

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION**

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

**SOCKET’S BRIEF**

Comes Now Socket Telecom, LLC (Socket) and submits its Brief for consideration by the Commission:

**Executive Summary**

Customers are entitled to keep their telephone numbers when they change local providers – including when they change from CenturyTel to Socket Telecom. When customers change providers, they are also entitled to change their service packages. Customers can move their offices or residences, change providers, change services, and keep their telephone numbers. And so long as the customer changes services to a foreign exchange service to maintain the association of their telephone number with the same rate center (and thereby the same local calling scope), they can even move outside the geographic boundaries of the rate center’s exchange/local calling area, change providers and services, and still keep their telephone number. All of these customer changes happen routinely everyday, everywhere, as shown by the conduct of all other carriers and by the decision of the Local Number Portability Working Group

Because such number porting is routine to the industry, the Commission can resolve the central issue in this case by ruling in Socket's favor on issue number 2 and concluding, as Staff recommends, that the interconnection agreements require CenturyTel to abide by industry practices and fulfill Socket's porting requests for the customers.

The Commission can and should also conclude under issue 1 that CenturyTel is required by FCC rules and decisions to port the numbers because the pertinent location – the rate center associated with the telephone number – does not change and the ports are simply plain vanilla examples of service provider number portability.

The Commission also needs to direct CenturyTel by ruling on issue 3 that it cannot refuse to port numbers because of network capacity concerns. The law requires porting without any extraneous conditions. Further, interconnection traffic will increase whether a number is ported or a new number is assigned. As Staff confirms, capacity is a distinct matter to be resolved in a cooperative manner between the interconnecting carriers separate and apart from the number porting process.

Finally, as Staff recommends, the Commission should take the opportunity to further number conservation by directing CenturyTel under issue 4 that Socket can provide service simply by porting numbers associated with a rate center, without first going through the wasteful steps of getting unnecessary facilities or NXX codes of its own in the exchange.

The Commission should resolve all the foregoing issues in Socket's favor, without taking up CenturyTel's illegitimate requests to re-litigate matters resolved in the prior arbitration, including Socket's right to interconnect either directly or indirectly, its

right to initially interconnect at a single POI in a LATA, the provisions that address the establishment of additional direct POIs over time based on actual traffic exchanged, the responsibility of each party for the sufficiency of the facilities on its side of a POI, and Socket's right to provide foreign exchange services and exchange that traffic over local interconnection facilities.

### **Introduction**

Number portability is all about customers and their right to keep their phone number when they change their telecommunications provider. (Kohly Direct, p. 6). CenturyTel's refusal to port numbers is all about its dissatisfaction with the Commission's decisions on interconnection issues in the 2006 arbitration between CenturyTel and Socket (Case No. TO-2006-0299) and really has nothing to do with number porting. But the impact of CenturyTel's actions, refusing to port numbers in an effort to undue the prior Commission decisions, falls squarely on the customers, preventing them from exercising their right to change providers and retain their telephone numbers. (Kohly Direct, p. 43-44; Tr. 102, 111-12; Kistner Tr. 150-51; Voight Tr. 176).

Congress and the FCC have consistently emphasized that number portability is about customer choice. Both have recognized since the inception of the Telecommunications Act of 1996 that customers are only afforded a meaningful choice in providers if they can keep their telephone numbers. (Kohly Direct, p. 6; Kistner Direct, p. 4). See, e.g., First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, para. 2 (July 1996)(reiterating Congressional findings).<sup>1</sup> The FCC has continued to stress this point, for example stating in 2003: "We reemphasize our view

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<sup>1</sup> Hereinafter "First LNP Order".

that LNP [local number portability] is still an important tool for enhancing competition, promoting numbering resource optimization, and giving consumers greater choices.”

Fourth Report and Order, CC Docket 95-116, para. 9 (June 2003).<sup>2</sup> In its October 2003 LNP Order, at para. 11, the FCC stated: “We interpret [the definition of number portability] to mean consumers must be able to change carriers while keeping their telephone numbers as easily as they may change carriers without taking their telephone number with them.”<sup>3</sup>

The FCC has also recognized that the ability of a customer to keep their telephone number when changing providers promotes competition by making it less expensive and less disruptive to change carriers, and concluded that the inability to port numbers is an operational barrier for new entrants.<sup>4</sup> (Kistner Direct, p. 4; Surrebuttal p. 6). As such, the FCC rules implementing number portability were designed to promote competition, not to protect individual competitors.<sup>5</sup> (Kohly Direct, p. 7; Kistner Surrebuttal p. 11-12). Thus, CenturyTel’s refusal to comply with these rules and port numbers not only harms the customers, but also illegally impairs Socket’s ability to compete.<sup>6</sup>

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<sup>2</sup> Hereinafter “Fourth LNP Order”.

