BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

THE MISSOURI SMALL TELEPHONE COMPANY GROUP'S
***AMICUS CURIAE* BRIEF**
AND PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

COMES NOW the Missouri Small Telephone Company Group ("STCG")(*see* Attachment A), by and through their undersigned counsel, and submits the following *Amicus Curiae* Brief and Proposed Findings and Conclusions to the Missouri Public Service Commission ("Commission" or "Missouri PSC").

I. INTRODUCTION

The STCG is comprised of small, rural telephone companies doing business in the state of Missouri. The STCG member companies are interested in this case because it involves issues of geographic and location portability. Specifically, Socket's complaint is that CenturyTel is not completing a geographic or "location" port. The PSC should find against Socket for the following reasons. First, Federal law does not require geographic or location portability. Second, industry practice in Missouri does not require geographic/location portability. For example, the PSC has held that Missouri's small rural incumbent local exchange carriers ("ILECs") should not bear the cost for the facilities or arrangements with third-party carriers needed to transport ported calls to any point outside the small rural ILEC local service areas. Finally, to the extent that the Commission addresses the specific terms in the CenturyTel/Socket interconnection agreement in this case, the Commission should expressly state that any ruling on geographic/location portability is strictly limited in application to the parties to that agreement.

II. DISCUSSION

A. <u>Federal law does not require location portability at this time</u>. At the present time, there is no requirement in applicable federal law or Federal Communications Commission (FCC) rules, regulations and orders that would require an incumbent local exchange carrier to port numbers when the customer is physically relocating outside of an exchange. *See* 47 C.F.R. §§52.21 and 52.23.

B. <u>Location portability is not industry practice in Missouri</u>. On the contrary, the Missouri PSC has specifically modified the FCC's wireline-to-wireless local number portability (LNP) order ("*Intermodal LNP Order*") to address the problems and costs associated with location portability for small rural ILECs.

1. The FCC's *Intermodal LNP Order*

Socket relies upon the FCC's *Intermodal LNP Order* to support its argument, but the *Intermodal LNP Order* is not on point for a number of reasons. First, the *Intermodal LNP Order* dealt with LNP between wireline and wireless companies with larger FCC-defined local calling areas (*i.e*. the MTA), so its analysis is inapplicable for LNP between wireline local exchange carriers. Second, the *Intermodal LNP Order* does not apply to Missouri's small rural ILECs because the *Intermodal LNP Order* has been remanded and stayed against application to small rural carriers by a federal appeals court. *USTA v. FCC*, 400 F.3d 29 (D.C. Cir. 2005). Third, the Missouri PSC specifically granted modification of the *Intermodal LNP Order* under 47 U.S.C. §251(f) so that Missouri's small rural ILECs will not bear the cost of facilities or arrangements with third-party carriers needed to transport ported calls to any point outside of the small rural ILEC local service areas.[1]

2. Transport Costs

Socket's position would appear to force ILECs to pay for the new transport costs related to location portability.[2] In other words, not only would the ILEC lose the customer, but the ILEC would also be forced to incur the additional ongoing expenses of transporting the "ported" calls to a distant location.[3] Before the federal appeals court remanded and stayed the *Intermodal LNP Order*, Missouri's small ILECs filed petitions for modification with the Missouri PSC to address this transport problem. After notice and hearings, the PSC found that modification of the Missouri small rural ILECs' obligation to transport calls to ported numbers served by distant switches was "necessary to avoid an **undue economic burden**."[4]

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[1] *See e.g. In the Matter of the Petition of Farber Telephone Company for Suspension and Modification of the FCC's Requirement to Implement Number Portability*, Missouri PSC Case No. TO-2004-0437, *Order Approving Unanimous Stipulation and Agreement*, issued July 27, 2004.

[2] Ex. 12, pp. 21-22; Ex. 22-25; Tr. 301-2.

[3] The FCC's *Initial Regulatory Flexibility Analysis* for its *Intermodal Order* recognized that "porting beyond wireline rate center boundaries could impose compliance burdens on small entities." Specifically, the FCC observed that "porting beyond wireline rate center boundaries may cause small or rural carriers to incur transport costs associated with delivering calls to ported numbers served by distant switches." *IRFA*, Federal Register, Vol. 70, No. 138, at ¶10.

[4] *Petition of KLM Telephone Company for Suspension and Modification of the FCC's Requirement to Implement LNP*, Case No. TO-2004-0401, *Report and Order*, issued Aug. 12, 2004 (emphasis added).

