

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)	

**RESPONSE OF SOCKET TELECOM, LLC TO
CENTURYTEL'S MOTION TO STRIKE**

COMES NOW Socket Telecom, LLC ("Socket") and files its response to CenturyTel's September 5, 2006 pleading styled as a "Motion To Strike Improper 'Evidence' Attached To Socket's Brief on Disputed Issues Regarding Conforming Interconnection Agreement" ("Motion To Strike"). CenturyTel's Motion To Strike is baseless, and should be denied. Moreover, the Commission should reject CenturyTel's transparent attempt to file a reply brief (in the form of its Motion To Strike) by not only denying CenturyTel's Motion, but also explicitly ruling that the substantive allegations in CenturyTel's Motion will not be considered in the Commission's deliberations regarding the remaining disputes over conforming contract language.

In the Parties' briefs supporting their competing conforming contract language, both Socket and CenturyTel addressed the dispute regarding implementation of the Final Commission Decision ("FCD") regarding Article XV (Performance Measures) of the conforming interconnection agreement. In the FCD, ruling on the Parties' dispute concerning Section 4.5.2 of Article XV, the Commission directed both Parties:

[T]o come up with language that will allow for a statistically significant sample to be determined over a period of months without referencing or considering the 'small' amount of orders currently processed.¹

¹ FCD at 65.

As detailed in the Parties' briefs, Socket and CenturyTel advocate dramatically different contract language for this issue.

In support of their competing positions, both Socket and CenturyTel advanced legal arguments and cited various authorities. Both Parties referenced the performance measures in effect for AT&T Missouri. In fact, both Socket and CenturyTel specifically cited the same AT&T Missouri document, the "Statistical Procedures" appendix to the AT&T Missouri performance remedy plan agreement.² The Statistical Procedures appendix is a public document that is part of AT&T's generic CLEC interconnection agreement offering in its "SWBT" region, including Missouri. For the Commission's convenience, Socket filed the Statistical Procedures appendix as Exhibit 1 to its Brief.

Despite having specifically cited the Statistical Procedures appendix in its Brief, CenturyTel now moves to strike it from Socket's Brief. In fact, CenturyTel urges the Commission to strike the Statistical Procedures appendix (which was filed as an exhibit to Socket's brief) and "all references in Socket's brief to the material contained in those exhibits, and strike all arguments based on that improper evidence."³ Apparently, CenturyTel views its own references to the Statistical Appendix as perfectly appropriate; it is only when Socket cites the *same authority* that CenturyTel claims there is a "callous disregard for basic evidentiary principles."⁴ The hypocrisy of CenturyTel's argument is surpassed only by its audacity.

CenturyTel also urges that Exhibits 2 and 3 to Socket's Brief also be stricken as "hearsay." Socket's exhibits are public documents filed in the Texas PUC proceeding that established the original version of the performance measures and remedies plan in effect for

² See CenturyTel Brief at 25, n.46 and Socket Brief at 21.

³ Motion To Strike at 6.

⁴ *Id.* at 2.

AT&T in Missouri as well as Texas. The documents provide support for the proposition that there is precedent for using the numbers Socket proposes for a “statistically significant sample.” This question is at the heart of the Parties’ dispute over Article XV, and directly related to implementation of the FCD. CenturyTel does not agree with Socket, and cited to its own purported authority in support of its position. In particular, CenturyTel cited to a book entitled “Business Research Methods” to support its argument about statistical sampling methodology.⁵ CenturyTel did not provide the Commission copies of its favored text, nor did it provide any basis for qualifying the authors of this text as experts in statistical analysis. Nevertheless, CenturyTel excoriates Socket for attaching copies of the precedent that Socket believes applies to the issue at hand.