<sup>3</sup> Memorandum Opinion and Order, CC Docket No. 95-116 (October 2003), hereinafter “October 2003 LNP Order”.

<sup>4</sup> First LNP Order, ¶ 16.

<sup>5</sup> *In the Matter of Telephone Number Portability*, FCC CC Docket No. 95-116 (Nov. 10, 2003), ¶ 27 (hereinafter Intermodal LNP Order).

<sup>6</sup> Not only has CenturyTel’s unlawful refusal to port numbers impaired customer choice and Socket’s ability to serve its customers, but the haphazard and unpredictable manner in which CenturyTel has acted has been especially harmful to Socket and disruptive to customers attempting to change providers. (Kohly Direct, p. 8-9). Mr. Kohly describes in detail the manner in which the number porting process is supposed to work. (Kohly Direct, p. 9-15; see also Kistner Surrebuttal p. 4-5). He also describes in detail the many ways in which CenturyTel has violated those procedures in conjunction with its various refusals to port numbers, with customer outages (and related upset and blame), slamming, improper customer contacts, incomplete processing, conflicting status communications, and ever-changing objections and obstacles. (Kohly Direct, p. 15-28, Surrebuttal p. 35-50). As a result, in addition to its other violations, CenturyTel has not lived up to its obligation to act in good faith per Article III, Section 22.0 of the interconnection agreements. (Kohly Direct p 9).

The federal statute, 47 USC 153 (46), defines “number portability” as “the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.” The FCC regulations at 47 CFR 52.21 define “number portability” and “service provider portability” in exactly the same way, using the same language as the federal statute. The Telecommunications Act of 1996 requires all local exchange carriers to provide number portability. Section 47 USC 251(b)(2) requires all local exchange carriers “to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.” The FCC requires all carriers, both wireless and wireline, to provide service provider portability (LNP), so that customers can keep their phone numbers when they change providers.<sup>7</sup>

In this case, Socket asks the Commission to require CenturyTel to port numbers in compliance with the law and the parties’ interconnection agreements, so that customers can both be served by their provider of choice and retain their telephone number. The customers in question want to change providers from CenturyTel to Socket, keep their telephone numbers, and obtain from Socket a form of foreign exchange service, also known as VNXX service, so that they can make and receive calls rated as local to the same rate center as when they were obtaining service from CenturyTel with those telephone numbers (i.e. their location on the network does not change), even though their place of business has geographically moved from one exchange to another.

**Who are the customers that have been harmed by CenturyTel’s refusal to port numbers?** Socket Telecom’s affiliate, Socket Internet is one. It wants to port two

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<sup>7</sup> First LNP Order; Intermodal LNP Order.

Willow Springs numbers that are used for local internet dial-up access and technical support so it can be served by Socket Telecom.<sup>8</sup> **Computer Magic** wants to port Jamestown, Prairie Home, and Wooldridge numbers and use Socket Telecom services. (Kohly Direct, p. 15, 24). **Poplar Bluff Internet** wants to port Lesterville,<sup>9</sup> Ellsinore<sup>10</sup> and Boss numbers and use Socket services. **Mississippi Valley Internet** wants to port Paris, Clarence,<sup>11</sup> LaPlata, and Macon numbers and use Socket services. **MCM Systems** wants to port Hunnewell, Shelbyville, Sante Fe, Shelbyville, Monroe City, Laddonia, Perry, and Stoutsville numbers and use Socket services. **Texas County Rural Area Information Network (TRAIN)** wants to port Houston, Summersville, Licking, and Cabool numbers and use Socket services. (Kohly Direct, p. 22-24, Surrebuttal, p. 44-50).<sup>12</sup>

CenturyTel refuses to process Socket's orders to port these customers' telephone numbers and contends that it is not required to port the numbers. Contrary to FCC and industry standards, CenturyTel asserts that it does not have to port numbers if the customer moves its place of business from one site to another, even though the numbers

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<sup>8</sup> CenturyTel seeks to denigrate the rights of Socket Internet because it is affiliated with Socket Telecom. This "argument" is irrelevant because of the many other customers harmed by CenturyTel's actions which are not affiliated with Socket Telecom. But more importantly, Socket Internet has all the same rights as any other customer. Given the spurious nature of the purported separate identities of the CenturyTel entities, which include an ISP affiliate, CenturyTel really has no room to make such corporate identity arguments anyway. (Tr. 245, 278-79).

