration Order at 16 (July 11, 2005).

IP-PSTN traffic consistently. Inconsistency in this controversial area could become a major policy problem.[245]

CenturyTel urges that no language be included in the ICA on this issue because it does not address "local traffic." Obviously, the Commission rejected that approach when it approved ICA language on this subject in the M2A Successor Arbitration. Moreover, if contract language is not included, the Parties will not have a contractual method of navigating the unsettled landscape regarding compensation for carrying VOIP and other enhanced services traffic (collectively "IS" Traffic). "Without definitive provisions in the ICA," Mr. Kohly testified, "Socket is concerned that CenturyTel may attempt to refuse to interconnect for the exchange of IS traffic, or may demand undue compensation for IS or other types of traffic that it does exchange with Socket."[246]

II. UNBUNDLED NETWORK ELEMENTS

Article VII, Issue 13B[247]

The record shows that Socket's lack of and need for access to electronic processes for ordering, provisioning and maintenance is one of the most important issues submitted for arbitration. CLECs require access to electronic ordering systems because it is these systems that enable them to order services most efficiently and accurately. Electronic order processing systems reduce costs for CLECs while speeding up and improving the accuracy of service provisioning; these positive attributes of electronic systems result in real benefits to end user customers as well. ILECs also can obtain cost benefits through automated processes and reduced

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245 SBC Missouri appealed this aspect of the M2A Arbitration decision, and the Commission has defended its decision in pleadings filed in that appeal in the U.S. District Court for the Eastern District of Missouri, in the matter styled *Southwestern Bell, L.P. v. Missouri Public Service Commission*, Case No. 4:05-CV-01264-CAS.

246 Kohly Direct at 82.

247 Kohly Direct at 100-101; Kohly Rebuttal at 88-89.

errors but, as Mr. Kohly testified, competitive self interest on the part of the ILEC results in foot-dragging and delay.[248] As long as an ILEC is able to pass on its costs of using a manual process, it has no or insufficient incentive to move to electronic ordering processes.[249]

Socket is proposing contract language in Section 2.18.4 of Article VII that removes this incentive to stay mired in manual processes with respect to one class of service orders -- conversions of existing wholesale services to UNEs and vice versa. Socket proposes that the following contract language be approved by the Arbitrators:

> **For UNE conversion orders for which CenturyTel has either a) not developed a process or b) developed a process that falls out for manual handling, CenturyTel will charge Socket the Electronic Service Order charge for processing Socket's orders until such process has been developed and Socket agrees to immediately use the electronic process. Then CenturyTel may charge the applicable service order charges and record change charges.**

CenturyTel has rejected this language and, instead, would apply its Engineering Charge of $179.37 for each such conversion.[250] CenturyTel would apply this charge even though all that is required to accomplish the conversion is to make a change in the records in CenturyTel's billing systems; no circuit is being physically disconnected or installed.[251] As Mr. Kohly observed, CenturyTel's proposed rate of $179.37 presumably was developed and is intended to recover the costs of designing a circuit.[252] Yet, when a conversion is being performed, the circuit is already in place and operating, and there is no engineering work that needs to be done.

The highest rate that is even colorably justifiable is the $65.68 ordering charge that reflects CenturyTel's current manual ordering process. But, that charge also is excessive

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248 Kohly Direct at 100.

249 *Id*.

250 This rate applies to conversions of services at DS1 and above; CenturyTel proposes that a rate of $161.87 apply to 2-wire and 4-wire conversions. P. Hankins Direct at 23.

251 Kohly Rebuttal at 88.

252 *Id*.

because it covers the cost for work associated with handling and filling new service orders, not for conversions. As Mr. Kohly testified, CLECs should have access to efficient ordering processes and should pay rates that reflect that such processes are being used.[253] As a result, the $65.68 ordering charge also is much too high for the work that actually will be done by CenturyTel.[254]

Socket therefore proposes that the $3.92 ordering charge set by the Commission in Docket TO-97-63 be applied here. Once CenturyTel develops a cost-based electronic process, Socket is willing to agree that service order and record change charges reflective of that electronic process will apply.

CenturyTel should not be rewarded for its inaction and failure to modernize, but that is precisely the result if it is allowed to impose upon its competitors not only the delays and errors inevitable in a manual system, but also non-recurring ordering charges that are grossly out of proportion to the work CenturyTel is performing. CenturyTel is wrong to argue (as it does in the Joint DPL) that the fact that the parties' have agreed upon ordering intervals means that Socket accepts or must accept the disproportionate charges CenturyTel wants to impose for simple conversions. Socket's proposed contract language should be approved.

Article VII, Issue 22[255]

CLECs are entitled to access to UNEs under Section 251 of the Act precisely because the FCC has determined that they are impaired without access to these network elements. Thus, it is important to ensure that the parties' interconnection agreement reasonably deals with the potential problem of a lack of available facilities. Socket relies and will continue to rely upon

253 Tr. at 269:22-25 (Kohly).

254 Kohly Rebuttal at 88-89.

255 Kohly Direct at 101-104; Kohly Rebuttal at 89-91.

CenturyTel's UNEs in order to serve its customers. If CenturyTel rejects an order for lack of facilities, Socket needs to know the reason why. As Mr. Kohly testified, Socket can best serve its customers if it knows, for example, whether CenturyTel is experiencing a temporary shortage of facilities that would delay availability or a long term lack of spare facilities.[256] CenturyTel acknowledged in its testimony that facility shortages occur, citing the situation in late 2004 when it experienced a facility shortage (switch ports) in Branson.[257] Augments take time to accomplish.[258] Information on the nature of a shortage, and whether efforts are planned, already underway or near completion to augment facilities, is key to Socket establishing and honoring the provisioning commitments it makes to customers who order Socket's services.

There is no question that CenturyTel has access to this type of information internally. As CenturyTel's testimony indicates, it obviously was aware of the Branson situation when it began the work to augment its facilities in response to the needs of its own customers.[259] And, as orders came in from other carriers, it knew the situation had been exacerbated.[260] Because CenturyTel is intimately familiar with its network and has information on orders it is receiving from other carriers, it has superior knowledge (compared to any one CLEC) of the potential for facility shortages and the plans underway for augmentation. This knowledge assists CenturyTel in planning its offerings and in modifying provisioning intervals if need be when responding to the needs of its retail customers.

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256 Kohly Rebuttal at 88-89.

257 CenturyTel Ex. M, Rebuttal Testimony of Alfred Busbee on behalf of CenturyTel ("Busbee Rebuttal") at 8.

258 Miller Rebuttal at 33-35.

259 *Id*.

260 *Id*.

The parties' dispute concerns the type of information CenturyTel must provide when it rejects an order for lack of facilities, and whether Socket must bear the full cost of a facility augmentation. The parties' have proposed competing contract language in Section 2.37:[261]

> In the event that CenturyTel asserts that it does not have the ability to provide the requested network elements, CenturyTel shall provide a detailed explanation of the reason CenturyTel cannot provide the requested network elements. If the reason that CenturyTel cannot provide the requested network elements is related to a lack of capacity or lack of facilities, **CenturyTel shall identify any capacity that CenturyTel is reserving for its own use, and submit a construction plan for setting forth the timeline for adding the additional capacity. CenturyTel shall submit this plan to Socket and to the Manager of the Telecommunications Department at the Missouri Public Service Commission** Socket may request to work with CenturyTel to establish a construction plan and Socket shall bear all costs associated with engineering and constructing such additional capacity.

Socket's objective in proposing its language is to (1) obtain assurance that CenturyTel will not give itself a competitive advantage by reserving spare capacity for its own use while denying facilities to its competitors[262] and (2) obtain information on CenturyTel's plans and timeline for adding facilities.[263] Socket does not dispute that CenturyTel has a right to reserve some capacity to meet its own customer needs; according to CenturyTel's witnesses CenturyTel does not have a practice of reserving capacity.[264] But that could change. And, unless CenturyTel is required to provide this information, the only way that Socket could learn that CenturyTel is acting in a discriminatory manner is if end user customers cancel orders Socket cannot fill (or timely fill) and go to CenturyTel because it promised prompt provisioning. And then, of course, the information is no better than anecdotal.

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261 Socket's proposed language is in bold and CenturyTel's proposed language is underlined.

262 Tr. at 272:10 (Kohly).

263 Tr. at 273:8-10 (Kohly)

264 Busbee Rebuttal at 10.

CenturyTel argues that revealing what capacity it is reserving to itself is competitively sensitive information,[265] but nowhere does it explain how this is true. If CenturyTel denies an order because a trunk group is full, informing Socket that CenturyTel has reserved for itself some amount of capacity on that trunk group provides no information that Socket could use to market its services. Similarly, learning that CenturyTel has reserved one port on a switch which has hit capacity gives Socket no competitive marketing advantage. Without some concrete explanation, without an example, the assertion that CenturyTel's proprietary competitive interests are at risk simply does not hold up.

CenturyTel further argues that Socket's proposed language is contrary to law in that it would impose upon it an obligation in excess of what is required under Section 251 of the Act. It is true, as CenturyTel notes, that in ¶ 630 of the *TRO*, the FCC stated that "section 251(c)(3) requires unbundled access only to an incumbent LEC's existing network – not to a yet unbuilt superior one." But, in the *TRO*, the FCC went on to address what constituted a "superior" network when it rejected essentially the same argument made by Verizon:

> We reject Verizon's argument that the Commission lacks authority to compel incumbent LECs to deploy new equipment to meet the demands of a competitive carrier. Verizon contends that the Commission cannot require incumbent LECs to add capacity or circuits, including constructing and modifying loops by adding electronics, where these facilities do not already exist. That is, Verizon argues that these modifications are not necessary to provide access to existing UNEs, they are the 'creation of new or improved UNEs' that would unlawfully force an incumbent LEC to provide superior quality access. In particular, Verizon claims that the Commission is barred from requiring incumbent LECs to build a new loop, place new line cards or electronics on a circuit, and provide line conditioning because these are all substantial alterations to an ILEC's existing network. *We disagree and, with the exception of constructing an altogether new local loop, we find that requiring an incumbent LEC to modify an existing transmission facility in the same manner it does so for its won customers provides competitors access only to a functionally equivalent network, rather than one of*

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[265] CenturyTel Ex. L, Direct Testimony of Alfred Busbee on behalf of CenturyTel ("Busbee Direct") at 9; Article VII DPL at 20.

> *superior quality*. Indeed, incumbent LECs routinely add a drop for a second line without objection. We conclude that with the exception of building a loop from scratch by trenching or pulling cable, because incumbent LECs are able to provide routine modifications to their customers with relatively low expense and minimal delays, requesting carriers are entitled to the same attachment of electronics.[266]

Socket is not seeking a "superior" network here, merely a functionally equivalent one. The contract language it proposes seeks information on the available (i.e., unused and unreserved) facilities in the existing network and CenturyTel's plans to augment the network for the benefit of all carriers that are interconnected.

CenturyTel's language by contrast only allows Socket to *request* to work with CenturyTel to establish a construction plan, but there is no obligation on CenturyTel to do anything once the request is made. CenturyTel is not saying that it will develop any such construction plan or provide any plan it already has to Socket at all. Moreover, CenturyTel's language assumes that Socket's request is always and only for "wholly new" construction for its use alone. That is not the situation Socket's language is intended to address and, as a result, it is totally inappropriate for CenturyTel to place the entire financial burden upon Socket when the constructed facilities would be used by CenturyTel to serve its customers, and would be used by other carriers.

As the Branson situation described by Mr. Miller makes clear, facility shortages requiring augmentation affect CenturyTel and can affect a number of carriers.[267] It is patently unreasonable to require any individual carrier to bear the whole cost of a facility augment when the construction is undertaken to meet the needs of CenturyTel's own customers and the needs of multiple carriers. Moreover, there is nothing in the Act or the FCC's rules that allows an ILEC

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266 *TRO* ¶ 639 (footnotes omitted).

267 Miller Rebuttal at 33-35.

to "freeze" its capacity at current levels and require CLECs to pay, upfront as non-recurring charges, the cost of any and every augment and facility expansion. Yet that is what CenturyTel's language would allow it do.

Socket's proposed contract language is reasonable and should be approved.

Article VII, Issue 34

This issue is the same issue as Article II Definitions, Issue No. 34. Socket addresses the Definitions and UNE issues in its Article II discussion.

Article VII, Issue 35

In applying the "necessary and impair" standard of Section 251 of the Act in the *TRRO*, the FCC examined CLECs' need for access to loops and transport circuits from the ILECs in the context of the likelihood that such facilities could be obtained from other telecommunications providers or self-provisioned, based on the concentration of business lines in a particular wire center and how many competitors had installed and were operating fiber-optic facilities in that wire center. When the number of business lines served and the number of competitors that had installed or were operating fiber through collocation attained a certain level, the FCC reasoned, it was appropriate to relieve the ILECs of the obligation to lease loops and transport circuits to CLECs at cost-based rates.[268] In establishing which wire centers had a sufficient concentration of business lines and a sufficient number of collocated fiber-based competitors so as to relieve ILECs of the obligation to lease loops or lease transport circuits to CLECs, the FCC established three "tiers" of wire centers. Tier 1 wire centers are those that serve the most business lines and have the most collocators and Tier 3 serve the fewest business lines and have the fewest collocators.

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[268] *TRRO* at ¶ 94.

Having segregated the ILECs' wire centers into these three Tiers, the FCC went on to consider for which routes between wire centers CLECs would have access to DS1 and DS3 level transport as UNEs. The FCC reasoned that CLECs would be willing to install their own transport facilities (or would have alternative wholesale sources available) on routes between two large wire centers, *i.e.*, between Tier 1 wire centers.[269] The FCC also reasoned that CLECs would be willing to install their own high capacity facilities, *i.e.*, DS3 transport, between a large and medium wire center or between two medium-sized wire centers, but that it was unlikely that a CLEC would install the lower capacity DS1 facilities in such a configuration.[270] Finally, in those cases where a small wire center was on one end of the transport route, the FCC reasoned CLECs were unlikely to install any transport facilities, even if the wire center on the other end of the route was large or medium in size.[271]

In addition to establishing this basic bright-line rule about when a CLEC could lease transport facilities from the ILEC at cost-based rates, the FCC also established caps on the number of such transport circuits that could be leased. For DS3 transport that is otherwise available (that is, where one end of the transport route is a Tier 3 wire center) the FCC set the cap at 12 DS3s, reasoning that if a CLEC had sufficient business between the wire centers to warrant such a large number of very high-capacity leased circuits, then there was probably sufficient business to justify the CLEC's investing in its own transport circuits.[272]

The FCC also set a cap on the number of DS1 transport circuits, but the rationale was different. Only in connecting the largest wire centers (*i.e.*, Tier 1s on both ends) did the FCC believe it was economically efficient for a CLEC to install its own transport facilities (or

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269 *TRRO* at ¶¶ 112 and 126.

270 *TRRO* at ¶¶ 118 and 126.

271 *TRRO* at ¶ 123.

272 *TRRO* at ¶ 131.

possibly have access to transport from an alternative wholesale provider).[273] But on the routes where a Tier 2 wire center was on both ends, and on routes between a Tier 1 wire center on one end and a Tier 2 wire center on the other, the FCC did not want a CLEC to be able to obtain numerous DS1 facilities and use them to get around its decision banning CLECs from obtaining DS3 transport. Noting that the economic crossover point from DS1 to DS3 appeared to be at approximately ten DS1 circuits, the FCC reasoned that a CLEC that ordered more than ten DS1 circuits on a route might impermissibly be avoiding the ban on obtaining DS3 circuits. Consequently, the FCC imposed a cap of ten DS1 circuits on these routes to prevent CLECs from gaming the FCC's decision on DS3s.

Paragraph 128 of the *Triennial Review Remand Order*, setting out this particular cap, states as follows:

> Limitation on DS1 Transport. *On routes for which we determine that there is no unbundling obligation for DS3 transport, but for which impairment exists for DS1 transport, we limit the number of DS1 transport circuits that each carrier may obtain on that route to 10 circuits.* This is consistent with the pricing efficiencies of aggregating traffic. While a DS3 circuit is capable of carrying 28 uncompressed DS1 channels, the record reveals that it is efficient for a carrier to aggregate traffic at approximately 10 DS1s. *When a carrier aggregates sufficient traffic on DS1 facilities such that it effectively could use a DS3 facility, we find that our DS3 impairment conclusions should apply.*

(footnotes omitted, emphasis added).

The FCC is explicit in the first sentence: On routes where an ILEC is not required to provide DS3 transport circuits, but is required to provide DS1 transport circuits, CLECs will be limited to 10 DS1 transport circuits. The FCC is just as explicit in the last sentence: When a CLEC has enough traffic on DS1 transport circuits to economically warrant using a DS3 transport circuit, the CLEC will be subject to the same restrictions on DS1 transport circuits that

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[273] *TRRO* at ¶ 126.

the FCC established for DS3 transport circuits. Thus, if a CLEC could not obtain a DS3 transport circuit on a route, it would not be allowed to circumvent that limitation by obtaining more than 10 DS1 transport circuits on that route.

When the FCC issued the *TRRO*, it expressly adopted the terms of its Order, as well as rules intended to effectuate the terms of the *TRRO* as set forth at Appendix B of the *TRRO at* ¶ 239. Contrary to CenturyTel's claim that the FCC's rule should just be read on its face, the FCC itself has stressed that its rules implementing the provisions of the Act cannot be read in isolation, but rather must be "read in conjunction with the rest of the Order." *TSR Wireless, LLC v. U S West Communications, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 11166, 11177-78 at ¶¶ 20-21 (2000). In determining whether there are limitations on the FCC's DS1 transport rule, one cannot ignore the explanatory comments in the *TRRO*, but must read those provisions together with the rule as a harmonious whole.

