

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

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

**SOCKET TELECOM, LLC MOTION FOR RECONSIDERATION OF
JUNE 9, 2006 ORDER DIRECTING FILING**

COMES NOW Socket Telecom, LLC (“Socket”) pursuant to 4 CSR 240-2.160, and files its Motion for Reconsideration of the “Order Directing Filing” issued by the Commission on June 9, 2006 (the “Order”).

The Order requires CenturyTel of Missouri, LLC (“CenturyTel”) to “file a pleading setting out its access line-to-trunk ratio for each of its exchanges.” The information is elicited to determine “if there are a certain number of access lines in an exchange, how does CenturyTel determine how many trunks are needed to carry traffic out of that exchange?” The Order states the information is sought in an effort “to clarify the Arbitrator’s decision with regard to single/multiple points of interconnection.”¹

Socket respectfully requests the Commission reconsider and withdraw the Order and its data request to CenturyTel. Socket states as follows in support of its Motion:

1. The Order gives CenturyTel the opportunity to provide additional post-hearing, post-Arbitrator’s Final Report, post-Comments, post Oral Argument factual evidence in this proceeding without providing Socket an opportunity to test the veracity or credibility of the facts to be alleged by CenturyTel. Moreover, the Order gives CenturyTel the opportunity to bolster

¹ Order at 1.

the record regarding a decision of the Arbitrator that it clearly supports.² Given that there is no record evidence supporting the 10% and 12% “thresholds” proposed by the Arbitrator for requiring Socket to establish additional points of interconnection (“POI”), it is not consistent with due process for the Order to provide CenturyTel and the Arbitrator a chance to supplement the record with *post hoc* rationalizations supporting their position.

If the Commission desires the hearing record be re-opened to consider the facts related to the Arbitrator’s POI proposal, Socket has the right to participate in the development of the record by cross-examining the CenturyTel personnel who provide the information sought by the Order. The Order provides no opportunity for Socket to question, or even comment on, the information to be filed by CenturyTel, and for that reason alone it should be reconsidered and withdrawn. Given that CenturyTel is not required to make its filing until June 20, 2006, and the Commission must issue a final decision by June 30, 2006, there simply is not time for Socket to meaningfully participate in the development of the record under the current procedural schedule.

If the Order is not reconsidered and withdrawn, Socket requests in the alternative that the CenturyTel “pleading” setting forth the facts elicited in the Order not be admitted into the evidentiary record in this proceeding or otherwise be considered in the Commission’s deliberations unless and until Socket is given the opportunity to rebut the accuracy and the relevance of the facts alleged by CenturyTel.

2. Socket also requests reconsideration and withdrawal of the Order on the grounds that the Order seeks information that is not relevant to the disputed POI issue. The Parties have

² CenturyTel’s Comments on the Arbitrator’s Report made clear that it concurs with the approach recommended on the issue by the Arbitrator: “[T]he Report properly rejected Socket’s demand that it be allowed to deploy a single point of interconnection (“POI”) per LATA virtually in perpetuity. ... This determination is reasonable, is consistent with the FTA’s underlying goal of encouraging facilities-based competition, and minimizes Socket’s ability to game the system.” CenturyTel’s Comments on Arbitrator’s Final Report, at 2.

made “final offers” on the POI issue: a DS3 threshold proposed by Socket,³ and a DS1 threshold advocated by CenturyTel. The Arbitrator’s Final Report found that a DS1 threshold is unreasonably low; the Arbitrator’s Report did not find that a DS3 threshold is unreasonable. Accordingly, a DS3 threshold should not be set aside in favor of the Arbitrator’s recommended outcome.⁴

There is no dispute that the applicable legal standard for establishing POIs is, as the Arbitrator’s Report recognizes, that “CenturyTel has a duty to allow Socket to interconnect at any technically feasible point within CenturyTel’s network.”⁵ The Commission previously resolved a disputed issue over thresholds for establishing additional POIs by *ordering* the inclusion of contract language in the SBC Missouri-Charter FiberLink interconnection agreement that mandates an OC-12 threshold for establishing an additional POI.⁶ The FCC, the Courts, and this Commission have ruled numerous times that an ILEC may force a CLEC to establish an additional POI only when the ILEC “can establish that the CLEC’s use of a single POI is no longer technically feasible.”⁷

³ See Comments of Socket Telecom LLC on the Arbitrator’s Final Report, at 18. Socket again emphasized its willingness to agree to a DS3 threshold at the June 6, 2006 hearing before the Commission.

⁴ The offer of resolving the issue based on a DS3 threshold for additional POIs was proposed by Socket to CenturyTel after the Arbitrator’s Final Report was issued in the hope of settling the issue. CenturyTel has never responded to Socket’s offer. Before the Arbitrator departs from approval of either of the Parties’ final offers, the Commission’s arbitration rules require that the Arbitrator find that both Parties’ proposals are unreasonable. Socket urges the Commission to consider the reasonableness of Socket’s proposed DS3 threshold before departing from the Parties’ “final offers” to craft a solution not supported by evidence already in the record. See 4 CSR 240-36.040.