<sup>9</sup> CenturyTel completed the Lesterville port and then slammed the customer later by porting it back. (Kohly Direct, p. 26-28).

<sup>10</sup> CenturyTel did ultimately complete the Ellsinore port, but still contends that it should not have done so. (Kohly Direct, p. 23).

<sup>11</sup> CenturyTel told Socket it would not complete the Clarence port, but then did it anyway, causing an outage for the customer, and then reversed it, thereby slamming the customer. (Kohly Direct, p. 24-25, Surrebuttal p. 37).

<sup>12</sup> Willow Springs, Jamestown, Prairie Home, Wooldridge, Cabool, and Summersville are CenturyTel exchanges. Lesterville, Ellsinore, Boss, Paris, Clarence, LaPlata, Macon, Hunnewell, Shelbyville, Sante Fe, Shelbyville, Monroe City, Laddonia, Perry, Stoutsville, Houston, and Licking are Spectra exchanges. (Kohly Direct, p. 15, 22-24, Surrebuttal, p. 44-50).

would still be assigned to the same rate center. To date, CenturyTel has completed port orders when customers physically move from one site to another within the geographic boundaries of an exchange or local calling area. However, CenturyTel maintains that it is not required to do so, and it has refused to do so when customers move to sites outside the geographic boundaries of an exchange or local calling area but subscribe to foreign exchange service to retain their rate center assignment. (Kohly Direct, p. 8; Tr. 109).<sup>13</sup>

The issues in the case are ultimately very narrow (despite the voluminous testimony). It is undisputed that a customer could stay with CenturyTel, move their place of business (or residence) outside the geographic boundaries of an exchange or local calling area, subscribe to a foreign exchange service, and retain their telephone number. (Kohly Direct, p. 36-37; Ex. 20).<sup>14</sup> It is undisputed that a customer already obtaining

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<sup>13</sup> It is certainly convenient to think of exchanges, local calling areas and rate centers in geographic terms. And by and large a geographic image helps with visualization of the concepts. But a rate center is actually a point, not an area. A rate center is associated with certain NXX codes and with a local calling scope. Through foreign exchange service, a customer achieves an association between their telephone number and a rate center (and the associated calling scope) without regard to geography. Hence, from a more precise perspective, none of the concepts are completely geographic, but rather are sets of customers with certain NXX codes and local calling scopes. Contrary to the testimony of Mr. Furchtgott-Roth (Tr. 217), the FCC has routinely defined “rate center” and used the term in its rules and decisions. For example, in the First LNP Order, at note 174, the FCC noted that: “Rate centers are defined by the local exchange carrier and approved by the state commission.” See also In the Matter of Application of Midwest Wireless Holdings, LLC 21 FCCR 11526 (Oct. 2006), “Rate centers are geographic areas used by local exchange carriers for a variety of reasons, including the determination of toll rates. *See* HARRY NEWTON, NEWTON'S TELECOM DICTIONARY: 19TH EXPANDED & UPDATED EDITION 660 (July 2003).” Newton in turn provides the following definition: “As defined by the telephone industry, **rate center is that point within an Exchange Area** defined by rate map coordinates used as the primary basis for the determination of toll rates.” The Missouri Commission defines “rate center” in similar fashion. See 4 CSR 240-37.020(21). In the parties’ interconnection agreements, “rate center” is defined as: “The specific geographic point and corresponding geographic area that are associated with one or more particular NPA-NXX Codes.” Rating and routing points are likewise defined. (Interconnection Agreements, Article II, Sections 1.102, 1.103, 1.107). At bottom, if the number remains assigned to the rate center, the customer remains “within” the rate center regardless of geography.