The U.S. Supreme Court has demonstrated how the FCC's orders should inform the meaning of its rules in a recent case, *Verizon Communications Inc. v. FCC*, 535 U.S. 467, 122 S.Ct. 1646, 152 L.Ed.2d 701 (2002), where the Court placed a limitation on an apparently unambiguous FCC rule by imposing limits derived from the accompanying text**.** In *Verizon*, the Court considered whether 47 C.F.R. § 315's requirement that ILECs must "combine" network elements, so long as doing so is "technically feasible,"[274] unreasonably allowed CLECs virtually

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[274] 47 C.F.R. § 315(c) and (d) provide:

> (c) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements in any manner, even if those elements are not ordinarily combined in the incumbent LEC's network, provided that such combination is:
>
> (1) technically feasible; and
>
> (2) would not impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.

unlimited ability to request combinations of network elements and unreasonably imposed virtually unlimited obligations upon ILECs to provide such combinations. 535 U.S. at 536. The Supreme Court rejected this contention, because the text in the First Report and Order (commonly known as the *Local Competition Order*,[275] which accompanied the contested rule) imposed meaningful limits upon the scope of "technical feasibility":

> [T]he incumbents are wrong to claim that the restriction to "technical feasibility" places only minimal limits on the duty to combine, since the First Report and Order makes it clear that what is "technically feasible" does not mean merely what is "economically reasonable," *id.* ¶ 199, or what is simply practical or possible in an engineering sense, see *id.*, ¶¶ 196-198. The limitation is meant to preserve "network reliability and security," *id.*, ¶ 296, n. 622, and a combination is not technically feasible if it impedes an incumbent carrier's ability "to retain responsibility for the management, control, and performance of its own network," *id.*, ¶ 203.

535 U.S. at 536. Thus, despite apparently unambiguous language in the rule requiring ILECs to provide all "technically feasible" combinations, the Supreme Court read into the rule various limitations and interpretations set forth in the accompanying *Local Competition Order*. The Court did so without first finding there was any ambiguity in the rule. Instead, the Court read the regulations and accompanying text together as a harmonious whole.

The Third Circuit came to exactly the same conclusion in *SBC Inc. v. FCC*, 414 F.3d 486, 499 (3d Cir. 2005), where the Court noted that, in *Verizon*, "the Supreme Court upheld an FCC rule on the basis of a limitation expressed not in the rule itself, but rather in the text of the *Local Competition Order*." The Court further noted that "[a]s a general proposition, we agree that SBC's argument that the regulation must be read in conjunction with the *Local Competition Order* has merit." *Id.*

> (d) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements with elements possessed by the requesting telecommunications carrier in any technically feasible manner.

[275] This *Local Competition Order* was the order under review in *AT&T v. Iowa Utils. Bd.*

Consistent with the *Verizon* Court's approach, in determining whether there are limitations on the FCC's DS1 transport rule, this Commission cannot ignore the explanatory comments in the *TRRO*, but must read those provisions together with the rule as a harmonious whole. The FCC's discussion in the *TRRO* repeatedly describes its perspective on when a CLEC is impaired without access to the ILECs' network elements under Section 251 of the Act and when it can be expected to turn to other sources of facilities, including self-deployment. From this perspective, the FCC established certain thresholds that it concluded would indicate that a CLEC is not impaired without access to DS1 and DS3 level transport.

The FCC's analysis with respect to transport focused on when it would make economic sense for a CLEC to either construct a DS3 transport facility or be expected to be able to acquire a DS3 transport from a provider other than the incumbent LEC. The FCC concluded as a general matter that whether CLECs are impaired without access to the ILECs' transport facilities depends on whether the revenue opportunities support the cost for competitors to construct those facilities. Thus, the FCC concluded that it is economically feasible for a CLEC or an alternative provider to construct DS3 facilities only on routes where both end-points are either Tier 1 or Tier 2 wire centers, i.e., on routes between wire centers that serve a denser population base. Conversely, the FCC found that on routes where at least one wire center serves a less dense population base – where either end-point is classified as Tier 3 – construction of alternative DS3 capacity is generally not economically feasible. Therefore, for this category of routes where at least one end is served by a Tier 3 wire center, it is "necessary" for a CLEC and the CLEC is "impaired" if it cannot obtain DS3 UNE transport from the ILEC under Section 251.

Thus, because all of CenturyTel's wire centers are classified as Tier 3, a CLEC is entitled to obtain DS3 UNE transport (capped at 12) on all transport routes. Paragraph 128 of the *TRRO*

uses explicit language and includes the FCC's supporting explanation of why it determined that a cap on CLECs' access to DS1 transport should apply, what the cap should be, and where it would apply. Paragraph 128 states that the cap applies only on transport routes where the ILECs' obligation to provide DS3 UNE transport is removed. The regulatory purpose of this cap – to prevent CLECs from using numerous DS1 transport circuits to avoid the FCC's decision to no longer require the ILECs to provide DS3 transport on some routes – applies only on those routes where CLECs are precluded from obtaining DS3s.

The Commission's ruling in the recent arbitration between AT&T (then SBC) and various CLECs to develop successor agreements to the M2A was consistent with the position advocated by Socket here. That ruling is not the subject of AT&T's appeal that is pending before the United States District Court for the Eastern District of Missouri.[276] Socket's proposed contract language – which follows that precedent – is as follows:

> 7.10.1 CenturyTel will provide DS1 Dedicated Transport unbundled under Section 251 on all routes between CenturyTel wire centers that are classified as Tier 2 and Tier 3 on one or both ends of the route. (The classification criteria for CenturyTel wire centers is set forth in Section 5.3.3 of this Article.) **Socket may obtain a maximum of 10 DS1 Dedicated Transport circuits on each route for which CenturyTel is required to provide only DS1 Dedicated Transport under Section 251. (The maximum of 10 DS1 Dedicated Transport circuits will not apply on any route where a CenturyTel wire center is classified as Tier 3 is on one or both ends.) Under no circumstances, will Socket obtain more than 346 DS1 Dedicated Circuits on any particular route.**

The last sentence in Section 7.10.1 was added by Socket to eliminate CenturyTel's concern that Socket would use its access to an unlimited number of DS1 transport circuits to circumvent the FCC's cap on the number of DS3 transport circuits it could obtain on these routes.[277] Although

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[276] Case No. 4:05-CV-01264-CAS. Neither AT&T's Complaint, nor its Motion for Summary Judgment on all issues, claimed error on this issue.

[277] Tr. at 277:8-15 (Kohly)

Socket believes CenturyTel's concern is unrealistic,[278] it has added this sentence that prevents Socket from obtaining more than 346 DS1s (the equivalent of the cap on DS3s).

CenturyTel's proposed language follows the FCC's rule, but *does not* follow the FCC's analysis or the explicit statements in the *TRRO*, and thus imposes a cap on DS1 transport circuits on all routes. Moreover, it inexplicably addresses the precedential effect of the Commission's approval of its language and the parties' non-waiver of their positions. CenturyTel's language is shown below:

> 7.10.1 CenturyTel will provide DS1 Dedicated Transport unbundled under Section 251 on all routes between CenturyTel wire centers that are classified as Tier 2 and Tier 3 on one or both ends of the route. (The classification criteria for CenturyTel wire centers is set forth in Section 5.3.3 of this Article.) Socket may obtain a maximum of ten (10) unbundled DS1 dedicated transport circuits on each route where DS1 dedicated transport is available on an unbundled basis ("DS1 Threshold"). The Parties agree that nothing in this section shall constitute a precedent in any other proceeding and, further, neither Party will assert in any other proceeding that this section should be considered as precedent. Neither Party waives its rights to participate and fully present its respective positions in any future proceeding dealing with the application of the DS1 Threshold.

Notably, in its effort to impose the cap on DS1 transport circuits on *all* routes, CenturyTel argues that the cap is necessary to effectuate an FCC policy. Mr. Busbee contends that if no DS1 transport cap applied on any routes between CenturyTel's wire centers, there would be no "regulatory mechanism" to encourage Socket to aggregate traffic above the 10 DS1 level to a DS3 UNE facility, thus thwarting the FCC's stated "pricing efficiencies" policy in the *TRRO* and the FCC's "aggregation requirements."[279] Nothing in the FCC's analysis in the *TRRO*, however, indicates that the FCC saw a need to create a "regulatory mechanism" to encourage traffic aggregation. Nor is there anything in the *TRRO* that establishes the "pricing efficiencies" policy or the "aggregation requirement" that Mr. Busbee claims exists in ¶ 128.

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278 Kohly Rebuttal at 92.

279 Busbee Direct at 12-13; Busbee Rebuttal at 16-18.

The FCC's discussion in ¶ 128 refers to the evidence in the record regarding the cross-over point at which CLECs could be expected to decide to use a DS3 instead of multiple DS1s. The FCC looking at that record concluded that "[w]hile a DS3 circuit is capable of carrying 28 uncompressed DS1 channels, the record reveals that it is efficient for a carrier to aggregate traffic *at approximately 10* DS1s."[280] Thus, the FCC clearly recognizes that the record before it did not establish a hard and fast cross-over point, but only an estimate of where that point is reached. Furthermore, there is nothing in this paragraph or anywhere else in the *TRRO* that orders CLECs to cease using DS1 level transport and move to DS3 level transport whenever they reach a level of 10 DS1s.

As a practical matter, there are excellent reasons why a CLEC would not immediately move from DS1 transport to a DS3 transport. As Mr. Kohly testified:

> there are other considerations that must be recognized besides the economics of recurring charges when choosing to maintain 10 DS1s or moving to a DS3 facility. It is important to note that converting from DS1 to DS3 transport requires physical disconnection and reconnection of circuits. That type of network grooming activity presents the potential for inadvertent disruption of service to customers. That potential is one reason why a CLEC might want to continue with a situation where it has more than 10 DS1 transport circuits rather than converting over to a single DS3 facility. Additionally, there are significant non-recurring charges associated with disconnecting DS1 transport circuits and establishing DS3 circuits. There is no reason to impose those costs on CLECs in situations where DS3 transport remains available as a UNE if the CLEC does not otherwise make the business decision to migrate the DS1 circuits to a DS3 facility.[281]

Moreover, *inefficiencies* are created when a CLEC is required to order a DS3 transport as soon as it needs more than 10 DS1s.

> Enforcing the cap as CenturyTel proposes would require a CLEC needing an eleventh Dedicated DS1 Transport Circuit to obtain a Dedicated DS3 Transport Circuit. That would force the CLEC to have 27 Dedicated DS1s of Transport

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280 *TRRO* ¶ 128 (emphasis supplied).

281 Kohly Rebuttal at 91.

> Capacity that remain unused – wasted – until the CLEC moved the 10 existing DS1s of Dedicated Transport over to the DS3. Even when that is done, there will still be 17 Dedicated DS1 Transport Circuits unused. Given CenturyTel's claim of limited interoffice transport capacity, that certainly seems wasteful. It would be even more perverse if CenturyTel claimed that it could not provide the DS3 that is was forcing the CLEC to lease because of a lack of capacity.[282]

CenturyTel's testimony never acknowledges the practical impact of imposing the DS1 cap on all routes nor does it explain any analytical basis, or policy objective, to be achieved by limiting DS1 transport on routes where a CLEC can obtain as many as 12 DS3 transport circuits. Routes where one end is Tier 3 wire center. The Commission should approve Socket's proposed contract language.

III. PRICING

A. Socket's Rate Proposals Are Reasonable And Supported By The Record Evidence.

As Socket witnesses have testified throughout this arbitration proceeding, reasonable rates for UNEs are essential to Socket's ability to serve customers in CenturyTel territory, particularly the small and medium-sized business customers who are the primary market for Socket's "integrated T1" voice and broadband data services. Socket made a rate proposal that amply compensates CenturyTel for all the wholesale services Socket will purchase from it.

Socket's rate proposal includes the following elements:

1. Recurring UNE Rates (except DS1 and DS3 Loops).

> For most recurring rates, the Socket and CenturyTel have agreed to continue using the rates originally approved by the Commission in the GTE/AT&T interconnection agreement that CenturyTel agreed to abide by when it took over GTE Missouri exchanges.[283] These rates are applicable to both CenturyTel and Spectra.

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[282] Kohly Rebuttal at 92.

[283] Turner Direct at 48. The case in which these rates were set is Case No. TO-97-63, *AT&T Communications of the Southwest, Inc.'s Petition for Arbitration to Establish an Interconnection Agreement with GTE Midwest Incorporated.*

2. DS1 Loop Recurring Rates[284]

Socket's proposed DS1 Loop rates are based on a recalculation of the cost study provided by CenturyTel to support its proposed rates.

Zone	Spectra	CenturyTel
Zone 1	$146.89	$140.63
Zone 2	$138.58	$131.82
Zone 3	$97.83	$90.82
Zone 4	$80.50	$70.49

3. DS3 Loop Recurring Rates[285]

In the absence of reliable cost studies from CenturyTel, Socket based its proposed DS3 loop rates on CenturyTel's tariffed special access rates.

Zone	Spectra	CenturyTel
Zone 1	$2,372.32	$2,050.30
Zone 2	$2,193.34	$1,895.62
Zone 3	$1,134.47	$980.48
Zone 4	$752.15	$650.05

4. Non-Recurring Rates ("NRCs")

Socket proposes that the ICA include the NRCs included in the TELRIC rates approved for SBC Missouri in the recent M2A Successor Arbitration, Case No. TO-2005-0336.[286]

5. Resale Discount

Socket is proposing the resale rates that are found in the current GTE/AT&T interconnection agreement. That resale discount is 25.4%. These rates are applicable to both CenturyTel and Spectra. In the alternative, if the Arbitrator is inclined to set new resale discounts in this proceeding, Socket proposes a resale discount of 21.18% for CenturyTel and 26.08% for Spectra.[287]

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284 Turner Rebuttal at 45-46.

285 Turner Rebuttal at 47-49; Tr. at 235-36.

286 These NRCs are included in Socket's ICA with SBC Missouri, which resulted from the M2A Successor Arbitration. The Socket/SBC ICA was approved by the Commission in Case No. TK-2006-0071.

287 Kohly Rebuttal at 83 – 87, and Ex. RMK-1.

The evidentiary record supports adoption of each of Socket's rate proposals. Before discussing the evidence supporting each component of the Socket proposal, three observations are in order.

First, the rates established in the GTE/AT&T arbitration are Commission-approved TELRIC rates that were subject to a full investigation, including rigorous examination of proposed costs studies. When CenturyTel – Spectra acquired its exchanges, one of the commitments it made was to "enter into agreements which have the same rates, terms and conditions as those agreements previously negotiated with GTE."[288] CenturyTel and Socket have agreed to continue using numerous recurring rates that are based on those approved TELRIC rates. These facts are important for three reasons. First, the rates in the GTE/AT&T agreement are the only Commission-approved rates that have been applicable to CenturyTel and Spectra, and both companies voluntarily agreed to abide by them. Second, the Commission should not inappropriately add to those rates by incorporating into them Non-Recurring Charges ("NRCs") proposed by GTE in its AT&T arbitration that were rejected by the Commission in that case, or adjust the resale discount set in that case without strong evidentiary justification. Third, the GTE/AT&T rates are based on fully-vetted cost studies, in stark contrast to the deeply flawed and late-filed cost studies offered by CenturyTel and Spectra in this proceeding.

Second, the overwhelming problems associated with CenturyTel's cost studies (which are detailed below) make them completely unreliable as an input for new TELRIC rates. Moreover, the fact that CenturyTel made its cost studies available so late in the proceeding has made it a practical impossibility for Socket (or Commission Staff) to thoroughly examine underlying data through discovery requests, much less to restate or revise them to correct errors. In the absence

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[288] Case No. TM-2000-182, *Joint Recommendation,* at 6 (Jan. 23, 2000); *see* Kohly Direct at 95-96.

of reliable cost studies from CenturyTel, Socket has proposed rates that rely to the greatest extent possible on CenturyTel's costs. Where such cost data was not available, Socket used rates that have been approved by the Commission as TELRIC-compliant.

Finally, Socket's rates provide Socket (and potentially other CLECs) a reasonable opportunity to compete in CenturyTel's territory. As noted at hearing, the rates proposed *by Socket* are higher in many instances than what Socket pays for the same wholesale services provided by SBC Missouri or Sprint. This is a result of Socket basing its proposals either on rates that CenturyTel has been living with from the GTE/AT&T agreement, the use of CenturyTel costs from its special access tariffs (for DS3 loops in particular), or the use of Commission-approved NRC rates for SBC Missouri that can reasonably be applied to CenturyTel.

By contrast, CenturyTel's rate proposals result in astronomical prices for essential wholesale services and network elements. Based on the record in this case, it is simply not credible that CenturyTel's costs justify the rate levels it proposes. As noted above, the parties have agreed on many recurring rates, but one of the areas of substantial dispute involves CenturyTel's proposed NRCs. For example, for the "bread and butter" DS1 EEL combination, CenturyTel's proposed NRC levels are not even in the same ballpark as the Commission-approved TELRIC rates charged by SBC and Sprint in Missouri. CenturyTel proposes that the first DS1 EEL purchased by Socket include a non-recurring charge of $1,976.67, and that each additional DS1 EEL include a non-recurring charge of $1,796.91. By contrast, Socket's negotiated rate with Spring found in a Commission-approved ICA for Sprint's DS1 EEL NRC is

$517.80 for the first and $362.91 for each additional EEL. For SBC, the same NRCs are $375.48 for the first EEL and $223.02 for additional EELs.[289]

The differences for DS1 Loops – another essential UNE for Socket – are equally staggering. CenturyTel proposes NRCs that total $623.79 for assembling a DS1 Loop; the similar charge by Sprint in its ICA with Socket is $335.18 and by SBC Missouri is $149.82. At the rates proposed by CenturyTel, the lack of competitive activity in CenturyTel's territory will remain a self-fulfilling prophecy. CLECs cannot afford to pay such enormous NRCs just to obtain basic UNEs. Nothing in the record justifies such competitively prohibitive rates. As Mr. Turner put it, with "this level of disparity" between the UNE rates charged in Missouri, "it will be virtually impossible for competition to develop at all in CenturyTel territory. Non-cost-based nonrecurring charges simply present too large of an artificial barrier to entry."[290]

The evidence supporting Socket's proposal for each contested group of rates is summarized as follows.

DS1 Loop Recurring Rates.

As noted above, Socket's proposed DS1 Loop rates are based on a recalculation of the cost study provided by CenturyTel to support its proposed rates. Socket witness Mr. Turner, after reviewing CenturyTel's cost studies and identifying the problems discussed in detail below, attempted to make use of as much of CenturyTel's cost data as possible in developing the DS1 Loop rate. Since the CenturyTel cost study simply added in the cost of an externally developed 4-Wire Analog Loop from another study, Mr. Turner "removed that cost and instead inserted in

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[289] These comparisons are detailed in Attachment 2 to this Brief, where citations for the Commission-approved Sprint and SBC Missouri rates are provided.

[290] Turner Rebuttal at 54.

the cost for the 4-Wire Analog Loop that CenturyTel has agreed to in this proceeding."[291] Mr. Turner concluded: "Given that according to CenturyTel's own cost study 80.88 percent of the DS1 Loop rate should be based on the 4-Wire Analog Loop Rate, there is no reason that CenturyTel should not utilize the underlying 4-Wire Analog Loop Rate that it is in agreement."[292]

DS3 Loop Recurring Rates.