The unfairness of this transport problem was aptly identified by Commissioner Gaw during the modification hearings involving wireline-to-wireless LNP:

> [I]t sort of reminds me of a farmer with a horse and another farmer comes over and says, I like that horse, I want that horse. And the farmer says, Well, I – that's nice. What will you give me for him? He says, I'm not going to give you anything for him. And, Oh, by the way, I want you to buy a truck and trailer and haul him over to my house for nothing. . . . this scenario asks that local company to pay for the . . . continuing transfer of that new call and whatever maintenance there is. I guess he's got to pay for the feed and the hay too now that I think about it.[5]

This is the same scenario that Socket appears to be advocating in this case.

It is not and should not be industry practice to require ILECs to bear the transport costs for ported calls outside of their exchange areas. Socket's proposal would require mid-sized ILECs to incur additional expenses to increase trunking facilities solely to carry a competitor's traffic, and this could amount to **over $2,000 a month**:

> AT&T and in this case Spectra would be responsible for 213 route miles of facilities with no compensation for this customer that has physically relocated in St. Louis. . . . For example, the case of Elsinore, because there are two tandem switches involved and that extensive amount of route miles, that **CenturyTel could be responsible for over $2,000 a month in monthly recurring charges to send this traffic to Socket's customer who is now located in St. Louis**.[6]

Most small rural ILECs do not even have facilities to carry such traffic to distant locations, so the costs and administrative burdens would be even greater for small ILECs.

The Missouri PSC has already found that wireline-to-wireless LNP would create an undue economic burden in remote rural areas. As a result, the PSC held that wireless

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[5] KLM *Report and Order*, Case No. TO-2004-0401, Tr. 67 (comment by Commissioner Gaw).
[6] Tr. 301-2 (emphasis added).

carriers (and <u>not</u> the rural ILECs) were financially and operationally responsible for the transport and termination of any ported wireless calls outside of the rural LEC's local exchange service area. The same reasoning should apply to Socket in this case.

C. <u>Any Commission decision interpreting the CenturyTel and Socket Agreement should be limited solely to that agreement</u>. The Commission's order in this complaint case will address a dispute between two parties to an interconnection agreement with arbitrated language. Therefore, the result of this case must be unique to the two parties to the agreement, and the Commission's decision is necessarily limited to the facts in this record and the two carriers involved. PSC Staff member Bill Voight testified:

> I would suggest that however you decide, that you – you make it well known that your decision is unique to these parties and this circumstance, because there are other ways of using virtual NXX numbers irrespective of how you decide. Make it unique to the circumstances of this case.
>
> * * *
>
> My concern would be that if something like that were not followed, that other parties and other circumstances could pick up on the Commission's order in this case and use it as justification one way or another in some other situation such as nomadic VoIP, Vonage and so forth. And it could be some entirely different circumstances.[7]

The STCG respectfully requests that the Commission expressly state that its decision is limited to the facts and parties in this case. *See e.g. In the Matter of the Application of WST, Inc. for a Variance*, Case No. EE-2006-0123, *Report and Order*, issued Oct. 19, 2005 ("**<u>This decision is limited to the circumstances as they exist in this case</u>**.")(emphasis added).

[7] Tr. 207-8.

III. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

1. **<u>Costs</u>**. Location portability would require incumbent local exchange carriers to incur additional costs to transport calls. Ex. 12, pp. 21-22; Exs. 22-25; Tr. 301-2.

2. **<u>Economic Burden</u>**. This Commission has previously held that small rural ILECs should not be required to bear the costs to transport calls to ported numbers served by distant switches in order "to avoid an undue economic burden."[8]

B. Conclusions of Law

1. **<u>Location portability is not industry practice in Missouri</u>**. On the contrary, the PSC has specifically modified the FCC's *Intermodal LNP Order* to address the costs and problems associated with location portability for small rural ILECs.[9]

2. **<u>Federal law does not require location portability</u>**. At the present time, there is no requirement in applicable Federal law or FCC rules and orders that would require an incumbent local exchange carrier to port numbers when the customer is physically relocating outside of an exchange.

3. **<u>The decision in this case is necessarily limited to the facts in this record, the interconnection agreement at issue, and the two carriers involved</u>**.[10]

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[8] *Petition of KLM Telephone Company for Suspension and Modification of the FCC's Requirement to Implement LNP*, Case No. TO-2004-0401, *Report and Order*, issued Aug. 12, 2004.

[9] *Id.*

[10] See e.g. *In the Matter of the Application of WST, Inc.*, Case No. EE-2006-0123, *Report and Order*, issued Oct. 19, 2005 ("This decision is limited to the circumstances as they exist in this case."); Tr. 207-8.

IV. CONCLUSION

WHEREFORE, the STCG suggests that the Commission: (a) deny Socket's request for geographic/location portability; and (b) state that its decision in this case is expressly limited to the unique interconnection agreement between CenturyTel and Socket and is not a general statement of policy.

RESPECTFULLY SUBMITTED,

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Certificate of Service

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