There is nothing inappropriate about Socket’s citation of precedent supporting its arguments. In several places in its Brief, Socket cited court decisions and prior Commission decisions that support Socket’s arguments in favor of its proposed contract language. The authority that was attached as Exhibits 1-3 to Socket’s Brief is no different. The fact that Socket attached these authorities to its Brief (simply to make it easier for the Commission to locate and review the documents) does not transform those authorities into “evidence” that requires authentication and admission into the record. The fact that Socket conducted extensive research to justify its position with citation to relevant authority does not constitute, as CenturyTel would have it, “gamesmanship” on Socket’s part.⁶

Finally, CenturyTel’s Motion should be denied because the Motion itself constitutes an attempted end-run around the rules of evidence concerning disclosure of settlement discussions.⁷

⁵ See CenturyTel Brief at 23, n.42.

⁶ CenturyTel Motion at 5.

⁷ See FED. R. EVID. 408.

In its Motion, CenturyTel complains about statements Socket purportedly made in the settlement negotiations regarding conforming contract language.⁸ CenturyTel's Motion essentially provides unsworn factual testimony concerning its views of what went on during the negotiations. This self-serving, unsworn testimony is aimed at prejudicing the Commission's view of Socket's position on the disputed contract language.⁹ Under the rules of evidence, this type of testimony would be inadmissible.

Rule 408 of the Federal Rules of Evidence provides that "[e]vidence of conduct or statements made in compromise negotiations" is not admissible evidence. CenturyTel's Motion provides a case study of why Rule 408 exists. During the give-and-take of settlement discussions, Parties should be in a position to speak freely about their positions and interests. Rule 408 ensures that parties to negotiations do not have to guard every word or action based on the fear that statements made in furtherance of settlement will be used against them if the issues are litigated.

In this case, CenturyTel and Socket were working out settlements on various conforming language issues up to the day the Briefs were filed. The discussions were extensive, frank, and often extremely productive. Based on CenturyTel's Motion, it appears that in CenturyTel's view, however, the settlement discussions were largely a means for gathering fodder for fresh allegations of misconduct by Socket. During the course of this proceeding, CenturyTel has regularly engaged in such overblown invective. In this instance, when CenturyTel's rhetoric is

⁸ Motion To Strike at 2-3.

⁹ For the record, Socket disputes CenturyTel's allegations. If the Commission wants witnesses to present testimony on the conforming contract negotiation process, Socket is more than willing to defend all of its actions throughout the process. Since such information would be irrelevant to the limited questions remaining before the Commission, however, Socket does not believe such a "he said, she said" forum would serve any purpose whatsoever.

in the service of improperly attempting to litigate using unsworn statements about settlement discussions, the Commission should emphatically reject CenturyTel's tactics.¹⁰

CenturyTel's Motion To Strike provides no legal basis for the relief it seeks. The Motion is nothing more than a reply brief in disguise. CenturyTel apparently hopes the Commission will, even if it denies the Motion To Strike, read and consider its re-argument of the CenturyTel position on Article XV. The Parties agreed in the last telephone conference with Judge Jones that each side would file a single brief supporting its positions on the remaining contract language disputes. CenturyTel's attempt to get around that agreement should be firmly rejected.

WHEREFORE, for all the reasons stated, Socket Telecom, LLC respectfully requests that the Commission DENY CenturyTel's Motion To Strike, and further that the Commission ORDER that the allegations included in CenturyTel's Motion To Strike not be part of the Commission's consideration of the remaining disputed issues in this proceeding.

¹⁰ The Motion To Strike is not the first instance in which CenturyTel has sought to utilize unsworn statements regarding settlement discussions to prejudice Socket. In its Brief on conforming issues, CenturyTel made numerous allegations about the history of the negotiation of the disputed language at Article III, Section 24.1. *See* CenturyTel Brief at 4-7. If the Commission is inclined to strike portions of the Parties' Briefs based on evidentiary concerns, Socket urges the Commission to strike CenturyTel's entire discussion of Article III, Section 24.1. Socket did not move to strike this portion of CenturyTel's Brief because, frankly, Socket would prefer that the Commission complete this proceeding on schedule rather than file more pleadings and engage in additional arguments with CenturyTel.

Respectfully submitted,

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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 6th day of September, 2006.

/s/ Carl J. Lumley