Socket developed its proposal for recurring DS3 Loop rates by utilizing CenturyTel's special access rates as a proxy. As with the DS1 Loop recurring rates, Mr. Turner's necessarily abbreviated review of the CenturyTel cost study indicated it was so flawed that it could not be used reliably to establish rates. In response to Staff's questions at hearing, Mr. Turner explained Socket's rationale for turning to the CenturyTel special access tariff for an analogous rate:

> [F]or the DS3 rate, … we used CenturyTel's DS3 special access rate, assuming a long term and high volume, believing that they would not sell the element for less than its cost. And so that was what we used to be a proxy for TELRIC, given that there was no way in the time frames allotted and with the information provided by CenturyTel in its filing for us to do a restatement of the DS3 cost study.[293]

Given the paucity of reliable cost evidence supplied by CenturyTel, use of another rate charged by CenturyTel for a similar service was a necessary step to develop a meaningful DS3 Loop rate for the parties' ICA.

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291 Turner Rebuttal at 45.

292 *Id.*

293 Tr. at 285:9-17 (Turner).

Non-Recurring Rates ("NRCs").

CenturyTel did not conduct cost studies to support its proposals for NRCs. Rather, CenturyTel requested the Commission approve its use of the NRCs that were never arbitrated and are found in old Verizon interconnection agreements in Kentucky, Ohio and Wisconsin.[294] As Mr. Turner testified, "these nonrecurring charges are from Verizon's generic pricing attachment and do not represent rates that are in any way specific to Missouri."[295] CenturyTel neglects to remind the Commission that in the GTE/AT&T arbitration, GTE's NRC proposals were flatly rejected by the Commission. The Commission did "review" the GTE proposed NRCs but, as Mr. Turner (a participant in that docket) testified, the Commission "did not like what it saw."[296] Specifically, the Commission made the following finding regarding nonrecurring costs:

> GTE's TELRIC studies are based on actual costs, the costs associated with non-recurring events like hook-ups, trouble shooting, and service calls, are already built into the cost of the service at the historic experienced level. To the extent the level of events increases because of competition, the costs associated with that change would not be reflected in the TELRIC.[297]

"It is my understanding", Mr. Turner testified, "that it was this finding that led to there being no nonrecurring charges ordered for Verizon in Missouri."[298] Thus, the GTE/AT&T agreement that CenturyTel and Spectra agreed to live under includes no UNE NRCs except for a single service order charge. Having accepted the GTE/AT&T agreement without NRCs, and having agreed to continue abiding by the recurring rates in that agreement, Socket believes it would be appropriate for the Commission to continue the current rates in the ICA approved in this docket.

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294 Turner Direct at 50.

295 *Id.*

296 Turner Rebuttal at 51.

297 Case No. TO-97-63, AT&T-GTE Arbitration, *Final Arbitration Order*, at 101 (August 20, 1997), cited in Turner Rebuttal at 51.

298 Turner Rebuttal at 51.

Nonetheless, Socket has proposed to use the Commission-approved SBC nonrecurring charges in Missouri in lieu of having no nonrecurring charges at all.

Use of the SBC Missouri NRCs is appropriate for several reasons. First, as Mr. Turner points out, the purported "differences" between SBC Missouri and CenturyTel all have impacts on *recurring* costs, not on the factors important to determining non-recurring costs.[299] Second, the evidence shows that there is no reason to believe that the main factors important to determining non-recurring rates (labor rates, task times, and the probability that a task will occur) are significantly different for CenturyTel and for SBC Missouri. As Mr. Turner testified:

> [T]he efficiency of a technician (which relates to the amount of time required) at SBC, Verizon, BellSouth, or CenturyTel should not be fundamentally different for performing a cross-connect on a frame for a 2-Wire Analog Loop. I would also anticipate that the labor rates for personnel between SBC-Missouri and CenturyTel in Missouri would not be materially different. Nor would I anticipate that in an efficient, forward-looking environment which is required in a Total Element Long Run Incremental Cost Study (TELRIC) required by the FCC that the probability of tasks between SBC and CenturyTel would be significantly different … .[300]

CenturyTel produced no credible evidence showing that the factors relevant to NRCs are appreciably different for CenturyTel than for SBC Missouri. Given CenturyTel's failure to produce any company-specific cost data relevant to NRCs, and given the unreliability of the GTE proposed NRCs, Socket's proposal to use Commission-approved NRCs applied to SBC Missouri provides the most reasonable approach to setting UNE NRCs in this proceeding.

Moreover, CenturyTel's witnesses could not adequately explain how they propose to apply their NRCs. In fact, it was not clear that CenturyTel's witness had carefully examined the proposed NRCs at all. The witness sponsoring CenturyTel's NRCs (who neglected to actually

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299 Turner Rebuttal at 19-20.

300 Turner Direct at 58-59.

attach a list of the proposed rates until the day of hearing),[301] could not explain which rate from its NRC schedule CenturyTel is proposing be applied to Socket.[302] CenturyTel's NRC witness clearly did not have a meaningful understanding of the differences between the "Ordering 100% Manual" and "Ordering Semi-Mech" categories on his proposed rate schedule – even though the categories involved resulted in significant differences in NRCs. CenturyTel's witnesses failed to provide a credible basis for the Commission utilizing the NRCs they proposed.

Resale Discount.

Socket proposes that the parties continue to utilize the discount approved by the Commission in the AT&T/GTE ICA. The discount percentage in that agreement was 25.4%.[303] However, if the Commission determines that it should set new rates, it should do so using the same methodology previously approved by the Commission as CenturyTel has failed to prove that any deviation from that standard is warranted.

In calculating the resale discount, state commissions are required to make "an objective assessment of what costs are reasonably avoidable when a LEC sells its services wholesale."[304] In defining the standard for "avoidable," the FCC rejected the idea that a LEC must actually experience a reduction in its operating expenses for a cost to be considered "avoided" for purposes of section 252(d)(3).[305] In support of this ruling, the FCC noted that to do so would be to allow incumbent LECs to sustain artificially high wholesale prices by declining to reduce their expenditures to the degree that certain costs are readily avoidable.

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301 Tr. at 350 (T. Hankins).

302 Tr. at 351-53 (T. Hankins).

303 Kohly Direct at 95.

304 *Local Competition Order* at ¶ 911.

305 *Id.*

Socket's analysis supports continued use of the current discount. Socket witness Kohly performed an analysis of the previously-approved avoided cost discount from an agreement entered into between AT&T and GTE. For each of the CenturyTel affiliates, Mr. Kohly prepared a wholesale cost analysis using the same methodology used by the Commission in Case No. TO-97-63 which used the FCC's defaults. Mr. Kohly's analysis resulted in a wholesale discount of 21.18% for CenturyTel – Missouri and 26.08% for CenturyTel – Spectra.[306]

Mr. Kohly calculated avoidable indirect expenses using the same calculation as Mr. Buchan as "the total avoidable expenses calculated for marketing and customer services [] divided by the total operating expenses."[307] The result is different than Mr. Buchan's analysis because it is dependent upon the amount of assumed direct expenses, which were incorrectly calculated in CenturyTel's cost studies.

CenturyTel's studies differ from the resale discount analysis previously performed by the Commission. These studies produce a lower resale discount rate primarily because Mr. Buchan has assumed a lesser percentage of avoidable costs than the Commission has previously utilized. CenturyTel has produced no justification for the additional rate elements and no cost justification for its proposed rates.

Mr. Buchan improperly utilized an avoided cost ratio of 25% for product management and 90% for sales and product management. The basis for this action was an Alabama

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[306] Kohly Rebuttal at 83-87 and Ex. RMK-1. The wholesale discount for CenturyTel-Spectra is lower because of a particularly large amount of Depreciation Telecom Plant in Service. CenturyTel-Spectra's amount of Depreciation Plant in Service Expense is five times greater than CenturyTel – Missouri. This stands out only because every other CenturyTel-Spectra expense was lower than the corresponding expense for CenturyTel-Missouri. As inputs to this study, detailed in the Exhibit RMK-1, Mr. Kohly used public filings by CenturyTel at the Commission. Data was taken from the income statements found in the 2004 Annual Report of CenturyTel of Missouri, LLC, and the 2004 Annual Report of Spectra Communications Group, LLC d/b/a CenturyTel. Kohly Rebuttal at 86-87.

[307] CenturyTel Ex. J/J-HC, Direct Testimony of Kenneth W. Buchan on behalf of CenturyTel ("Buchan Direct") at 30.

commission decision for which CenturyTel provided no explanation. This Commission previously authorized an avoidable cost ratio of 50% for product management and 90% for sales and product management. The Missouri Commission's previous decision is more relevant than an unexplained Alabama decision and result in CenturyTel's calculations being improperly conducted.[308]

As part of CenturyTel's resale discount analysis, Mr. Buchan also puts forward a study that is intended to determine the avoidable service order activities in order to determine the overall avoidable customer service expenses.[309] At the heart of this study are the Avoided Time Ratios which are "CenturyTel's estimate of the time that would be avoided offering the services on a strictly wholesale, rather than retail, basis."[310] CenturyTel assumed that 50% of the Install and Change Order time was avoidable, that 25% of the time associated with Disconnect and Outside Moves was avoidable, and that there would be no avoidable time and even additional time with Suspend and Restore Order. The credibility of these estimates is critical to the accuracy of the study.

Mr. Kohly testified that each of these assumptions was based upon avoided time using manual processes, instead of electronic processes, for accepting and processing the orders. Mr. Kohly's testimony provided examples of how Mr. Buchan's assumptions are unreasonable.[311] Mr. Kohly also questioned Mr. Buchan's basic premise to estimate the percentage of avoidable costs if 100% of the services were offered on a wholesale basis rather than a retail basis.

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308 Kohly Rebuttal at 84.

309 Buchan Direct at 27.

310 *Id.* at 28.

311 Kohly Rebuttal at 84-85.

If CenturyTel were focused on a 100% wholesale model, Mr. Kohly testified that it must be assumed that there would be automated systems in place to process wholesale orders. As noted, the FCC defines avoidable costs as those that can be avoided, whether the company chooses to avoid it or not.[312] In describing each of CenturyTel's assumptions, CenturyTel acknowledges that it has automated systems for its retail operations but then proposes to use more time-intensive manual processes for processing wholesale orders. For this reason alone, CenturyTel's proposed avoidable time ratios and the resulting estimates of customer services avoidable cost must be rejected. Instead, the Arbitrator should use the FCC default percentage previously used by the Commission. Mr. Kohly testified that this Commission previously authorized a 90% avoidable cost discount for customer services.[313]

In addition to its faulty rate analysis, CenturyTel proposes to impose new nonrecurring charges. In addition to its proposed retail charges, CenturyTel proposes to charge Socket additional nonrecurring charges for these resold services. CenturyTel proposes adding to the resale nonrecurring charges new charges for items such as Ordering and Provisioning, Coordinated Conversion, and Hot Cut Coordinated Conversion Charges. There is no basis to assess CenturyTel's discounted retail tariff charges plus additional nonrecurring charges. If CenturyTel is allowed to charge these rates, Socket would pay more than a retail customer pays when ordering a service.

CenturyTel's requested rate increases are not justified. Consequently, the Arbitrator should approve continuation of the existing avoided cost discount or, in the alternative, an avoided cost discount based on the analysis provided by Mr. Kohly.

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312 Case No. TO-97-63, AT&T-GTE Arbitration, Final Arbitration Order at 110.

313 Kohly Rebuttal at 85.

B. CenturyTel's Rate Proposal Is Unreasonable and Not Supported By Credible Evidence.

1. CenturyTel's Cost Studies Lack Credibility

In its *Virginia Arbitration Order*, the FCC promulgated certain standards that it found must be met for a cost study to qualify as "TELRIC-compliant." The FCC noted that "any cost model we use should be consistent with TELRIC pricing principles (*i.e.*, it should be designed to calculate the cost of a network that uses the most efficient technology available, taking as a given the existing incumbent LEC wire centers)."[314] As Mr. Turner testified, "[t]his is a significant first requirement for a cost study. TELRIC – or Total Element Long Run Increment Cost – requires that the model develop the 'cost of a network' that is designed to support the total demand (the 'T' in TELRIC) for all elements on that network."[315] In other words, a TELRIC cost model would require that the loop model, for example, would evaluate the cost to provide a network to serve all of the loops in the network – not just one class of loop or a subset of the loops. Moreover, TELRIC requires, as the FCC notes, that the cost model should use the "most efficient technology available." For a loop model (which is the only cost model CenturyTel purports to offer in this proceeding), the model would need to evaluate the available most efficient technologies and select the most cost effective one to serve the loop in question.

The FCC requires the following as its second and third principles:

> Second, the model should be transparent. That is, the logic and algorithms of the cost study should be revealed, understandable, capable of being adjusted by the parties and regulators, and not contain "black boxes." … Third, any assumptions contained in the model should be verifiable. Any data used to estimate costs should either be from public sources, or capable of verification and audit without undue cost or delay.[316]

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314 *Memorandum and Order*, DA 03-2738, CC Docket Nos. 00-218 & 00-251 (August 29, 2003) ("*Virginia Arbitration Order*") at ¶ 48.

315 Turner Rebuttal at 24.

316 *Virginia Arbitration Order* at ¶ 48.

The evidence conclusively demonstrated that CenturyTel's model is not TELRIC compliant, and does not meet the guidelines for cost studies set out by the FCC in the *Virginia Arbitration Order*. Socket's witness Mr. Turner, who has participated in numerous TELRIC cost reviews at this Commission and across the country, delineated in his testimony numerous fundamental deficiencies in the cost support submitted by CenturyTel in this proceeding. At hearing, Mr. Turner provided a further detailed examination of the shortcomings of CenturyTel's hastily assembled cost studies in association with a review of Socket Exhibit 7 (Confidential).[317] The problems Mr. Turner identified can be summarized as follows:

- CenturyTel's cost study fails the first FCC principle because it has not modeled an efficient, forward-looking loop network that takes into account all of the demand for loops on the network. The study does not model the engineering of loops addressing total demand, nor calculate costs based on customers' location, and the study hard-codes items such as the placement of the DLC at an uneconomical 24,000 feet from the central office.[318]

- CenturyTel's cost study fails the second and third FCC principles that require a model to be transparent, with assumptions and data that are verifiable.[319]

  * There is no way for Socket or the PSC to evaluate the validity of inputs to the cost model because, even if one "un-hides" the rows, the calculations that created given figures have been blanked out. The numbers in the model are simply typed in, with no indication of their derivation, which is very atypical of cost studies.[320]

  * The DS3 cost study does not rely on other studies done by the Commission. Consequently, all of the inputs, fill factors, material cost inputs, engineering approaches used to provide a DS3, average mileage of a DS3 circuit, must be tested and verified. The time available in this proceeding did not begin to permit the discovery and analysis necessary to evaluate this study.[321]

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317 *See* Tr. at 300-312 (Turner).

318 Turner Rebuttal at 25-26; see also Tr. at 300:23-301:22 (Turner), noting that hard-coding loop costs into five areas of the model does not take the demand at the customer location back to the wire center and identify an efficient least-cost network that would serve that demand.

319 Turner Rebuttal at 26-31.

320 Socket Ex. 7, Tr. at 304:20-307:4 (Turner).

321 Tr. at 312:2-312:24 (Turner).

* Similarly, CenturyTel has provided no support for its cost of equity, cost of debt, tax rates, depreciation rates, useful lives, expense factors, etc., and simply hard-coded the resulting factors into the cost studies. Those factors are also the highest Socket's expert has ever seen in any part of the country.[322]

* CenturyTel also provided "black boxes," i.e., unverifiable data, for all fill factors, loop sample data, derivation of material price inputs, investment in DLC and Remote Units, Drop Investment, among others.[323]

The cost studies for 2-wire analog loops and 4-wire analog loops, which feed the cost studies for DS1 and DS3 loop rates, are not credible.

- These studies produce rates that are so much higher than the rates to which CenturyTel has agreed in this arbitration that the Commission should question whether there is anything believable in the cost studies whatsoever.[324] Consequently, the DS1 loop cost study (where 81% of the loop cost is taken from the 4-wire analog loop cost) cannot be viewed as credible simply because it is based on the 4-wire loop cost input.[325]

- The calculation of loop costs is internally inconsistent within the cost study itself, producing an even greater disconnect from the cost of 4-wire loops which this Commission has previously approved and which CenturyTel has agreed to use on a forward-going basis.[326]

- The difference in rates between those supported in CenturyTel's cost study and those currently charged by AT&T, even in comparable rural exchanges, are staggering.[327]

CenturyTel's fill factors are not credible.

- Even assuming CenturyTel's conservative engineering size factor of pairs per living unit is correct, CenturyTel's application of this factor produces an unreasonably low fill factor.[328]
- Using a single copper fill factor for both the feeder cable and the distribution cable is inappropriate because feeder cable can be much more easily augmented so the fill factor can be much higher.[329]

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322 Turner Direct at 54-55.

323 Turner Rebuttal at 27-31.

324 Turner Direct at 50-51.

325 Turner Rebuttal at 39-45; Socket Ex. 7, Tr. at 307:5-309:4 (Turner).

326 Socket Ex. 7, Tr. at 309:5-312:1 (Turner).

327 Turner Direct at 21-22.

328 Turner Rebuttal at 36-37.

329 *Id.* at 37-38.

- CenturyTel is inconsistent in its derivation of fill factors, e.g., with distribution copper cable behind DLC, the fill factor is higher than for an all copper loop, for no apparent reason.[330]

CenturyTel used unreasonable assumptions in the DS3 loop cost study.

- CenturyTel used for the DS3 loop the same average loop distance it developed for the 2-wire analog loop, despite the fact that users of 2-wire loops are likely to have a much more disparate placement across a wire center than users of DS3 loops.[331]

- CenturyTel's equipment inputs do not have traceable support such as contracts.[332]

- Fill factors for fiber cable are again unreasonable low.[333]

The many failures in CenturyTel's cost studies may be related to the haste with which they were produced. As Mr. Kohly testified, Socket repeatedly asked CenturyTel for the cost data that backed up its rate proposals during negotiations. CenturyTel never provided such data. In fact, the cost studies offered into evidence by CenturyTel were not received by Socket until March 15, 2006. Before that, Socket had no meaningful information to assist it in determining whether CenturyTel's proposals were TELRIC-based.[334] Moreover, CenturyTel's cost witness admitted that CenturyTel did not even begin assembling its DS1/DS3 loop cost studies until February 2006, long after it had made its rate proposals in this proceeding.[335]

The necessarily expedited schedule of this Section 252 arbitration proceeding, combined with CenturyTel's failure to produce cost studies in a more timely manner, left Socket and the Commission Staff with little opportunity to carefully examine CenturyTel's studies – much less

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330 *Id.* at 38.