<sup>14</sup> It is true that in some instances, because Socket has a larger service area than CenturyTel, a customer could be moving to an office outside of CenturyTel’s service area and not be able to get continued service from CenturyTel. But CenturyTel is free to expand its service area, or to work out joint arrangements with a neighboring LEC. (Tr. 160). It is not entitled to artificial protection against competition based on its failure to take advantage of such opportunities.

foreign exchange service from CenturyTel could stay in the same place of business (or residence), switch providers to Socket, receive a similar service,<sup>15</sup> and keep their telephone number.<sup>16</sup> (Smith Tr. 270). A customer could certainly switch to Socket, move their place of business, receive foreign exchange service and use a new telephone number. (Kohly Tr. 72-73, 78). A new customer can come along and select Socket as its provider and subscribe to foreign exchange service using a new number. (Kohly Direct, p. 30, 35-38, Surrebuttal, p. 19-26; Tr. 72-73, 78). So the issue is not the offering of foreign exchange/VNXX service.<sup>17</sup> In fact, as discussed further below, both “foreign exchange” and “VNXX” are defined in the interconnection agreements (Article II, Sections 1.46 and 1.131), and the exchange of such local traffic over local interconnection facilities between the parties is expressly permitted (Article V, Section 9.2.3).<sup>18</sup> The issue is not the change in providers or the change in services in conjunction with a change in providers.<sup>19</sup> Instead, the dispute presented in this case concerns

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<sup>15</sup> The companies may offer the service in different ways, but the result for the customer is the same – calls dialed and completed as local calls using the local NXX code of a rate center associated geographically with an exchange other than that of the customer’s residence or place of business. (Kohly Surrebuttal, p. 19-26). As shown by the definitions of foreign exchange and VNXX service in the interconnection agreements, the manner in which the service is offered is not pertinent; it is the functionality that the customer receives that matters. (Interconnection Agreements, Article II, Sections 1.46 and 1.131)(Voight Tr. 165). Locally-dialed calls are local, regardless of the addresses of the end users. (Kohly Surrebuttal p. 24-25; Voight Rebuttal p. 13-14; Tr. 165-67). The FCC has confirmed that NXX codes determine jurisdiction, not user geography or service provisioning methods. (17 FCC Rcd 27039, para. 286-88).

<sup>16</sup> In a similar instance, the Commission expressly ruled in the Socket/CenturyTel arbitration that customers obtaining remote call forwarding service from CenturyTel could change providers to Socket and keep their telephone numbers. See Final Commission Decision, Case No. TO-2006-0299 (June 30, 2006), p. 55-57 (herein “Arbitration Decision”). (Kohly Surrebuttal p. 27; Voight Tr. 166).

<sup>17</sup> The Commission has long recognized the importance of allowing customers to choose foreign exchange service. See, e.g., Order Denying Motion, Case No. TO-92-306 (10/6/93)(rejecting motion to preclude customers from using foreign exchange service in conjunction with MCA calling scopes).

<sup>18</sup> The Commission ordered that the provisions authorizing Socket to exchange VNXX traffic over local interconnection facilities be included in the interconnection agreements. Arbitration Decision, p. 28)(Voight Tr. 163-67). Ms. Smith’s suggestion that the Commission ruled otherwise is baseless. (Smith Rebuttal p. 10).

<sup>19</sup> The FCC has expressly stated that it is permissible for a customer to change providers and services at the same time and keep their telephone number. First LNP Order, para. 183. (Kistner Surrebuttal, p. 14; Voight Tr. 169).



circumstances where the customer wants to change providers, change service to a foreign exchange service, and keep their telephone number, all at the same time that the customer moves their place of business (or residence) outside the geographic boundaries of one exchange or local calling area.

Why should such a customer be treated differently from the others? He could achieve his result in steps, making one change and then another (i.e. he could move his place of business and get foreign exchange service from CenturyTel, and then change providers to Socket), or he could achieve everything except retention of his number. So why should not the customer have it all at once?

The dispute is not about any technical problem. CenturyTel has actually ported numbers in such circumstances before<sup>20</sup> and still admits it can do it today.<sup>21</sup> (Kohly Direct, p. 25-28, 34, Surrebuttal, p. 25, Tr. 109; Kistner Direct p. 11, Tr. 144; Smith Rebuttal, p. 27-28). Such ports are routinely provided by others. (Kistner Direct p. 11, Tr. 132-33). These are “plain vanilla” port requests. (Kistner Surrebuttal p. 3, 17; Tr. 141). In fact, as fully described in the argument concerning issue no. 2 below, CenturyTel is the only carrier refusing to port numbers in such circumstances.