⁵ Arbitrator’s Final Report, at 16.

⁶ See Case No. TO-2005-0336, Arbitration Order, at 18-19 and Attachment V Part 1 Detailed Language Decision Matrix (July 11, 2005) (ruling on “Charter NIM Issue 1(c)).

⁷ See, e.g., Case No. TO-2005-0336, Final Arbitrator’s Report, Section V at 6 (June 21, 2005). See also *Southwestern Bell Tel. Co. v. Texas Public Util. Comm’n.*, Not Reported in F.Supp.2d., 2002 WL 32066469 (W.D. Tex. 2002); *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*”).

CenturyTel's practice for determining "how many trunks are needed to carry traffic out of [an] exchange"⁸ is not relevant to the legal standards that govern when CenturyTel may require Socket to invest in additional POIs. CenturyTel's current "access line-to-trunk ratios for each of its exchanges"⁹ provide no basis for determining at what point an additional POI is "technically feasible," nor does it provide meaningful guidance on the question of whether Socket's DS3 or CenturyTel's DS1 thresholds are reasonable. Moreover, the data requested will not provide a factual basis for the radical departure from the OC-12 threshold ordered by the Commission in the M2A Arbitration one year ago. Therefore, Socket requests the Commission reconsider its Order because it will not elicit information that will lead to the discovery of admissible evidence.

3. Socket requests reconsideration because the Order includes ambiguities that permit CenturyTel to shape its response in a way that could distort the underlying facts. If the Commission does not withdraw the Order's data request, Socket urges the Commission to clarify the request to account for the following potential problems that may affect the data the Commission receives from CenturyTel.

First, the Order appears to contemplate that CenturyTel's response should only include one-way trunks, since the question posed in the Order focuses only on traffic originating in "one exchange" and being transported "out of that exchange." Focusing only on one-way trunks from an exchange is inappropriate, as it will cause an under-reporting of the number of trunks in use. At a minimum, the request should be clarified to also include trunks that either are "needed to carry traffic into that exchange," "needed to carry traffic out of that exchange," or "needed to carry traffic into and out of that exchange."

⁸ Order at 1.

⁹ *Id.*

Second, the Order appears to focus on current capacity in use rather than *available* capacity. Capacity in use at a particular point in time should not be relevant to the “technical feasibility” issues related to POIs. Rather, the focus should be on the amount of capacity available on the ILEC network to support increases in traffic. To the extent the Commission seeks information related to this concept, “Available Capacity” should be defined to include capacity currently in use, spare capacity, capacity that is readily available by adding switch ports, line cards or other electronics. Spare capacity and capacity that can be added by simply adding a switch port or a line card represent capacity that can be used to support the requested interconnection either immediately or in very short order. Thus, this capacity should be included in any analysis used to determine CenturyTel’s current trunking practices and available capacity.

Third, the data request in the Order does not specify the jurisdictional nature of the traffic being transported. This creates ambiguity and the opportunity for misreporting the number of trunks based upon differing interpretations of the Order’s request. Socket suggests the Commission clarify its request to include the total number of trunks, regardless of the jurisdiction of the traffic being carried on those trunks. The Arbitrator should also require CenturyTel to include Special Access Trunks as well as Interconnection Trunks used to exchange traffic between CenturyTel and another CLEC. This will provide the best picture of the number of trunks that CenturyTel currently uses to carry traffic to and from an exchange.

Fourth, the Order’s data request should include traffic to and from exchanges served by remote switches. The number of trunks that carry traffic to and from an exchange will vary based upon whether the exchange is served by a remote switch. In the remote switch situation, all types of traffic, regardless of jurisdiction, will be transported to and switched at the host switch, including traffic that originates and terminates in the same exchange. The host switch

will generally be located in another exchange. The Order's data request should be clarified to include this traffic as well.

WHEREFORE, for all the reasons stated, Socket respectfully requests that the Commission reconsider and withdraw its June 9, 2006 Order Directing Filing and the data request to CenturyTel that is the subject of the Order. If the Commission does not withdraw the Order, Socket requests that: (1) CenturyTel's "pleading" filed in response to the Order not be admitted into the evidentiary record in this proceeding or otherwise be considered in the Commission's deliberations unless and until Socket is given the opportunity to rebut the accuracy and the relevance of the facts alleged by CenturyTel; and (2) the Commission revise the data request in the Order in the manner suggested by Socket in this Motion.

Respectfully submitted,

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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 foregoing 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 13th day of June, 2006.

/s/ Carl Lumley