331 *Id.* at 47-48.

332 Turner Direct at 49.

333 *Id.*

334 Tr. at 296-97 (Kohly & Turner).

335 Tr. at 355:20-24 (Buchan).

conduct the level of discovery that Mr. Turner testified is normally associated with such cost studies – before the hearing on the merits. Given these circumstances, it would be fundamentally unfair as a procedural matter for the Commission to set rates based on these studies. As the evidence amply demonstrates, however, there are also numerous substantive reasons that CenturyTel's cost studies must be rejected as the basis for setting TELRIC rates.

2. CenturyTel's Claims Regarding Costs Associated With Its Size and Service Territory Lack Credibility.

If there is one phrase that best summarizes Dr. Avera's testimony regarding CenturyTel's size and service territory, it would have to be "accentuate the negative."

Dr. Avera's client is a financially healthy company listed on the S&P 500 that in 2005 was capable of "returning $580 million to shareholders through share repurchases and cash dividends,"[336] and in 2006 has announced plans to return another $1 billion directly to shareholders.[337] CenturyTel is listed on the S&P 500 and serves over 2.2 million access lines in 22 states.[338] CenturyTel reported to is shareholders in 2005:

> CenturyTel's strong cash flows and solid capital structure provide us the financial strength and flexibility to invest in growth initiatives, to meet the challenges that lay ahead and to return capital to shareholders through share repurchases and dividends.[339]

Besides its general financial health,[340] CenturyTel's prospects in Missouri are increasingly promising, as areas that were once lightly populated are becoming more urbanized. CenturyTel serves three of the fastest-growing areas of the State: St. Charles County on the western edge of St. Louis, the Branson area, and Columbia. Population statistics and economic

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336 Socket Exhibit 13, CenturyTel 2005 Annual Report, p. 2.

337 Tr. at 340 (Avera).

338 Socket Exhibit 13, p. 6.

339 *Id.* at p. 3.

340 *See* Kohly Rebuttal at 6-11 for additional data concerning CenturyTel's economic outlook and service territory.

reports show without a doubt that these areas are poised for continued growth in population and business location.[341]

Despite this promising outlook, and despite the fact that CenturyTel is the second-largest ILEC in Missouri, Dr. Avera sees only dark clouds. For example, in the areas of high population growth, Dr. Avera testifies that the growth will only be "out," but not "up," meaning large businesses or other densely located customers will not go to those areas.[342] Dr. Avera had to admit at hearing, however, that he lives in the vicinity of a major counter-example to his own testimony: Round Rock, Texas – a formerly rural town on the outskirts of Austin, Texas that is now both densely populated and the corporate headquarters of Dell Computer Corporation.[343] Dr. Avera cannot explain why his expectations of growth for similar areas served by CenturyTel in Missouri are so bleak.

Moreover, despite all his testimony regarding the differences between CenturyTel and AT&T, Dr. Avera's cost of capital analysis of the two companies was remarkably similar. "In many respects, Dr. Avera's testimony that he has filed in this proceeding related to the cost of capital looks very similar to the testimony that Dr. Avera filed on behalf of AT&T in Texas in a UNE cost proceeding in that state in 2003," according to Mr. Turner, who was involved in both proceedings.[344] Mr. Turner reported:

> In this Missouri proceeding, Dr. Avera asserts that 'reasonable TELRIC-based cost of capital for CenturyTel's UNEs is on the order of 12.18%.' In the Texas proceeding, Dr. Avera concluded that the AT&T cost of capital was 12.19 percent. While I recognize that the Missouri Commission will decide these issues on its own, I believe it is worth noting that ultimately the Texas Commission did not use the proposed cost of capital calculated by Dr. Avera. Instead, the Texas

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341 Socket Exhibits 8 (Missouri population data); 9 (U.S. Census Bureau data regarding St. Charles County); 10 (St. Charles County "Master Plan"); 11 (U.S. Census Bureau data regarding Columbia).

342 Tr. at 332:14-22 (Avera).

343 Tr. at 333 (Avera).

344 Turner Rebuttal at 31.

> Commission utilized a cost of capital of 9.29 percent. This cost of capital is significantly below that proposed by Dr. Avera and also significantly below that allegedly used by CenturyTel – 11.25 percent.

The evidence showed that Dr. Avera's high cost of capital estimate is not justified here in Missouri, just as the Texas Commission found it was not justified for AT&T in 2003.

Dr. Avera's testimony ignores the facts on the ground in Missouri, as well as the optimistic reports about its business that CenturyTel provides to Wall Street. Dr. Avera's testimony about CenturyTel's "differences" from AT&T provide no basis for approving a high cost of capital for CenturyTel, nor for deviating from prior Commission precedents decided in cases involving AT&T as the ILEC.

IV. OPERATIONS SUPPORT SYSTEMS ("OSS")

Article XIII, Issue 1[345]

Under Section 251(c) of the Act, Socket is entitled to timely, efficient and effective provisioning of wholesale facilities. In Article XIII, Socket has proposed reasonable terms and conditions governing the interface between Socket and CenturyTel in the pre-ordering, ordering, provisioning, maintenance, repair and billing systems. Socket's proposed OSS article is derived in large part from the OSS attachment that the Commission approved as reasonable and appropriate in Case No. TO-2005-0336, except that Socket has modified that attachment to reflect changes between CenturyTel's operations and those of SBC Missouri.

CenturyTel's current manual processes are both slow and error-prone, with numerous delays and inefficiencies caused, in large part, by Socket's lack of direct access to CenturyTel's systems. These failures are most obvious and acute with respect to Socket's access to CenturyTel customer information ("CSRs") during the pre-ordering and ordering process, but

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[345] Turner Direct at 29-31; Socket Ex. 15, Bruemmer Direct at 10-17; Kohly Rebuttal at 93-112; Bruemmer Rebuttal at 5-18; Turner Rebuttal at 8-10; Socket Ex. 14, Cadieux Rebuttal at 7-9.

that is not the only need. CenturyTel's obligation is clear under both the Act and pursuant to representations previously made to this Commission when CenturyTel entered the Missouri market. The Commission should order CenturyTel to fulfill its obligations in a timely manner by developing an electronic OSS system for use by Socket and other CLECs.

A. There is ample legal precedent for CenturyTel's obligation to provide electronic OSS access.

The FCC has determined that ILECs' obligations under the Act with regard to unbundled network elements ("UNEs") extend to providing access to OSS. This obligation begins with the requirement to provide UNEs at just, reasonable and nondiscriminatory terms and conditions, establishing the concept of parity as follows:

> The duty to provide unbundled network elements on "terms, and conditions that are just, reasonable, and nondiscriminatory" means, at a minimum, that whatever those terms and conditions are, they must be offered equally to all requesting carriers, and where applicable, they must be equal to the terms and conditions under which the incumbent LEC provisions such elements to itself.[346]

In the *Local Competition Order*, the FCC further expressly recognized OSS systems as critical for gaining access to UNEs and resold services, recognizing

> that incumbent LECs must provide carriers purchasing access to unbundled network elements with the pre-ordering, ordering, provisioning, maintenance and repair, and billing functions of the incumbent LECs' operations support systems. Moreover, the incumbent must provide access to these functions under the same terms and conditions that they provide these services to themselves or their customers.[347]

Indeed, the FCC determined that an ILEC's OSS is a UNE in and of itself and required ILECs to unbundle their operations support systems as part of their overall unbundling obligations:

> We conclude that operations support systems and the information they contain fall squarely within the definition of "network element" and must be unbundled upon request under section 251(c)(3), as discussed below. Congress included in the

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346 *Local Competition Order* at ¶ 315 (1996) ("*r*")**.**

347 *Id.* at ¶ 316.

definition of "network element" the terms "databases" and "information sufficient for billing and collection or used in the transmission, routing, *or other provision* of a telecommunications service." We believe that the inclusion of these terms in the definition of 'network element' is a recognition that the massive operations support systems employed by incumbent LECs, and the information such systems maintain and update to administer telecommunications networks and services, represent a significant potential barrier to entry. It is these systems that determine, in large part, the speed and efficiency with which incumbent LECs can market, order, provision, and maintain telecommunications services and facilities. Thus, we agree with Ameritech that "[o]perational interfaces are essential to promote viable competitive entry."

Nondiscriminatory access to operations support systems functions can be viewed in at least three ways. First, operations support systems themselves can be characterized as "databases" or "facilit[ies] . . . used in the provision of a telecommunications service," and the functions performed by such systems can be characterized as "features, functions, and capabilities that are provided by means of such facilit[ies]." Second, the information contained in, and processed by operations support systems can be classified as "information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service." Third, nondiscriminatory access to the functions of operations support systems, which would include access to the information they contain, could be viewed as a "term or condition" of unbundling other network elements under section 251(c)(3), or resale under section 251(c)(4). Thus, we conclude that, under any of these interpretations, operations support systems functions are subject to the nondiscriminatory access duty imposed by section 251(c)(3), and the duty imposed by section 251(c)(4) to provide resale services under just, reasonable, and nondiscriminatory terms and conditions.

Much of the information maintained by these systems is critical to the ability of other carriers to compete with incumbent LECs using unbundled network elements or resold services. Without access to review, *inter alia*, available telephone numbers, service interval information, and maintenance histories, competing carriers would operate at a significant disadvantage with respect to the incumbent. Other information, such as the facilities and services assigned to a particular customer, is necessary to a competing carrier's ability to provision and offer competing services to incumbent LEC customers. *Finally, if competing carriers are unable to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for network elements and resale services in substantially the same time and manner that an incumbent can for itself, competing carriers will be severely disadvantaged, if not precluded altogether, from fairly competing.* Thus providing nondiscriminatory access to these support systems functions, which would include access to the information

> such systems contain, is vital to creating opportunities for meaningful competition.[348]

For these reasons, the FCC declared OSS systems and the data within these systems to be a UNE and mandated in the *Local Competition Order* that,

> an incumbent LEC must provide nondiscriminatory access to their operations support systems functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing available to the LEC itself.[349]

This Commission's precedent also supports requiring CenturyTel to provide an electronic OSS system. During the arbitration proceeding between pre-merger AT&T and GTE (later Verizon) in Case No. TO-97-63, the parties agreed that GTE would provide access to its operation support system via electronic interfaces, with that implementation occurring in three phases, culminating in fully electronic interfaces.[350] In the Arbitration Order, the Commission found that, "GTE should provide OSS access via electronic interface using the schedule proposed by [the pre-merger] AT&T."[351]

Finally, CenturyTel itself recognized its own obligations to provide non-discriminatory access to its operations support systems functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing, during the proceedings that approved its purchase of its

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348 *Id.* at ¶¶ 516-518 (emphasis supplied).

349 *Id. at* ¶ 524. The FCC has subsequently reiterated its conclusion that, without nondiscriminatory access to OSS, a competing carrier "will be severely disadvantaged, if not precluded altogether, from fairly competing in the local exchange market." *See, e.g.*, CC Docket No. 99-295, *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order at ¶ 38 (rel. Dec. 22, 1999).

350 Case No. TO-97-63, *In the Matter of AT&T Communications of the Southwest, Inc.'s Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement Between AT&T Communications of the Southwest, Inc. and GTE Midwest, Inc.*

351 *Id.*, Arbitration Order, December 10, 1996 at 46.

current franchise territory from GTE/Verizon. There, CenturyTel committed to providing a web-based system to automate the process of interacting with CLECs as follows:

> To date, the only deviation identified pertains to the electronic interface support system. To the extent that Verizon offers electronic interface to operations support system functions, CenturyTel will have to accomplish this interface via a call-in or paper transmission by the CLEC to a customer service representative. CenturyTel is working toward a web-based solution that should allow for automation to the interconnecting companies. We anticipate this functionality to be available within nine months of the expected close date of the transaction.[352]

This was presumably part of CenturyTel's overall commitment that the transfer from Verizon to CenturyTel would have no impact on the existing interconnection arrangements that CLECs had with Verizon, including the AT&T/GTE agreement addressed above with its mandated electronic OSS, in order to convince this Commission the transfer was in the public interest.[353]

Hence, there is ample federal and state precedent that supports Socket's request for nondiscriminatory access to CenturyTel's OSS system. Such access at parity is not possible without an electronic interface.

B. Parity does not exist in CenturyTel's manual system.

One of the most critical flaws in CenturyTel's current manual OSS system is the lack of electronic access to the CSR. This record contains information identifying the customer (such as business name, billing address and telephone number(s)) as reflected in CenturyTel's systems,

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[352] Turner Direct at 29-30, quoting from TM-2002-232, *In the Matter of the Joint Application of GTE Midwest, Inc. d/b/a Verizon Midwest and CenturyTel of Missouri, LLC for 1) Authority to Transfer and Acquire Part of Verizon Midwest's Franchise, Facilities, and System Located in the State of Missouri, 2) For Issuance of Certificate of Authority to CenturyTel of Missouri, LLC 3) To Designate CenturyTel of Missouri, LLC as Subject to Regulation as a Price Cap Company; and 4) To Designate CenturyTel of Missouri, LLC as a Telecommunications Carrier Eligible to Receive Federal Universal Service Support*, Direct Testimony of Kenneth M. Matzdorff ("Matzdorff Transfer Testimony") at 15-16; *see also* Kohly Direct at 7. As addressed in detail *infra*, CenturyTel's current "web-based system" for LSRs (only) is certainly not what was implied in Mr. Matzdorff's testimony, since the web interface is nothing more sophisticated than the fax or email it theoretically replaced. Consequently, Mr. Matzdorff's commitments remain unfulfilled.

[353] Kohly Rebuttal at 106, citing Matzdorff Transfer Testimony at 15; Bruemmer Rebuttal at 10-11.

plus a list of all the services that customer is currently receiving from CenturyTel. This information is critical to a competitor who has won the customer and is assembling an order for UNEs or resold services to provide service to that customer.[354]

As a result of this arbitration, CenturyTel has committed to providing CSR data within six hours of request.[355] But, as described by Socket witness Mr. Bruemmer, Socket's experience has been that the data provided to Socket is frequently in error. This could be, for example, because the customer's name or address or list of services is carried differently in different parts of CenturyTel's system. Each time there is an error, Socket's order is rejected and the provisioning interval starts over.[356] This order reject problem is precisely the issue identified by Mr. Cadieux as a timing problem that results from manual systems:

> the errors create their own timing problem, because if there's an error, an order gets rejected when it really shouldn't have needed to be rejected and the order had to be resubmitted, and you can go through that cycle several different times and be a week or ten days down the road further than you should have been with a clean order under an electronic system.[357]

For CenturyTel, these kinds of record problems do not hold up service provisioning the way they do for Socket. CenturyTel's employees have real-time access to necessary information so they do not have to wait six hours to receive information in the first place – which then could potentially result in an order reject that requires starting and waiting another six hours. Even if CenturyTel's information is in paper files, its employees have the advantage of access to those files and the ability to find additional information once they realize it is missing. This contrasts

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354 Bruemmer Rebuttal at 6.

355 *Id.* at 8.

356 *Id.* at 6-8.

357 Tr. at 433:8-14 (Cadieux).

with Socket, which has to wait for notification and cannot correct or supplement its order until *after* its LSR is rejected.[358] This is not parity.[359]

As for the actual ordering process, parity does not now exist for this function either. For LSRs, Socket uses the CenturyTel Internet Services Customer Portal, which has only a limited web-based interface for entering LSR orders. Contrary to any dissembling by CenturyTel with regard to the commitments it made during the transfer from Verizon, this limited process does not satisfy those commitments because ***there is no automation involved with this interface.*** Orders submitted by Socket via this interface must be re-typed by CenturyTel into another system. This is nothing more than a replacement for a fax machine. There are no selectable-list fields that would be considered automated. In addition, this system only covers LSRs, while Access Service Requests ("ASR") that are used for ordering interconnection and UNE combinations must be ordered via e-mail or facsimile.[360] Beyond this minimal, partial ordering function, this system presently has no capabilities such as pre-ordering, provisioning, maintenance and repair. All of these manual systems are necessarily more error-prone than an automated system.[361]

It has also been Socket's experience to date that there are delays due to "regulatory review" of Socket's orders, or due to "typing intervals."[362] Even if CenturyTel commits to manually processing Socket's orders as quickly as its own, the error rates on Socket's orders are quite simply phenomenal. Mr. Bruemmer provided several specific examples of orders failures

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358 Bruemmer Rebuttal at 8.

359 For additional discussion on the lack of parity in CenturyTel's OSS systems, see the discussion under Article IX, Maintenance, *infra.*

360 Bruemmer Direct at 11-12.

361 Tr. at 425, 433:1-6 (Cadieux) (noting that, in his experience with other ILECs, the implementation of electronic OSS resulted in a substantial reduction of error).

362 Bruemmer Rebuttal at 9-11.

in his rebuttal testimony, and estimates that there are five to ten times as many problems with CenturyTel orders as with AT&T and Sprint orders combined.[363] It is difficult to believe that CenturyTel has this many problems in dealing with its own retail customers, but if, in fact, the problems are at "parity," then CenturyTel's territory is highly in need of the innovation and better customer service that competition often provides.

C. There are no preconditions or prerequisites Socket must satisfy before CenturyTel can be required to provide an electronic OSS, nor are there any legitimate concerns with Socket's access to CPNI.

Socket is not required to meet any test of minimum size or service order volume in order to obtain parity treatment. Indeed, the *Local Competition Order* is replete with references to promoting competitive entry by small entrants.[364] To require Socket to reach a certain size, or to require a certain number of CLECs to be operating in CenturyTel's territory before requiring nondiscriminatory access to OSS is contrary to the FCC's rules and decisions implementing the Act.[365] Indeed, as pointed out by Mr. Cadieux in his rebuttal testimony, one of the factors that deters CLECs from expanding into CenturyTel's territory is the fact that their OSS systems are non-standard, so it is more resource intensive and more costly for a CLEC to do business with CenturyTel than with another carrier that has an electronic OSS system.[366]

The alarms CenturyTel raises concerning Socket's access to customer proprietary network information ("CPNI")[367] are also without merit. Socket and CenturyTel will continue to operate under the LOA process that is already agreed upon between the Parties, and Socket has

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363 Bruemmer Rebuttal at 14-15.