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<sup>20</sup> It is irrelevant whether CenturyTel’s actions were inadvertent as it now claims. (Smith Rebuttal p. 28). The fact remains that it fulfilled the ports, demonstrating that there is no technical problem. (Kohly Tr. 109).

<sup>21</sup> CenturyTel’s decision to stop porting such numbers after it had been porting them was yet another violation of its contractual obligation not to make such changes in policies without Socket consent. (Article III, Section 24.1). (Kohly Direct, p. 46-47). Another such violation arose from its abrupt insistence that Socket demonstrate that it had facilities or NXX codes before porting numbers. (Kohly Direct p. 22 n. 22, Surrebuttal p 37-39; see issue 4 herein below). During the course of these proceedings, it implemented yet another new requirement, again without Socket consent in violation of the agreements, demanding that Socket certify in writing that “the physical termination point for the ported telecommunications service will not be moving.” This conflicted with Ms. Smith’s rebuttal testimony (p. 5) in this case in which she swore to the Commission that CenturyTel will in fact port numbers even if the customer is moving within the exchange. When confronted with that inconsistency, CenturyTel advised that it would “interpret” the certification it was demanding as meaning “not moving outside the exchange”. (Kohly Surrebuttal, p. 47-49). The Commission could resolve this case simply by rejecting all of CenturyTel’s illegal changes in policies and practices and require it to resume porting numbers. (Kohly Direct p 46). Staff agrees CenturyTel is not allowed to unilaterally impose new requirements. (Voight Rebuttal p 25).

The dispute is not due to any differences in interconnection between the parties. As discussed further below, whether Socket assigns a new number to the customer, which it can do without CenturyTel's cooperation, or ports the number from CenturyTel, either way Socket and CenturyTel exchange the traffic at the same POI and have the same responsibilities for their respective sides of the POI. In fact, the traffic is exchanged at the same POI whether the customer moves or not, because the rate center assignment remains the same through the foreign exchange service as if the customer had not moved. CenturyTel only has one set of interconnection facilities, regardless of whether numbers are ported or newly assigned. (Smith Tr. 281).<sup>22</sup> There simply is no interconnection impact on CenturyTel at all. (Kohly Direct p. 37-39, 44; Tr. 103-04; Kistner Tr. 144; Voight Rebuttal p. 32, Tr. 177, 201-02).

So what is the problem? It is technically feasible to give the customers what they want, and doing so has no impact on CenturyTel. But CenturyTel says, "We don't want to do it, and you can't make us." (Kohly Direct, p. 8, 34; Smith Rebuttal, p. 3). And CenturyTel also throws up two additional roadblocks. First, it asserts that it is not required to port numbers if it does not have sufficient interconnection facilities on its side of the POI. Second, it asserts that it is not required to port numbers if Socket does not have either facilities of its own in the exchange or numbering resources (NXX codes) assigned to the exchange. (Kohly Direct, p. 16-17, 22).

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<sup>22</sup> CenturyTel yet again tries to confuse the Commission by referring to interconnection facilities as common toll trunks. If the facilities are used for interconnection purposes, then they are interconnection facilities. It is not Socket's fault that Spectra is totally dependent upon CenturyTel to have a complete network, or that CenturyTel and Spectra are together dependent by a factor of 30% upon AT&T and Embarq (what CenturyTel euphemistically describes as joint provisioning). (Kohly Surrebuttal p. 16-17; Voight Tr. 206; Smith Tr. 273). CenturyTel/Spectra is obligated to meet its interconnection requirements notwithstanding such dependence on others.

As fully discussed in response to issues 1, 2, 3 and 4, CenturyTel is wrong on all counts. It is required to port these numbers for these customers, both by law (issue 1) and by the industry standards that are incorporated into the terms and conditions of the interconnection agreements between the parties (issue 2). It is not allowed to refuse to port numbers based on interconnection capacity issues (issue 3). And it is not allowed to demand that Socket have either facilities of its own in the exchange or numbering resources (NXX codes) assigned to the exchange (issue 4). As Ms. Kistner testified: “The customers that are involved in the requests have a right to change carriers and keep their telephone numbers under the pro-competitive policies of our State and Nation.” (Kistner Direct, p. 11).