364 Kohly Rebuttal at 99, citing *Local Competition Order* at ¶¶ 61-62, 242, and 316, *inter alia*.

365 Kohly Rebuttal at 99.

366 Cadieux Rebuttal at 8.

367 CenturyTel Ex. Z/Z-HC, Direct Testimony of Maxine Laird Moreau on behalf of CenturyTel ("Moreau Direct") at 16-17; CenturyTel Ex. S/S-HC, Direct Testimony of Carla Wilkes on behalf of CenturyTel ("Wilkes Direct") at 8-9.

no intention of going on "fishing trips" seeking CPNI information. Indeed, neither SBC, nor Sprint, nor CenturyTel has *ever* accused Socket of misusing the access it obtains to CPNI.[368] Further, mere speculation about potential changes in the federal CPNI rules should not dictate any ruling in this docket that is more conservative than existing rules require. Instead, if there are necessary changes, they can be handled through the agreement's change in law process.[369]

Socket is not seeking development of a unique OSS specific to Socket.[370] There are industry groups that deal with standards for OSS systems and CenturyTel can obtain information from those standards groups on developing its OSS system. Furthermore, any OSS system CenturyTel develops for CLECs in Missouri should also be available for CLECs in other states.[371] In this way, CenturyTel would also benefit itself on a national basis from increased automation.

D. CenturyTel should not be given an extended period of time to make an electronic OSS system available to Socket and other CLECs.

The nine-month time period Socket proposes for OSS development is based upon the Direct Testimony of Kenneth Matzdorff before this Commission at the time CenturyTel acquired these exchanges from GTE, as quoted in Section A above.[372] Socket's view is that the OSS should have been completed several years ago, so allowing nine more months to put an OSS in place following the award in this case is reasonable.[373]

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368 Kohly Rebuttal at 102-103.

369 *Id.* at 102-103.

370 *Id.* at 103-104.

371 *Id.* at 104-105; Tr. at 436:13-20 (Cadieux).

372 Kohly Rebuttal at 112.

373 *Id.* at 112.

There are many small ILECs who have electronic OSS systems. At hearing, Mr. Cadieux mentioned two, Alltel and Cincinnati Bell.[374] Alltel has approximately 3.0 million access lines in 15 states, with 69,224 in Missouri.[375] This contrasts with CenturyTel's 2.3 million access lines in 22 states,[376] with 442, 138 in Missouri.[377] Cincinnati Bell has only 931,000 access lines.[378] These companies are similar in size or smaller than CenturyTel, but have found it to their benefit to develop electronic OSS systems, which in turn benefit CLECs. In addition to other small or rural ILECs, CLECs that provide wholesale services to other carriers have also developed electronic ordering systems. It is not necessary for CenturyTel to start from scratch.[379]

E. The cost of putting an electronic OSS in place and cost recovery mechanisms should not be decided in this proceeding.

It is by no means clear that CenturyTel should be permitted to recover from CLECs its costs of putting an electronic OSS in place given its commitments when it obtained its properties in Missouri. As noted above, when CenturyTel sought Commission approval for the transfer of exchanges from GTE d/b/a Verizon Midwest, Inc., CenturyTel filed sworn testimony stating that an automated electronic interface for CLECs was in development and the functionality would be available within nine months of the close of the transaction. That promise was made as part of the assurances that the transaction was in the public interest and there was no implication that the

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374 Tr. at 439:22-440:20 (Cadieux).

375 Case No. TM-2006-0272, *In the Matter of Application for Approval of Transfer of Control of Alltel Missouri, Inc. and Transfer of Alltel Communications, Inc. Interexchange Service Customer Base*, Application at 6 (Dec. 22, 2005) (data is as of June 30, 2005).

376 Avera Direct at Schedule WEA-1.

377 Kohly Direct at 9.

378 December 31, 2005 Form 10-K for Cincinnati Bell, Inc., available at http://investor.cincinnatibell.com/downloads/2005AnnualReport.pdf.

379 Kohly Rebuttal at 112.

promised web-based system would be merely a non-interfaced substitution for a fax machine. Mr. Matzdorff stated that the transfer from Verizon to CenturyTel, "will have no adverse impact on the arrangements between Verizon and the CLECs," which statement could not be made if CenturyTel expected CLECs to function thereafter without an equivalent to Verizon's automated OSS.[380]

Thus, CenturyTel previously committed to developing and implementing electronic interface support system functions, which would include pre-ordering, ordering, provisioning, installation, maintenance and repair, and billing functions, at parity. The record in Case TM-2002-232 reveals no reservations on these commitments that would permit CenturyTel to assess CLECs for the costs of meeting its merger commitments. This would also be inconsistent with the claim that there would be no adverse impact on the CLECs.[381]

It is not consistent with the public interest to either allow CenturyTel to shirk its obligation to develop an electronic OSS in order to provide parity or to force CLECs to pay for development when presumably they already were paying for Verizon to develop its OSS system that CenturyTel apparently did not even attempt to use.[382] Giving a class of customers (CLECs) a less efficient operations support system runs afoul of the stated objective of protecting the public interest and ensuring that the transaction has no detrimental impact. Requiring that a class of customers (CLECs) pay significant amounts of money to CenturyTel to correct a broken promise, a dishonored commitment to the people of Missouri, is not appropriate.[383]

If CenturyTel is permitted to recover its costs for unbundling its OSS and providing CLECs with access to electronic OSS, the cost recovery should be based on something more

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380 Kohly Direct at 7; Kohly Rebuttal at 106.

381 Kohly Rebuttal at 106.

382 *Id.*

383 *Id.* at 106-107.

reliable than the cost structure proposed by CenturyTel in this proceeding. In the short time available to Socket between the time CenturyTel provided its cost study and the hearing, Socket was able to conduct only a preliminary review of CenturyTel's cost estimates. But that cursory review demonstrated that CenturyTel's costs for computer equipment was significantly outdated, either because the prices were hundreds of thousands of dollars higher than the cost of the equipment today or because the listed equipment was taken out of production as much as three years ago.[384] CenturyTel has also demonstrated throughout this proceeding that it is more than willing to exaggerate costs in support of its "Just Say No" philosophy. *See, e.g.*, CenturyTel testimony by Ms. Hankins suggesting CenturyTel would have to hire additional personnel to maintain a 10-person Socket email distribution list.[385]

CenturyTel's proposed rates and rate structure to recover its overblown costs also require scrutiny and further consideration, and should not be decided without a thorough vetting. CenturyTel witness Mr. Hankins testified that his starting point was to gross up AT&T's non-recurring charges to include CenturyTel's estimated cost of developing and implementing an OSS for Missouri.[386] Aside from the fact that those estimated OSS costs are clearly exaggerated, Mr. Hankins also appears not to have considered any efficiencies or benefit CenturyTel would gain for itself from the electronic system.[387] Furthermore, CenturyTel's assumptions on the volume of future UNE orders are questionable and do not appear to have anticipated as much growth as Socket and others believe is likely to occur based on CenturyTel's report to its

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384 Bruemmer Rebuttal at 18.

385 P. Hankins Direct at 7-8.

386 CenturyTel Ex. P/P-HC, Direct Testimony of Ted M. Hankins on behalf of CenturyTel ("T. Hankins Direct") at 10-11.

387 Kohly Rebuttal at 108.

stockholders on competition and the fact that CenturyTel's exchanges are located in areas of suburban expansion.[388]

There are also a variety of alternatives for the ultimate cost recovery. CenturyTel's proposed rate structure just applies its estimated costs to the non-recurring charges. It might be more efficient to have a monthly subscription rate for CLECs electing to use the electronic OSS. Or, a rate structure that has varying rates based upon what functionality a particular CLEC wants may be a more efficient means to recover the cost of OSS. No other options were considered by CenturyTel and they should be.[389]

CenturyTel should be required to develop the system and demonstrate that it is functional before recovering any costs. In the meantime, there is no basis for imposing new rates on Socket for an OSS while Socket remains forced to suffer the inefficiencies and delays inherent in a manual process. CenturyTel has demonstrated a propensity for delay, and it would be inappropriate for Socket to have to begin to pay for a system that does not exist if CenturyTel fails to timely complete the system. For these reasons, any specific amount or method of cost recovery should not be decided in this proceeding, but should be reserved for review once the system is operational.[390]

F. Socket's proposed contract language should be approved.

Despite the fact that CenturyTel seems to be taking the position that an Article XIII is unnecessary,[391] CenturyTel has proposed competing contract language for the Article. The functionality in CenturyTel's proposal, however, is wholly inadequate, and is missing many of the key elements appearing in Socket's proposed contract language. For example, CenturyTel's

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388 *Id.* at 9-11, 108-109; Cadieux Rebuttal at 3-5.

389 Kohly Rebuttal at 109-110.

390 *Id.* at 107.

391 Article XIII DPL, CenturyTel position statement, Introduction.

"Pre-OSS Services," Section 15, provides the same existing, non-interfaced GUI system and adds only the ability to request CSRs, but it still excludes ASRs. It does not add any electronic interface, but does permit CenturyTel to begin charging for this limited functionality.[392] Further, CenturyTel's proposal has no definitive obligation for developing an electronic OSS in the near future or ever,[393] but basically leaves that to the discretion of CenturyTel.

Socket's proposal is derived in large part from the OSS attachment approved by the Commission as reasonable and appropriate in Socket's interconnection agreement with SBC Missouri in Case No. TO-2005-0336. Some changes were made to reflect differences between CenturyTel's operations and those of SBC Missouri. Socket proposes that meetings be held to provide progress updates as interfaces are developed in order to ensure that the outcomes of the project meet the obligations set forth during development rather discovering problems at the end, with optional Commission staff participation.[394] Socket's proposal also addresses security and proper use of the OSS because it is important for both the ILEC and CLECs to be protected from misuse and intrusions into the systems.[395] The contract language obviously also addresses CSRs and pre-ordering to address the problems and needs discussed above.

Socket's language expands the interface capabilities for ordering and provisioning. Socket needs to be able to order all UNEs and combinations of UNEs as defined in Article VII through the interface. Currently, this is not possible because CenturyTel allows only certain types of LSR orders. An order for an EEL must be ordered through an ASR, and all ASR orders must currently be ordered via e-mail. This also impacts any interconnection orders and others

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392 Tr. at 441:12-442:14 (Kohly).

393 Tr. at 429:22 (Kohly).

394 *See* § 3.3.2; Bruemmer Direct at 14.

395 Bruemmer Direct at 14.

which are not included in the limited group of LSR orders that now can may be ordered through CenturyTel's interface.[396]

Socket's proposed language also includes maintenance and repair functions, electronic billing and billing interfaces, and document and user manuals as additional functions. Despite the origination of the proposed language, Socket is not attempting to have CenturyTel recreate the OSS that AT&T operates in Missouri. Socket is simply attempting to find contract language that would obligate CenturyTel to implement an electronic OSS consistent with the requirements of the Act and FCC rules, and consistent with the operating environment within CenturyTel. Ultimately, however, the Commission should not allow CenturyTel to shirk its responsibilities to provide efficient interconnection with Socket and other CLECs. Doing so would prevent Missouri consumers from truly benefiting from competition in CenturyTel's territory as customers in AT&T and Verizon's territories are benefiting presently.

V. ARTICLE IX MAINTENANCE

Socket's issues in Article IX Maintenance arise either because of CenturyTel's apparent reluctance to be a "willing wholesaler" or because CenturyTel's antiquated systems and procedures prevent it from providing parity service to its CLEC wholesale customers. Socket requests contract language to ensure it receives services from CenturyTel that are comparable to what CenturyTel provides to itself, similar to what Socket receives from other incumbent LECs,[397] and that are reasonable in the ordinary course of business in a competitive environment.

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396 Bruemmer Direct at 14-15.

397 *See* Bruemmer Rebuttal at 2.

A. CenturyTel should provide Socket with advance notice of scheduled maintenance and emergency outages.

Article IX, Issue No. 1[398]

In proposed Section 4.1, Socket seeks notification by CenturyTel of emergency network outages.[399] In Section 5.1, Socket requests that CenturyTel provide it with advance notice of any other maintenance-type events involving CenturyTel's central offices and inter-office network.[400] CenturyTel responds that it is CenturyTel's practice to provide outage and maintenance information to CLECs only on a CLEC's specific request or inquiry because the CLEC is more capable of identifying where on the network its affected customer resides.[401]

To maintain the level of service expected by Socket's customers, it is vital that Socket be aware of CenturyTel's maintenance and outage activity that may affect Socket's customers. Socket strives to notify its customers in advance of maintenance or outages that may affect its customers' service, and can do so readily in both Sprint and AT&T territories because those ILECs provide advance notices.[402]

Socket witness Mr. Bruemmer testified that he believes "this issue comes down to a question of parity."[403] Under the definition of "parity" agreed to by the parties, CenturyTel is required to provide service to Socket that is equivalent to that which it provides to itself or its

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398 Bruemmer Direct at 3-5; Bruemmer Rebuttal at 1-4.

399 CenturyTel proposes no competing language.

400 CenturyTel proposes language that permits Socket to contact CenturyTel to discuss activities involving the central office and inter-office network that may impact Socket customers.

401 CenturyTel Ex. CC/CC-HC, Rebuttal Testimony of Marion Scott on behalf of CenturyTel ("Scott Rebuttal") at 10.

402 Bruemmer Rebuttal at 2.

403 *Id.* at 1.

customers.[404] CenturyTel proposes to provide maintenance information to Socket only at parity with its retail customers. Because Socket would receive no advance notice from CenturyTel, it would learn of an outage from an irate Socket customer who has lost phone service. Socket would then be required to call the CenturyTel retail customer service line to inquire whether any scheduled network maintenance or outages could be causing the customer's problem and the expected duration of the outage.[405] This process puts Socket in a position of parity with a CenturyTel retail customer, who is also caught unaware, but it is significantly less than what CenturyTel provides to its own organization or what should be expected for a wholesale customer.[406]

CenturyTel witness Scott described how CenturyTel sends notifications from the CenturyTel Network Operations Center to CenturyTel personnel in advance of network maintenance and during network outages.[407] At no time are CenturyTel personnel expected to request information from the repair line to learn of an outage; they also are alerted prior to planned maintenance.[408]

To ensure that Socket and its customers receive parity treatment from CenturyTel, Socket has proposed that CenturyTel timely provide to Socket the same information that it provides to

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404 Article III, Section 52.0. "For any services that either Party is required by Applicable Law to provide to the other at parity, each Party shall provide services under this Agreement to the other Party that are equal in quality to that the Party provides to itself. 'Equal in quality' shall mean that the service will meet the same technical criteria and performance standards that the providing Party uses within its own network for the same service at the same location under the same terms and conditions."

405 Bruemmer Rebuttal at 1-2.

406 *Id.* at 2.

407 CenturyTel Ex. BB, Direct Testimony of Marion Scott on behalf of CenturyTel ("Scott Direct") at 4-5.

408 Bruemmer Rebuttal at 1.

CenturyTel personnel.[409] In rebutting the potential value to Socket of such a notification system, CenturyTel witness Scott testified that providing Socket the same email notification of network outages or maintenance as is provided to CenturyTel employees would not be of any value to Socket.[410] That is because the email that is sent to CenturyTel employees does not provide any substantive information but only a link to CenturyTel's Remedy trouble system to allow CenturyTel employees to obtain details about the outage.[411] Ms. Scott testified that the database is not partitioned in a manner that would permit Socket to access it or to view the information.[412] In effect, Ms. Scott claims that parity is impossible.

If CenturyTel is not able to provide Socket direct access to the Remedy database so that Socket has equivalent advance knowledge of outages or maintenance, CenturyTel must find another way to provide Socket timely information equivalent to that which CenturyTel employees have. For example, CenturyTel employees receive advance notification of outages, so may contact CenturyTel customers to inform them in advance. Consequently, CenturyTel must notify Socket in some way of the same planned outage, so that Socket has the opportunity to notify its customers as well.

The ability to notify customers in advance is not the only reason Socket needs notice of outages. Lack of knowledge of scheduled maintenance or outages often causes unnecessary troubleshooting and causes Socket's customer service representatives to be less informed and less able to address customer concerns.[413] Under CenturyTel's no-notice procedure, a Socket technician researching a customer outage must first contact CenturyTel to determine if a general

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409 *Id.* at 2.

410 Scott Direct at 5.

411 *Id.*

412 *Id.*

413 Bruemmer Rebuttal at 2.

network outage is affecting that customer. Failure to eliminate that possibility first increases the risk of performing troubleshooting steps that could cause problems when CenturyTel restores service to the customer.[414]

CenturyTel's current system and proposed contract language do not meet the parity standard required for operations support functions. The Commission should approve Socket's proposed language in Sections 4.1 and 5.1 to ensure that CenturyTel provides information to Socket at parity with the information provided to its own employees.

B. CenturyTel should provide Socket notice of missed repair commitments and other information that is necessary to communicate properly with Socket's customers.

Article IX, Issue No. 1[415]

Because CenturyTel cannot provide Socket with access to its Remedy database that contains real-time repair ticket information,[416] Socket proposes language in Section 7.3 that would require CenturyTel to contact Socket with an update if CenturyTel misses a repair commitment or appointment, or if a trouble ticket commitment time passes and the ticket has not been closed.[417] Additionally, because CenturyTel cannot provide information electronically to Socket, Socket requests that CenturyTel provide it with a daily log of Socket's trouble tickets. CenturyTel again objects to each of these requests as "overly burdensome."

Socket's experience has shown that CenturyTel often fails to meet its repair commitments.[418] CenturyTel denies this, claiming such notification is unnecessary because it meets its repair commitments. CenturyTel points to its most recent data, and states that it met its

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414 *Id*.

415 Bruemmer Direct at 3-5; Bruemmer Rebuttal at 1-4.

416 *See* Scott Direct at 5.

417 CenturyTel proposes no additional language.

418 Bruemmer Direct at 5.

24-hour repair commitment for 94.9% of the out-of-service repairs of regulated services.[419] Although this may meet the Commission's quality of service standard, it also means Socket can expect that CenturyTel will fail to meet its 24-hour repair commitment in 1 of 20 business service calls, causing inconvenience and problems for Socket and its customers. Yet, CenturyTel claims that notifying Socket that it failed to meet its commitment to Socket and the customer is "overly burdensome,"[420] thus preventing Socket from providing its customer with timely information about the missed repair commitment. If CenturyTel's repair record is as strong as it claims, then it should not constitute a burden to directly notify Socket. And for those unfortunate 1 out of 20 customers whose repairs are late, Socket is sure they will be pleased when Socket too can adhere to the standard industry practice of notifying customers of missed repair commitments. Socket, therefore, requests that the Commission require that CenturyTel provide Socket with notification of missed repair commitments.

Another aspect of this issue is Socket's inability to track the status of repair tickets. CenturyTel's repair technicians and customer service representatives are able to view the status of the repair tickets in the Remedy database, but Socket has no similar access. To compensate for this disparity, Socket proposes language in Section 7.3 that would require CenturyTel to provide it with a log of all of Socket's trouble tickets.[421] Not only does Socket require knowledge of which tickets are still open, Socket also needs knowledge of what took place in the closed repairs so it can provide that information to customers who inquire about their service issues.[422]

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419 Scott Rebuttal at 8.

420 *Id*.

421 Tr. at 422:10-12 (Bruemmer).

422 Tr. at 422:2-9 (Bruemmer).

CenturyTel has committed to provide service equal in quality to that which CenturyTel provides to itself. Because Socket employees do not have equivalent access to the Remedy database, Socket must repeatedly contact CenturyTel customer service employees to determine the status of repair tickets for Socket's customers. Socket's proposal alleviates the disparate provision of service information and allows Socket to respond to its customers' needs in the same manner as CenturyTel is able to respond to its own retail customers. The Commission should require that CenturyTel provide Socket with a log of Socket's trouble tickets.

Socket also proposes that CenturyTel provide Socket with a summary status report of repair calls. CenturyTel claims that this request is an "example of a Socket demand that attempts to impose additional administrative burden and cost on CenturyTel for the primary purpose of making Socket's business operations more convenient to Socket."[423] The Commission should not reject Socket's proposal for this reason as both parties have routinely proposed language in this contract to make their business operations more convenient or efficient.

CenturyTel witness Scott claims that CenturyTel does not provide such status information to its own plant managers.[424] Mr. Bruemmer explained, however, that a summary report would not be required to be provided to the CenturyTel plant managers because they have electronic access to the information and can review it as necessary. If Socket were provided with similar electronic access to the status information, it would no longer be necessary to receive the requested summary reports.[425]

CenturyTel is required by law to provide operations support services equal in quality to the services that CenturyTel provides to itself. Because electronic access to the information

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423 Scott Rebuttal at 10.

424 Scott Direct at 9.

425 Bruemmer Rebuttal at 3.

requested by Socket is available to CenturyTel but is not available to Socket, however, Socket does not have access to the status of repair calls on parity with CenturyTel. The Commission should approve Socket's proposed language that compensates for the disparity of access to Socket's service tickets to allow Socket to properly conduct its business and to be better informed of the status of its repair tickets with CenturyTel.

C. Socket should not be required to contact CenturyTel's retail repair center to initiate wholesale service requests.

Article IX, Issue No. 2[426]

In Section 7.1, the parties agree that Socket will be provided with a single point of contact for its maintenance and repair issues. CenturyTel proposes that Socket call the same number that CenturyTel's residential and business retail customers call for service. Being placed in a retail queue does not satisfy Socket's requirements as a wholesale CenturyTel customer and can even be dangerous, such as the time Socket waited in a retail queue during a 911 trunk outage, causing serious delay and endangering public safety.[427]

Calling a ticket into the repair center often only serves to delay the start of a ticket with knowledgeable personnel who can actually resolve the issue.[428] For example, it has been Socket's experience that CenturyTel personnel in the repair center do not understand the circuit IDs for the high capacity, interconnection, and 911 circuits, which are different from retail circuit IDs. Consequently, repair tickets on these circuits have had to be placed as "Miscellaneous Tickets" in the CenturyTel system because repair center personnel have not been able to find the circuit IDs in their system.[429] The fact that the retail repair center personnel are only able to

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426 Bruemmer Direct at 6-7; Bruemmer Rebuttal at 4-5.

427 Bruemmer Direct at 6.

428 Bruemmer Rebuttal at 5.

429 *Id.* at 4.

open "Miscellaneous Tickets" (due either to their training and/or the CenturyTel systems) for the types of circuits that Socket purchases from CenturyTel highlights the fact that the retail repair center should not be the primary vehicle for starting a repair ticket for higher capacity circuits.[430]

Socket has demonstrated that CenturyTel's retail approach to wholesale service can endanger public safety, delay repairs, and impair Socket's ability to initiate service requests with knowledgeable wholesale customer service representatives. For these reasons, Socket objects to CenturyTel's procedure requiring Socket to contact a retail call center. Socket proposes that, to initiate its service order requests, its service technicians call a number that is different from the retail call center so that customer service employees are available who are properly trained to address Socket's wholesale issues.[431]

VI. PERFORMANCE MEASURES[432]

The purpose of performance measures and a remedy plan in the industry is to provide an incentive for the ILECs to provide high quality services on a timely basis for CLECs *so that CLECs' customers receive the benefit* of that. At the hearing, it became clear that the parties are in agreement that a set of performance measures and a remedy plan will be part of the interconnection agreement resulting from this arbitration. The parties also appear to be very close to agreeing on the aspects of CenturyTel's performance, *e.g.*, meeting provisioning due dates, that will be subject to such measures and a remedy plan. Socket is pleased with the progress made by the parties on this issue. Work remains to be done however, much of it very

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430 *Id.*

431 *See* Tr. at 417:3-4 (Bruemmer). In response to a question whether it was fair to say that the main issue is that Socket objects to having to use this 800 number in order for Socket to report or open trouble tickets for its customers, Mr. Bruemmer responded: "I guess our feeling is it should be a number with staff for people that would be working on like, interconnection type of circuits, have knowledge of them."

432 Turner Direct at 3-9; Kohly Direct at 109-113; Kohly Rebuttal at 113-127.

detailed and requiring subject matter expertise. Socket urges the Commission to establish a collaborative process in which the parties will be given a specific period of time to resolve the details of the measures and the remedy plan. Through a collaborative, any issues that are not resolved will be narrowed so that the matters that ultimately may require Commission decision will be smaller in number and more fully fleshed out than they now are.[433]

The collaborative process has worked very well for this highly technical subject area, both in the development of the original performance measures and remedy plan in SBC's 271 proceedings and in subsequent modifications. Except for certain threshold issues that should be addressed now by the Commission and which are addressed below, the vast majority of the individual PM issues identified in the DPL would be best resolved through further negotiation.

CenturyTel has proposed performance measures as well as general language for Article XV, but both the measures, remedy plan provisions and contract language contain provisions to which Socket cannot agree. CenturyTel is advocating a number of changes and an added layer of detail that were not in Socket's original proposal, but would impact it profoundly. Some changes and additions are objectionable, some are vague and will simply create another

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[433] Socket's proposed performance measures and remedy plan provisions were derived from Attachment 12 of the AT&T – GTE Interconnection Agreement that Socket and CenturyTel currently operate under and the Performance Measures attachment approved by the Commission in Case No. TO-2005-0336, with some modifications to reflect changes between CenturyTel's operations and those of SBC Missouri. Socket had proposed a set of simple measures, because it assumed as a result of the parties' negotiations that Socket (1) would have to track CenturyTel's performance, (2) would have access to only very limited data and (3) would have to develop the reports from which the Parties would determine when payments under the remedy plan were due and when a Gap Closure Plan would have to be created. CenturyTel in its direct testimony then proposed a set of performance measures as well as general language for Article XV; however, CenturyTel's proposal, although more detailed, is not better at achieving the objective of determining whether CenturyTel is offering its wholesale service in parity with the services it provides to itself, its retail customers and its affiliates. Turner Direct at 3-5. Kohly Rebuttal at 113.

round of disputes, and some are simply unsupported and arbitrary. This brief will address several of the most obvious problems with CenturyTel's proposal.

First, CenturyTel proposes in Section 1.1 of its Article XV that the cost of measuring its performance be recovered through non-recurring charges to CLECs. At this point CenturyTel has provided no information as to the work it anticipates to be required on its part. There is nothing in the testimony that addresses this. Notably, as Mr. Turner testified, because CenturyTel had refused to undertake any of the work associated with tracking its performance, Socket's original proposal stated that Socket would do so.[434] Socket does not know what information can be derived from CenturyTel's existing records and systems and what would have to be derived through time-consuming and expensive manual efforts; nor have the parties discussed what tracking activities CenturyTel may already be performing and be obligated to perform under the Commission's rules. None of these costs of tracking CenturyTel's own performance in providing service to its customers should be assigned to CLECs.

Cost recovery should be addressed at the same time as other costs and rates are reviewed. And, it is essential that the parties first resolve what measures to adopt and the precise details of the data to be gathered and reported. The parties could resolve the basic matters of what aspects of CenturyTel's performance can and should be tracked, and exactly how the performance will be measured. For example, suppose the activity being measured is "timely service order provisioning." To measure this, the parties need to determine exactly when the clock starts (e.g., would it be at the time of order submission, order confirmation, or due date confirmation); when does it stop (e.g., would it be at acceptance testing or notice of order completion); what occurrences should be excluded (e.g., CenturyTel's technicians unable to access end user

[434] Turner Direct at 4.

customer premises or Socket's failure to have in place necessary CPE); and what is being measured (e.g., is it the percent of orders not provisioned by the due date or is it the number of days on average that provisioning occurs past the due date). Only when these details are agreed upon will it be possible to determine what costs CenturyTel would incur to gather these data.

Second, although CenturyTel's criticism that Socket's proposal has the potential to penalize CenturyTel for even small deviations from the performance objectives has merit, CenturyTel's proposed solution is no solution at all. It is understandable that CenturyTel does not want to have to make a payment for failing a performance measure when that failure was the result of just one miss, and that one miss out of a small number of reported transactions constitutes a percentage that triggers payments. But, the fix CenturyTel offers is to not have the remedy plan go into effect at all until Socket has submitted 150 orders per month for three months.[435] As Mr. Kohly testified, that volume from a single carrier is unlikely to occur during the life of the agreement; thus, no remedy plan would ever actually be in effect.[436] And, even if the volume of orders does occur, there may still be small samples for some types of UNEs or resold service being ordered.

The problems that result when working with a small number of observations (in this instance, service orders) are matters that statisticians regularly face and have developed methods to address.[437] As Mr. Kohly noted, because performance measures and remedy plans have been in existence for several years, the parties could look to these or consult statisticians to assist in finding a middle ground, a means of dealing with small numbers of observations while yet

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435 Kohly Rebuttal at 116.

436 *Id.*

437 *Id.* at 118.

having a remedy plan that provided real incentives to CenturyTel to meet the performance objectives that the measures embody.[438]

Third, CenturyTel's performance measures deviate from Socket's proposal in that they require mutual negotiations to determine when the activity being measured occurred.[439] Although the parties can and should discuss this and other details regarding the measure in a collaborative process, as Mr. Kohly testified, the ongoing task of measuring aspects of CenturyTel's delivery of wholesale services cannot require mutual agreement each step of the way.[440] The Parties have to have certainty, at some point and for some period of time, so that performance can be measured and reported on a consistent basis from month to month and trends observed.

One of CenturyTel's criticisms of Socket's proposal is particularly unfair. CenturyTel criticizes Socket for proposing measures and a remedy plan that set benchmarks that do not reflect historical experience or CenturyTel's delivery of services to its own customers.[441] Socket had no access to any "historical experience" other than its own experience in dealing with CenturyTel.[442] Socket had no information on CenturyTel's delivery of services to its retail customers or its affiliates, nor any information as to what level of performance reasonably can be achieved by CenturyTel.[443] CenturyTel asserts that Socket's measures are unreasonable, but that assertion has not been "tested" through discussion and data review by the parties working

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438 Kohly Rebuttal at 118-119.

439 *Id.* at 115.

440 *Id.*

441 *Id.* at 117.

442 *Id.*

443 *Id.*

cooperatively in a collaborative process in which this matter can be given a thorough examination and solutions found.

As Mr. Kohly testified, experience shows that a collaborative process can work exceptionally well for performance measures and remedy plans once both sides fully focus on and commit to working through the technical issues.[444] In the recent SBC Arbitration proceeding to develop a successor ICA to the M2A, testimony was filed by SBC and the CLEC Coalition attesting to the success of the collaborative process conducted in Texas in the arbitration of successor agreements to the T2A. That testimony demonstrated that in Texas, the parties were able to resolve all their disputes regarding not only the specific aspects of SBC's performance to be measured but also the intricacies of how performance would be tracked plus a remedy plan. As the record in that arbitration proceeding shows, the collaborative process begun in Texas was so successful in reaching a result that SBC and CLECs found fair and workable that CLECs (including Socket as a member of the CLEC Coalition), that did not participate in the Texas collaborative agreed to apply the results to the ICA in Missouri.

A collaborative could result in performance measures and a remedy plan that is workable and that both parties would find acceptable. Even if Socket and CenturyTel cannot resolve each and every detail, we can greatly narrow the gap that currently exists between what Socket proposes and what CenturyTel proposes and can bring back for Staff mediation or dispute resolution both a smaller number of disputes and fully developed alternatives that benefit from company-to-company dialogue. In particular, as Mr. Kohly stated, the parties can review CenturyTel's current level of service that it provides its own customers, look at the "historical

444 *See* Kohly Rebuttal at 119.

experience" that Ms. Moreau says is lacking in Socket's proposal and determine benchmarks for performance that are achievable. [445]

The need to flesh out details is apparent if one looks at the contract language CenturyTel is proposing in Article XV. For example, in Section 4.5 CenturyTel proposes to add the following sentence:

> CenturyTel is committed to service parity. Both parties recognize that a sufficient volume of orders must be processed before a Performance Measurement can exhibit with a degree of confidence that parity does or does not exist.

This language leaves open to debate and dispute what constitutes "parity" here and it leaves open to debate what would be a "*sufficient* volume of orders" and whether that volume requirement applies not just to Socket's orders but to the volume of orders CenturyTel receives from its own customers for a particular service. Moreover the concept of "confidence" has a specific meaning in statistical analysis but is not defined here and the Parties have not discussed what "degree of confidence" they want to apply here.[446] Mr. Kohly testified that Socket does not object to pursuing performance measures that meet statistical tests for "degree of confidence," but the parties have not discussed performance measures at that level of detail.[447] Thus, it does not seem productive to include language such as that proposed by CenturyTel that is unspecific and only opens the door to dispute. This is a perfect example of a matter the Parties can and should resolve through a collaborative process.

The same problem exists with CenturyTel's proposed language in Section 4.5.1 that states that the Parties will agree

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445 Kohly Rebuttal at 120.

446 *Id.* at 121.

447 *Id.* at 122.

> to a 'transition period' where process data will be accumulated and discussed. This information will assist the designated coordinators in their development and implementation of processes.

The duration of the period and how it will be collected and reviewed need to be fleshed out through discussion of the parties' capabilities to collect data and when they can begin to do so.[448] Agreement on these basics is needed before this concept could have any real meaning. Collaborative discussions could resolve this.

Two other matters require discussion in this brief. First is DPL Issue 3 and the Gap Closure Plans and associated penalties. Mr. Kohly described the purpose of the Gap Closure Plan as a means to address situations where CenturyTel's performance in delivering wholesale services on which Socket relies is failing to meet, on a regular basis, the performance measures set forth in this Agreement.[449] Performance misses that occur only occasionally will not trigger the Plan; the objective is to identify and correct chronic performance misses.[450] Thus, if CenturyTel fails to meet certain of the performance measures for three consecutive months in a six-month period, CenturyTel must thereafter submit to Socket a Gap Closure Plan. That plan will identify in specific terms what CenturyTel proposes to do to identify the causes behind its performance misses and state how CenturyTel will address the causes of the problem to correct that on-going performance issue.

The key elements of the Gap Closure Plan are that CenturyTel must develop a proposed Plan within a specific amount of time and that the Plan will identify a date by which performance will be corrected. CenturyTel's language would include no such date for corrected performance, even though the parties agree that the Plan is to be one to which both parties agree.

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448 Kohly Rebuttal at 122 n. 139.

449 *Id.* at 115.

450 *Id.* at 115-116.

By the time a need for a Plan arises, CenturyTel will know that it has missed its performance two months in a row; thus to the extent there are obvious means within CenturyTel's control to improve performance, one might reasonably expect that some action will be undertaken already. Performance that is missed three months in a row is a significant problem, indeed it potentially is a significant end-user customer-affecting problem for Socket, and it is entirely reasonable to have a specified plan with a specified date for correcting missed performance. Socket's proposed language sets out reasonable requirements and should be adopted.

A Gap Closure Plan is part of the ICA that CenturyTel and Socket currently are operating under, but it has never been implemented. However, similar efforts undertaken by SBC have been successful. As the Commission is aware, the original performance measures and remedy plan that were part of the M2A required SBC to undertake a root cause analysis if its performance was below parity or did not meet benchmarks for a number of consecutive months. SBC took this obligation seriously and worked to identify the reasons why its performance was coming up short and to address those reasons. CLECs have seen very significant improvements in SBC's performance on almost every measure.[451]

It is because the root cause analysis has been successful and because SBC has had an incentive to improve its performance in delivering services to its wholesale customers, that CLECs overall have seen performance improvements where problems existed. CenturyTel has drastically reduced the dollar amounts of the payments set out in Article XV that would apply if it fails to fulfill the provisions regarding the Gap Closure Plan, contending that the amounts in Socket's proposal bear no economic relationship to the harm Socket suffers.

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[451] Kohly Direct at 112.

The purpose of remedy plans is not to compensate CLECs for actual harm, but to incent ILECs to perform. ILECs as well as CLECs benefit from such plans because they are liquidated damages provisions that allow the Parties to avoid costly litigation over damages and breach of contract claims. Because a Gap Closing Plan only comes into existence when performance measures show a "chronic" problem, it is vital that CenturyTel have strong incentives to develop and live up to such Plans. The payment amounts proposed by CenturyTel are not sufficient. The development of a Plan is critical, yet the financial figures CenturyTel proposes to pay or credit to Socket for failure to develop a plan and failure to adhere to the plan are paltry.[452]

The Plan is only required when performance misses are chronic, and the Plan and its timelines are not dictated by Socket but are developed by and agreed to by CenturyTel. Payments under the Gap Closure Plan should be a true incentive, not so small that they can be written off as "just a cost of doing business."

Finally, one of the threshold issues on which the Commission could issue a decision now, that would assist the parties in the collaborative, concerns whether Socket is required to submit accurate forecasts in order for the performance standards and remedy plan to have effect. CenturyTel contends that it cannot be held to any performance standard for pre-ordering, ordering and provisioning of UNEs and services unless Socket submits accurate forecasts of its order volumes and future facility needs. It proposes two performance measures that would apply only to Socket. Furthermore, CenturyTel's proposed remedies in its individual PMs in some instances state that the remedy plan is triggered only if Socket submits completely accurate orders at least 95% of the time.

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[452] Kohly Rebuttal at 115.

CenturyTel's testimony is peppered with complaints that Socket's order volume is too small to justify meeting unbundling obligations, OSS obligations and performance measure and remedy plan obligations. Yet, here, CenturyTel would have the Commission believe that it has real concerns about being overwhelmed by Socket's quantity of orders. It is readily apparent in this industry that (1) no competitor in the marketplace, including Socket, can ever create an *accurate* forecast of order volumes or its facility needs and that (2) Socket's order volume is not so great in size that its growth alone will cause CenturyTel to have to hire additional personnel.

Forecasts are known in the industry to have limited value. As Mr. Kohly explained:

> Some CLECs and RBOCs have been working together to share non-binding forecasts of interconnection facility needs, and to my knowledge all that is expected is a good faith effort to forecast needs to avoid problems such as tandem exhaust. The volume of service orders any CLEC submits is not dependent upon its marketing efforts alone, but is dependent on customer response to marketing and customer decisions, such as business relocations and expansions, over which we have no control and know nothing about until service is requested from Socket. There is no way to predict the number of customers Socket will acquire (or lose) in any month, nor can we predict what services these customers will want or where they will want them. Facility needs similarly are driven by the size of the customers who select a telecommunications carrier's service, the nature of their needs, and their location. Asking Socket to submit forecasts while attempting to hold it to some standard of accuracy makes no sense.[453]

It is important to note that *CenturyTel is Socket's competitor*. Forecasts of order volumes and facility needs could give CenturyTel insight into Socket's marketing and expansion plans, or Socket's efforts to woo particular customers. It is not reasonable to expect a CLEC to reveal this type of information indirectly when it would never provide it directly to its major competitor who serves the lion's share of customers in its territory.[454]

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[453] Kohly Rebuttal at 123.

[454] *Id.* at 124.

The Commission should rule that any performance measures and remedy plan to be included in the parties' ICA will apply to CenturyTel's performance of its obligations under the ICA only, not Socket's performance, and that the provision of forecasts specifically will not be required. If there is any legitimate concern that Socket submits service orders with inaccurate information, the way to ensure that CenturyTel is not penalized for Socket's errors is to, first, require CenturyTel to provide improved OSS and, second, exclude inaccurate orders where Socket makes an error (i.e., an error is not caused by CenturyTel information or inconsistent databases) from the performance calculations.

VII. DEFINITIONS

Article II, Issue 6[455]

This issue concerns the definition of "Currently Available," which Socket defines as follows: "Existing as part of CenturyTel's network at the time of the requested order or service and does not include any service, feature, function or capability that CenturyTel, **either directly or through an Affiliate**, does not have the capability to provide." Socket has proposed the disputed language based upon its understanding and experience to date, which demonstrates that a significant portion of CenturyTel's interoffice transport network is provided by its affiliate, CenturyTel Fiber II d/b/a LightCore.[456]

Socket presented testimony demonstrating how extensive LightCore's facilities are, including maintaining Points of Presence (POPs) in 35 CenturyTel end offices, many of which are relatively small and ten of which are remote end offices. The balance of LightCore's POPs in Missouri are in large central offices that are also tandems, and are more typical for IXC fiber

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455 Kohly Direct at 22-27; Kohly Rebuttal at 36-37.

456 Kohly Direct at 22.

carriers. [457] CenturyTel claims this configuration is an historical accident, and reflects the network set-up of Verizon.[458] While that may be true, CenturyTel Inc. (the parent) certainly did nothing to change the ownership arrangement of this configuration when it purchased the piece parts.

CenturyTel admits that it practices "just in time" inventory practice with respect to its interoffice network,[459] but of course does not acknowledge that such a practice creates the ability to avoid fulfilling interconnection and unbundling obligations because substantial network assets are held in the unregulated affiliate's name rather than in the ILEC's name.[460] CenturyTel does acknowledge that Socket is concerned about the availability of facilities when Socket wishes to purchase EELs, but suggests that Socket simply purchase the missing, unavailable-from-CenturyTel transport facilities directly from its affiliate or another IXC.[461] Even if the EELs eligibility criteria concerning collocations do not prevent Socket from purchasing a UNE loop from CenturyTel and transport directly from LightCore as CenturyTel claims,[462] CenturyTel's witness does not explain how Socket is to combine these elements. It appears likely that this would require Socket to purchase channel terminations from CenturyTel's special access tariff. In the case of a DS1 EEL, that would amount to a non-recurring charge of $450 and a recurring charge of $209 for each end,[463] for a total one-time payment of $900, and a monthly recurring charge of $418, which additional charges would not be incurred if Socket could purchase the

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457 *Id.* at 25.

458 Simshaw Rebuttal at 25-26.

459 Davis Rebuttal at 8.

460 *See* Kohly Direct at 23.

461 Davis Rebuttal at 10.

462 Busbee Rebuttal at 5.

463 CenturyTel Operating Companies, FCC No. 3 tariff, 3rd Revised Page 7-119. These rates are in effect for the Branson area and the St. Charles County area.

entire EEL from CenturyTel. Other special access charges might also arise, depending on which facilities CenturyTel claims are not currently available.

The Commission has encountered a similar situation in Case No. TO-97-269, *In the Matter of the Application of Sprint Communications Company L.P. for a Certificate of Service Authority to Provide Basic Local Telecommunications Service and Local Exchange Telecommunications.* In that case, a Sprint CLEC sought certification to provide service in the Sprint ILEC territory. The Commission stated its concerns about affiliates operating in the same territory as follows:

> The Commission finds that the question of what protections may be necessary in a situation where a CLEC seeks a certificate of service authority to provide basic local service in the territory of an ILEC with which it is affiliated is a case of first impression. Concerns were raised about the potential for abuses in such a situation. One example discussed in Staff's Suggestions in Support of the Stipulation and Agreement and at the stipulation hearing is the possibility that an affiliated CLEC could place new facilities and offer new services instead of the ILEC, which could encourage the migration of customers to the CLEC by limiting the offerings of the ILEC, and could circumvent the requirements of the Federal Telecommunications Act of 1996 by depriving competitors of access to new facilities or new services through the purchase from an ILEC of services for resale or UNEs.[464]

The Commission then found that the provisions of a Stipulation, which placed several conditions on Sprint the ILEC and Sprint the CLEC, was sufficient to "ensure that adequate protections are in place to prevent abuses." One of those conditions which was placed on Sprint the ILEC states: "Sprint-United will offer unbundled network elements (UNEs) or resale throughout its territory, on the same terms, prices, and conditions, regardless of whether Sprint-United or Sprint provides the underlying facilities."[465]

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[464] Case No. TA-97-269, Report and Order (May 1, 1998), available at http://www.psc.mo.gov/orders/older/04217269.htm

[465] *Id.*

In this case, the potential for abuse is similar to that which concerned the Commission in the Sprint case, namely depriving competitors of access to facilities by having those facilities reside with the affiliate rather than the ILEC. CenturyTel could practice its "just-in-time" inventory, as it admits it does, and claim, for example, that it cannot satisfy a request for an EEL because a particular transport circuit is not "currently unavailable" – but then can serve its own needs by purchasing the equivalent facility from its affiliate. What Socket seeks here is parity, i.e., that CenturyTel simply provide the same thing it would provide for itself, regardless of where it gets its facilities – and parity does not consist of Socket purchasing the piece parts, only to incur additional special access charges by CenturyTel to connect those parts which charges could have been avoided if CenturyTel had the facilities itself.

Socket is not seeking to make LightCore a party to its interconnection agreement, nor is Socket requesting the Commission to order LightCore to make certain facilities available to Socket. Instead, Socket is requesting the Commission to order CenturyTel the ILEC to offer unbundled network elements and resale throughout its territory, on the same terms, prices, and conditions, regardless of whether CenturyTel the ILEC owns the facilities or if CenturyTel the ILEC gets the underlying facilities from its affiliate. Such a policy will ensure only that Socket receives the treatment it would have been entitled to if CenturyTel had not chosen to divide up the various ownership of its facilities into different corporations. Even if CenturyTel did not set up its corporate configuration in a deliberate attempt to circumvent the requirements of the Federal Telecommunications Act of 1996 by depriving competitors of access to UNEs, it should not be permitted to accidentally benefit in the same way because of its corporate structure.

Article II, Issue No. 14[466]

The primary debate between the parties is fully explored in this Brief with regard to Article V issues, *i.e.,*: is the FCC's assertion of jurisdiction over ISP-bound traffic limited to ISP-bound calls that originate and terminate in the same local exchange or does it extend to all ISP-bound traffic, therefore making ISP-bound traffic more generally subject to the federal regime, or is the situation that if the call is inside a local exchange, it's interstate, but once it goes outside the local exchange, it's intrastate?[467]

CenturyTel's definition incorporates its view of the limit on the *ISP Remand Order* definition of ISP-Bound traffic.[468] CenturyTel's definition also defines information access traffic; however "information access" can be a broader set of services than CenturyTel includes in its definition. In fact, in the *ISP Remand Order*, the FCC said that ISP-Bound traffic is a subset of information access. Information access is a term that goes back to before the 1996 Act, to the "Modification of Final Judgment" that broke up the original AT&T. The FCC examined that category of traffic pursuant to Section 251(g) of the Act in the *ISP Remand Order* and decided that ISP-Bound traffic was a subset of information access.

Socket recognizes that the resolution of this issue is linked to the Commission's determinations on issues related to compensation for ISP-Bound and FX-type traffic, but Socket is concerned that if the Commission incorporates a definition that limits information access to calls within the local calling area (as proposed by CenturyTel), that the definition would go beyond any interpretation of the *ISP Remand Order* that CenturyTel's position might support, because the Commission would be reaching out and defining yet another term as being limited to

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466 Kohly Direct at 28-31; Kohly Rebuttal at 37-39.

467 Tr. 504:6-13 (Socket attorney).

468 Tr. 504:15-17 (Socket attorney).

the local calling area. This approach is nothing more than an invitation to further dispute resolution proceedings.

Socket's definition of "Information Access Traffic" incorporates its previously-proposed definition of "Information Access."[469] Socket's definition is simple and straightforward, and recognizes that Information Access Services are specialized exchange telecommunications services that are purchased by providers of information services.

CenturyTel inappropriately attempts to equate the definition with "ISP-bound traffic."[470] In addition to ISPs, other types of information service providers purchase Information Access Services. Even worse, CenturyTel proposes to include only calls from end users that terminate to an ISP within the same CenturyTel exchange or common mandatory local calling area. It should be obvious that a call to an ISP is "ISP traffic" regardless of where the ISP is located (no matter how one views the limits of the *ISP Remand Order*), and CenturyTel should not be permitted to avoid interconnection and compensation obligations in a roundabout way by its definition.

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[469] The parties agreed to combine this issue and Issue No. 13, the definition of "Information Access." Socket's proposed definition: **1.60 "Information Access Traffic" is traffic arising from the provision of Information Access Services, are specialized exchange telecommunications services and *where necessary*, the provision of network signaling and other functions in connection with the origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of a provider of information services.**

[470] CenturyTel's proposed definition: 1.60 Information Access Traffic, or ISP-Bound Traffic" in accordance with the FCC's Order on Remand and Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intermarried Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket 96-98, 99-68 (rel. April 27, 2001) (FCC ISP Compensation Order) if the call (i) originates from end users and terminates to an ISP in the same CenturyTel exchange area; or (ii) originates from end users and terminates to an ISP within different CenturyTel Exchanges that share common mandatory local calling area, as defined in CenturyTel's tariff, e.g., mandatory Extended Area Service (EAS), mandatory Extended Local Calling Services (ELCS), or other like types of mandatory expanded local calling scopes. The term Information Access Traffic does not include transmission of voice telecommunications traffic regardless of whether it is delivered to an ISP and regardless of whether it is carried at any point on facilities via Internet protocol.

Additionally, Socket objects to including the reference to the FCC decision in the definition. Including that reference likely will contribute to ambiguity and disputes because that decision is subject to interpretation. Including it in the definition adds unnecessary ambiguity to the term.

Article II, Issue No. 15[471]

Both parties describe an internet service provider ("ISP") as an enhanced service provider. Socket's proposed definition comes directly from the FCC's *ISP Remand Order*, and is simple and straightforward.[472] In contrast, CenturyTel's proposed definition unnecessarily references an FCC order that is subject to interpretation and increases the likelihood for disputes in the future.[473] The paragraph to which CenturyTel refers is not a definitional paragraph.[474]

The information services definition in the federal Act has been hotly contested and has been used in very significant ways in deregulating services. CenturyTel proposes to reference a paragraph in the FCC order as a definition of a term in this ICA; however the reference is not a definition but is itself a reference to two other definitions. This approach is not the best or clearest way to draft the definition.

The CenturyTel definition also fails to recognize that ISPs are permitted to purchase exchange services from LEC's local tariffs and limits its definition to describing an ISP only as

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471 Kohly Direct at 31-32; Kohly Rebuttal at 37-39.

472 Socket's proposed definition: **1.62 "Internet Service Provider" (ISP) is an Enhanced Service Provider that may also utilize LEC services to provide their customers with access to the Internet. "ISP traffic" is traffic to and from an ISP.**

473 CenturyTel's proposed definition: Internet Service Provider (ISP) is an Enhanced Service Provider that provides Internet Services, and is defined in paragraph 341 of the FCC's First Report and Order in CC Docket NO. 97-158.

474 Tr. 506:10-25 (Socket attorney). In footnote 498, the FCC explains its definition of enhanced services that are defined in the federal rules. The FCC then provides references to the 1996 Act definition of information services, which is somewhat different from the enhanced services definition. At the end of the footnote, the FCC states that, for the purposes of that order, providers of enhanced services and providers of information services are each referred to as ISPs.

an enhanced service provider. When combined with CenturyTel's definition of Information Access Traffic, CenturyTel has inappropriately attempted to resolve complex interconnection and compensation issues in its favor via the definitions section of the ICA. The Arbitrator should adopt Socket's straightforward definitions and resolve those thorny issues elsewhere in this arbitration.

As unclear as CenturyTel's proposed drafting may be, however, Socket is more concerned about potential disputes that could arise as a result of the reference to the FCC order. If there is a dispute about the referenced paragraph or if the FCC takes further actions that provide more information about what it means by information services, the definition in the agreement would have to be revised.

Socket urges the Commission to keep the definition of an internet service provider clean and to reject CenturyTel's attempt to cross reference into an almost ten-year old order that does not provide a clear definition.

Article II, Issue No. 16[475]

Socket's proposed definition tracks with the way the term is defined in Missouri statutes, FCC and PSC rules, carrier tariffs and commonly used throughout the industry.[476] Under CenturyTel's definition,[477] traffic that is properly rated as "local" based on properly assigned NPA/NXX codes could be converted to intraLATA toll traffic for compensation purposes. This

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475 Kohly Direct at 32-34; Kohly Rebuttal at 39-40.

476 Socket's proposed definition: **1.68 "IntraLATA Toll Traffic" is defined as traffic between one calling area and another local calling area within the same LATA where the IntraLATA toll provider assesses a separate retail charge for originating this type of traffic.**

477 CenturyTel's proposed definition: IntraLATA Toll traffic is defined as traffic between one CenturyTel local calling area and another CenturyTel local calling area or that of another LEC within the same LATA.

would be inconsistent with both the FCC standard in the Unified Intercarrier Compensation rulemaking and with the definition of "telephone toll service" in current federal regulations.

Socket's proposal recognizes that IntraLATA means the traffic originates and terminates within the same LATA and that Telephone Toll Service is a service where the toll provider assesses a separate retail charge. Socket's definition does not restrict a Party's ability to offer bundles of service or flat-rated products. Under the Commission's rules regarding disconnection for non-payment, a carrier can only disconnect the local service for non-payment of local service. Consequently, even when services are bundled, intraLATA toll service will have a separately assessed charge – even if that charge is not usage-based.

Article II, Issue 34

As the Commission is aware, CenturyTel provides telecommunications services as an incumbent LEC through two entities in Missouri – CenturyTel of Missouri, LLC and Spectra Communications Group d/b/a CenturyTel. These two entities exist because CenturyTel acquired them in two separate transactions from GTE (now Verizon). But the two ILEC entities are fully integrated, managed jointly, operate under the same name, market their services with the same CenturyTel brand name, and operate within the same LATA. As Socket's counsel noted in his opening statement for Panel V, when Socket submits orders it does not submit separate orders for UNEs in Spectra's territory and for UNEs in CenturyTel-Missouri's territory, and both companies bill under the CenturyTel name.[478] CenturyTel would have to take affirmative steps to modify its current systems in order to change this operational reality.[479]

Socket has proposed a definition of dedicated transport to be used in this interconnection agreement that would allow it to obtain, as UNEs, transport circuits between wire centers

[478] Tr. at 508:22-509:6 (Socket counsel); Kohly Direct at 4-5.

[479] Kohly Direct at 35.

operated by CenturyTel whether or not those wire centers are located solely in Spectra's territory or solely in CenturyTel-Missouri's territory.

> "Dedicated Transport" is defined as CenturyTel interoffice transmission facilities dedicated to a particular CLEC or CLEC's customer that is within CenturyTel's network, connecting CenturyTel switches or wire centers within a LATA. **Dedicated transport also includes interoffice transmission facilities between CenturyTel of Missouri, LLC's network and Spectra Communications Group, LLC d/b/a CenturyTel's network and vice-versa that directly connect two switches or wire centers within a LATA without making use of transit or switching facilities of a third party LEC.** Dedicated Transport does not include transmission facilities between CenturyTel's network and Socket's network or the location of Socket's equipment.

Without this express language, Socket's ability to obtain and use loop-transport combinations—EELs—will be severely limited.[480] The Spectra end offices that directly subtend the CenturyTel-Missouri tandem would essentially be "written off" from having competitive alternatives because these Spectra end offices do not have direct connection to other Spectra end offices.[481] As CenturyTel's witness Mr. Busbee acknowledged, if UNE transport is not available between a Spectra end office and the CenturyTel-Missouri tandem it subtends, Socket could only serve customers out of the Spectra end office by obtaining special access (ordered from both ILECs) or by obtaining a facility from a third-party provider.[482]

CenturyTel's testimony does not refute Socket's observations regarding the management and operations of these two affiliated ILECs. Indeed, Mr. Busbee testified that Spectra and Century-Tel Missouri "use a single ordering system and share administrative resources."[483] What CenturyTel argues, instead, is that the FCC's definitions require that dedicated transport be

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480 Kohly Direct at 36, Kohly Rebuttal at 42.

481 Kohly Rebuttal at 42.

482 Tr. at 564:7-25 (Busbee).

483 Busbee Rebuttal at 6.

provided only between wire centers and switches owned by the same ILEC.[484] But, the FCC's definitions are not so crystal clear. Rule 51.319(e) addresses the ILECs' obligation to provided unbundled dedicated transport as follows:

> *Dedicated transport*. An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to dedicated transport on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part and as set forth in paragraph (e)(1) through (e)(5) of this section. As used in those paragraphs, a ``route'' is a transmission path between one of an incumbent LEC's wire centers or switches and another of the incumbent LEC's wire centers or switches. A route between two points (e.g., wire center or switch "A" and wire center or switch "Z") may pass through one or more intermediate wire centers or switches (*e.g.*, wire center or switch "X"). Transmission paths between identical end points (*e.g.*, wire center or switch "A" and wire center or switch "Z") are the same "route," irrespective of whether they pass through the same intermediate wire centers or switches, if any.

The first sentence requires ILECs to offer unbundled dedicated transport consistent with *all* of the following subsections of the rule. The second sentence defines what a "route" is, a route being the new terminology utilized by the FCC in eliminating some ILEC unbundling obligations and instituting caps on the quantity of dedicated transport circuits a CLEC must obtain.

The next section of the Rule--Section 51.319(e)(1)--defines dedicated transport:

> (1) *Definition*. For purposes of this section, *dedicated transport includes incumbent LEC transmission facilities between wire centers or switches owned by incumbent LECs, or between wire centers or switches owned by incumbent LECs and switches owned by requesting telecommunications carriers,* including, but not limited to, DS1-, DS3-, and OCn-capacity level services, as well as dark fiber, dedicated to a particular customer or carrier.

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[484] CenturyTel also argued that it was technically infeasible to require dedicated transport to be provided between a Spectra end office and a Century-Tel Missouri end office if the tandem on which one of the wire centers subtended was owned by AT&T. Socket has responded by modifying its proposed contract language to specifically exclude these situations by adding the limiting phrase that dedicated transport "directly connect[s] two switches or wire centers within a LATA without making use of transit or switching facilities of a third party LEC."

(emphasis supplied) Thus, dedicated transport as a UNE *on its face* includes transport circuits between ILEC and CLEC wire centers or switches; it is not defined as transport between a single ILEC's wire centers or switches. And, the next section of the Rule--Section 51.319(e)(2)—in which the FCC establishes the ILECs' unbundling obligations with respect to entrance facilities states that "[a]n incumbent LEC is not obligated to provide a requesting carrier with unbundled access to dedicated transport that does not connect a pair of incumbent LEC wire centers." This section of the Rule notably does *not* say that an ILEC need not provide dedicated transport that does not connect a pair of *its* wire centers.

The FCC's analysis for dedicated transport in the *TRRO* expressly adopts a "point-to-point" level of granularity for determining whether impairment exists for dedicated transport.

> Thus, as we did in the *Triennial Review Order*, we identify the route as the appropriate level of granularity for our analysis. However, in order to give effect to the reasonable inferences that can be drawn between similar markets, we depart from the *Triennial Review Order*'s exclusive focus on the particular route at issue, and instead establish categories of routes, as defined by the economic characteristics of each end-point of the route, in order to better identify routes with similar economic traits. We thus find no impairment not only on routes exhibiting actual competitive deployment but also on routes that are similar, in relevant respects, to those routes.
>
> A route-specific market focus, as well as treating similar routes in a like fashion, is consistent with long-standing Commission precedent identifying transport as a link between two points. We define a route, for purposes of our analysis here, as a connection between incumbent LEC wire center or switch A and incumbent LEC wire center or switch Z. Even where in the incumbent LEC's network, a transport circuit from A to Z passes through an intermediate wire center X, the relevant determination is whether competitive providers are impaired without access between the two end-points, A and Z. Individual routes, even within the same larger geographic area, may have very different economic characteristics because, for instance, some routes may connect points of very high traffic aggregation while other routes do not. We find that analyzing transport at this very detailed level is necessary given the unique economic and operational characteristics of each individual route.[485]

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[485] *TRRO* at ¶ 79-80 (footnotes omitted).

Thus, the route concept and the route definition are (1) tied to the objective of determining where competitive deployment exists or potentially occur and (2) rooted in the FCC's past reliance on a point-to-point analysis when defining geographic markets for purposes of examining competition.[486] At no time in the *TRRO* did the FCC examine the situation that exists here where affiliated ILECs, serving the same LATA, share the same management, and exist as independent legal entities purely through the accident of the timing of their acquisition.

Looking at the FCC's Rule as a whole, especially its definition of dedicated transport, it is reasonable to conclude that the FCC's use of the point-to-point concept and its definition of a "route" did not contemplate the facts at hand. This is not a situation in which Socket seeks stretch the FCC's Rule to its limits. Socket is not asking the Commission to require that unaffiliated ILECs must accommodate CLEC orders for dedicated interoffice transport UNEs. Socket is not asking for contract language that would provide for dedicated transport between Spectra and AT&T wire centers or between CenturyTel-Missouri and Sprint wire centers. The two ILEC entities involved are under common ownership/management.

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[486] In ¶ 80 quoted above, the FCC referred in its footnote 228 to several examples of its prior use of point-to-point analysis to define geographic markets, as follows:

> *See, e.g.*, *LEC Classification Order*, 12 FCC Rcd at 15762, 15793, paras. 5, 65 ("We define the relevant geographic market for interstate, domestic, long distance services as all possible routes that allow for a connection from one particular location to another particular location (*i.e.*, a point-to-point market). We conclude, however, that when a group of point-to-point markets exhibit sufficiently similar competitive characteristics (*i.e.*, market structure), we can aggregate such markets, rather than examine each individual point-to-point market separately."); *Application of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of NYNEX Corp. and its Subsidiaries*, File No. NSD-L-96-10, Memorandum Opinion and Order, 12 FCC Rcd 19985, 20016-17, para. 54 (1997) ("A geographic market aggregates those consumers with similar choices regarding a particular good or service in the same geographical area. In the [*LEC Classification Order*], we found that each point-to-point market constituted a separate geographic market. We further concluded, however, that we could consider groups of point-to-point markets where customers faced the same competitive conditions.") (internal footnotes omitted).

No ILEC should be permitted to avoid its unbundling obligations through structural machinations. Socket recognizes that a historical reason exists for the current existence of separate entities; nonetheless if CenturyTel-Missouri and Spectra are permitted to rely on their legal status to deny Socket UNE transport, the potential exists for other ILECs to deliberately restructure in order to shrink their certificated territory and artificially limit CLECs' access to important UNEs such as dedicated transport. Socket's proposed language should be adopted.

VIII. GENERAL PROVISIONS

Article III, Issue 2[487]

The first Article III issue remaining in contention is the number of days that Socket has to review and pay CenturyTel's bills. Socket proposes that it have 45 calendar days from the date printed on the bill.[488] CenturyTel proposes that Socket have 20 business days from the date printed on the bill,[489] hence giving a due date of 28 days (unless a holiday happens to occur during a particular month). But CenturyTel's current system "has been configured for a 30-calendar day period,"[490] not a 28-day period. CenturyTel also apparently issues its bills for a given customer on the same date each month,[491] thereby giving its customers anywhere from 28 to 31 days to pay, depending on how many days there are until the same date of the following month and unrelated to the number of business days. At hearing, no CenturyTel witness knew for sure what triggered the billing system to print a particular date on the bill although it appeared to be the same every month,[492] so the determination of the start date for the varying due

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487 Kohly Direct at 37-41; Kohly Rebuttal at 43-45

488 See Article III, Socket's proposed §§ 9.2, 9.3 and 9.5.

489 See Article III, CenturyTel's proposed §§ 9.2, 9.3 and 9.5

490 Tr. at 569:4-7 (P. Hankins).

491 Tr. at 571:18-25 (Moreau).

492 Tr. at 571:8-11, 572:10-16; 573:1-7 (Moreau).

dates and its relationship to when the bill is printed, audited, and mailed is still somewhat of a mystery. But despite CenturyTel's admitted "loose interpretation"[493] of precisely when a payment may be due, CenturyTel is opposed to any change whatsoever to the current due date system.

Socket's request is simple: Because CenturyTel's bills are consistently plagued with errors, they require extensive auditing followed by the filing of billing disputes – all required prior to the due date; consequently, Socket needs at least 30 days for this process after it sees the bill.[494] Because it has been Socket's experience that Socket receives CenturyTel's bills from 10 to 19 days following the printed bill date, Socket proposed 45 days from the bill date so it would have sufficient time to review and audit those bills.[495]

There is somewhat conflicting evidence on the volume of bills currently received by Socket,[496] but there is no real conflict that the level and types of errors presented by Socket were correctly represented. Instead, CenturyTel countered that it had eventually corrected the specific errors which Socket identified in its testimony, and that the total volume was not that high because the volume of bills was not that high.[497] But it is the sheer variety of errors that causes Socket's audit process to be so time-consuming.[498] As detailed in Mr. Kohly's testimony, CenturyTel's errors have included incorrect rates for wholesale items, charges for wholesale services not purchased, assessment of incorrect service order charges, assessment of retail taxes,

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493 Tr. at 569:22-23 (P. Hankins) (When asked whether CenturyTel would need to change its current 30 calendar-day billing system to accommodate its new proposed 20 business-day system, Ms. Hankins stated they were interpreting "loosely" the number of days they would be willing to give Socket to pay).

494 Kohly Direct at 38-39, 41.

495 *Id.* at 37-38, 40-41. As noted at hearing, the time-period Socket reviewed in its bill study was August 2005-February 2006. Tr. at 538:18-539:2 (Kohly).

496 In his Rebuttal Testimony at 43, and at hearing (Tr. at 537:17-538:17), Mr. Kohly clarified that Socket receives 8 wholesale bills.

497 P. Hankins Rebuttal at 15-18.

498 Tr. at 535:14-17 (Kohly); Socket Rebuttal at 44-45.

charges for special access fees on interconnection facilities, errors in 911-related charges, the inclusion of third-party retail services on Socket's wholesale bill, and assessment of toll charges associated with a prior CenturyTel customer's number before it was ported to Socket.[499] Because there is no pattern to the errors or easy way to research and identify what or why something has been billed, it takes a much greater effort to audit CenturyTel's bills even though they may not be as long as bills received from AT&T Missouri.[500]

The other conflicting testimony concerns how long it takes CenturyTel to get its bills to Socket. CenturyTel testified that its CABS bills are mailed within one to two days of the bill date, and its Ensemble bills are mailed within four to five days of the date printed on the bill.[501] Socket's experience, however, has been that it receives its bills from 10 to 19 days following the date printed on the bill, indicating either that CenturyTel's statistics are wrong or that the location of CenturyTel's billing office has an unusually slow postal system. CenturyTel also claims that the full bills are available to Socket online within these same time frames, but Socket has not had the opportunity to verify that.

It is not necessary for the Commission to resolve these factual disputes in order to award Socket the 30 days it needs to review, audit, dispute, and remit payment to CenturyTel. The Commission can simply approve language consistent with its decision in the M2A successor arbitration and provide for the bill due date to be 30 days from receipt.[502] Then, if Socket can indeed readily access all of its bills online in an identical format to those received by mail, as CenturyTel claims, and if CenturyTel is correct that those bills are posted two to four days

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499 Kohly Direct at 38-40; Kohly Rebuttal at 44-45.

500 Kohly Rebuttal at 44-45.

501 P. Hankins Rebuttal at 9; Tr. at 570:24-571:2 (Moreau).

502 Socket indicated at hearing that it would be satisfied with this result. Tr. at 540:14-16 (Kohly).

following the date printed on the bill,[503] then such a Commission decision would not require CenturyTel to amend its billing systems because Socket would only receive an additional two to four days to pay – and CenturyTel has already demonstrated that there is a three-day variation in due dates for its other customers (from 28 to 31 days, depending on whether they are on a 20 business-day cycle, or a 30 calendar-day cycle, or a same-date-every-month cycle). If CenturyTel's depiction of the timeliness of its bills is in error, however, CenturyTel can then improve its own performance and shorten the overall billing cycle – but without penalizing Socket for CenturyTel's failings. Socket therefore requests a ruling that the bill due date be 30 days from Socket's receipt of CenturyTel's bills.

Article III, Issue 6[504]

The only remaining dispute on this issue involves the implementation of changes in network maintenance, management and change management. Socket has proposed the following single sentence, which CenturyTel disputes: "Either Party may request the assignment of project team resources for implementation of the change."

Socket has proposed this language to ensure that the parties work together to implement significant changes, and minimize disruption to both parties. Such changes, as set out in agreed Section 54.4, affect the transmission and routing of services using UNEs or resold services as well as other changes that affect the interoperability of the UNEs and each party's network.[505] CenturyTel provided very limited testimony on this issue, claiming that Socket should not be

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503 It must be noted that CenturyTel's testimony is somewhat inconsistent on bill availability. Ms. Moreau stated at hearing that bills are available online at the same time they are mailed. Tr. at 570:24-571:5. Ms. Hankins, however, was somewhat equivocal on the online availability, stating bills are available online from five to seven days following the date printed on the bill. Hankins Direct at 15. Regardless of which statement is accurate, the fact remains that the mailing of the bills and their availability online is solely within the control of CenturyTel.

504 Kohly Direct at 41-44; Kohly Rebuttal at 45-46.

505 Kohly Direct at 42, 44.

permitted to co-opt CenturyTel employees. [506] CenturyTel also claims that it has always made resources available to assist in understanding a change,[507] but Socket's experience to date with CenturyTel has been that it is difficult to get cooperation to resolve issues that impact both parties. This is evident simply from the course of this arbitration, where Socket was unable to get CenturyTel's attention during the negotiation phase, but finally managed to resolve more than half of the issues once Socket actually filed its petition. Consequently, Socket is not comfortable with CenturyTel's bland assurances that are not memorialized in the contract language.

CenturyTel also claims that an unspecified "burden and cost of such an imposition" will result, and that there is a potential for abuse.[508] But Socket is even smaller than CenturyTel, and does not believe in committing its own resources to a project team except for significant projects.[509] The provisions of this interconnection agreement should not be predicated on the assumption that the parties will deliberately operate in bad faith or harass the other party for no purpose. There is simply no reason to believe that Socket would invoke this provision unless the proposed change was going to have a significant impact on Socket and required an extraordinary level of cooperation to implement the change.

The Commission approved identical contested language for Socket in the M2A successor arbitration.[510] It should do so in this arbitration as well.

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506 P. Hankins Direct at 17 (a single partial paragraph).

507 P. Hankins Direct at 17.

508 P. Hankins Direct at 17.

509 Kohly Rebuttal at 46; Tr. at 528:24-529:1 (Kohly).

510 Case No. TO-2005-0336, Final Arbitrator's Report, Attachment I.A. Detailed Language Decision Matrix, at 221 (CC GT&C 17) (June 21, 2005).

IX. NUMBER PORTABILITY

Article XII, Issue 2[511]

The sole disputed issue in Article XII concerns whether telephone numbers associated with Remote Call Forwarding (RCF) may be ported. Specifically, if CenturyTel currently has a customer that has its original telephone forwarded to another telephone number, Socket will generally have no opportunity to convert that customer to Socket's service unless the same functionality of call forwarding provided by CenturyTel stays in place after the transition to Socket. This can only happen if Socket is able to port the number from CenturyTel to Socket.

Socket witness Mr. Turner testified about his experience with a presentation on this same subject to the Local Number Portability subcommittee of the North American Numbering Council (NANC). The participants in this meeting, which included most of the major ILECs, agreed that the porting of remote call forwarding numbers is a routine occurrence for which number portability should be provided.[512] Such a practice permits the business customer to retain its telephone number when it moves, and, in turn, permits that business' customers to continue to call the business without incurring toll charges.

CenturyTel objected to Socket's proposed language for a variety of reasons, including claiming that such an arrangement is a forbidden "location portability" and because location portability can result in third party customers inadvertently making, and being billed for, toll calls. In order to address some of CenturyTel's concerns, at hearing, Socket offered additional language to its proposal as follows (the addition is in bold italics):

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511 Turner (Revised) Direct at 60-62; Turner Rebuttal at 54-56.

512 Turner Direct at 61-62.

> 6.2.3 Each Party shall permit telephone numbers associated with Remote Call Forwarding to be ported***, provided that the local calling scope of the ported number does not change***.[513]

In contrast, CenturyTel's proposal is as follows:

> 6.2.3 Each Party shall permit telephone numbers associated with Remote Call Forwarding to be ported <u>if the number is being forwarded to another number located in the same rate center.</u>

Socket's proposal ensures that there are no call jurisdiction problems created for the originating caller and that no one calling the business at the remote call-forwarded number inadvertently incurs toll charges.[514]

During the hearing, Mr. Turner also provided a chart to demonstrate how the calling patterns would be affected, before and after the porting.[515] As a threshold matter, it should be noted that this issue does not concern whether Socket has the ability to offer remote call forwarding to its existing customers or to new customers. Instead, because this issue involves porting, the customers at issue are those who are already receiving a remote call-forwarding service from CenturyTel.[516] So CenturyTel's protests about the inadvisability of permitting a customer to retain the same number when it changes location – what CenturyTel is calling "location portability" – is not occurring in this porting situation because the telephone customer is ***not moving*** his location as a result of the switch to Socket and subsequent porting. He may have moved his physical location in the past, but that was already facilitated by CenturyTel in providing him with the remote call-forwarding option.[517] Socket does not seek to impose some new arrangement for that customer; it merely seeks to perpetuate the same functionality that

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513 Tr. at 514:12-16 (Socket counsel).

514 Tr. at 536:19-537:12 (Turner).

515 Socket Ex. 17; *see* Tr. at 542:14-552:2 (Turner) (explaining chart).

516 Tr. at 542:8-14 (Turner).

517 Tr. at 557:22-558:20 (Turner).

CenturyTel itself offered to its customer. And because this is a common issue, other carriers routinely provide such porting and the NANC has no problem with such porting occurring.[518] Consequently, this Commission should approve porting of RCF numbers to prevent the anti-competitive effect that would result if CenturyTel is permitted to refuse porting.

CONCLUSION

For all the reasons stated, Socket respectfully requests that the Commission adopt its proposed language for the parties' interconnection agreements.

Respectfully submitted,

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[518] Tr. at 560:1-13 (Turner).

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ATTORNEYS FOR SOCKET TELECOM, 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), the Office of Public Counsel (at opcservice@ded.mo.gov), counsel for CenturyTel of Missouri and Spectra Communications (at lwdority@sprintmail.com and at hartlef@hughesluce.com) on this 5th day of May, 2006.

/s/ Leland B. Curtis