CenturyTel is also wrong to try to re-litigate the provisions of the interconnection agreements. As indicated above, the Commission expressly determined that Socket is entitled to provide foreign exchange/VNXX service and exchange such traffic with CenturyTel over local interconnection facilities. Several aspects of the interconnection agreements are pertinent:

1. Section 9.2.3 of Article V acknowledges that **Socket is entitled to “assign[] NPA/NXXs to a customer physically located outside of the CenturyTel Local Calling Area containing the Rate Center with which the NPA/NXX is associated”**. Likewise, the definitions of FX services and VNXX traffic acknowledge that the parties may offer services that allow customers to be assigned NXX codes and receive local service associated with a rate center that is different than the rate center geographically associated with the customer’s actual place of business or residence. (Article II, sections 1.46 and 1.131). Further, a rate center is not tied to customer location at all, but rather is a

“specific geographic point and corresponding geographic area that are associated with one or more particular NPA-NXX Codes.”<sup>23</sup> Likewise rating and routing points pertain to assigned numbers, not customer locations. (Article II, Sections 1.102, 1.103, 1.107).<sup>24</sup>

2. Section 9.2.3 of Article V acknowledges that such VNXX traffic is Local Traffic (which will be routed as local because of the shared local calling scope – see also Article II, Section 1.78 definition of Local Traffic), but **deems** it not to be Local Traffic for compensation purposes and makes the exchange of such traffic subject to **bill-and-keep** rather than the reciprocal compensation<sup>25</sup> that applies for terminating other Local Traffic originated by the other party (see also Sections 9.4.2 and 9.7.2 regarding bill-and-keep and terminating charges, and Section 1.72 of Article II providing that ISP-bound traffic is Local Interconnection Traffic).<sup>26</sup>

Notwithstanding the fact that such issues were resolved in the prior arbitration, CenturyTel’s petulant refusal to fulfill Socket’s simple porting requests boils down to CenturyTel’s dissatisfaction with the Commission’s prior decisions. Specifically, CenturyTel’s opposition boils down to dissatisfaction with the Commission’s decision accepting CenturyTel’s proposed contract language that expressly allows Socket to exchange VNXX service over local interconnection facilities, but rejecting CenturyTel’s

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<sup>23</sup> See supra note 13.

<sup>24</sup> Arbitration Decision, p. 27-28, 44-46. (Voight Tr. 163-67).

<sup>25</sup> CenturyTel confirmed that other local traffic is subject to reciprocal compensation and only VNXX traffic is at bill and keep. (Tr. 46-49).

<sup>26</sup> Arbitration Decision, p. 9. There is no question that the traffic is to be exchanged over local interconnection facilities. The Commission expressly refused to address “non-local traffic not subject to an interconnection agreement” and yet had no reservations about addressing all the provisions concerning foreign exchange/VNXX traffic. (Arbitration Decision, p. 24). The FCC has similarly ruled. (17 FCC Rcd 27039, para. 286-88). As Mr. Voight testified, “Section 9.2.3 clearly contemplates VNXX traffic as being covered in the Agreement.” (Voight Rebuttal p. 7). Further, such services are routinely set forth in local tariffs. (Voight Rebuttal p. 12-15). Even Ms. Smith conceded that ISPs buy such local services out of local tariffs. (Tr. 283).

accompanying proposal to require POIs in every exchange.<sup>27</sup> Indeed, CenturyTel has made it plain to Socket that if Socket would agree to ignore the Commission's prior decisions and install POIs in every exchange, then CenturyTel would fulfill the porting requests. (Kohly Direct p. 18-20, Tr. 109-10; Kistner Tr. 144). Thus revealed, CenturyTel's position is plainly untenable – it is not entitled to reconsideration of the arbitration or alteration of the provisions of the interconnection agreements, nor can it legitimately hold required number ports hostage in its effort to coerce such reconsideration/alteration from Socket.

Schizophrenically, CenturyTel not only tries to convince the Commission illegally to revisit prior arbitration decisions, but also contends erroneously that the Commission cannot make any decision at all. The Commission should not be confused by CenturyTel's arguments concerning supposed preemption. The agreed-upon and approved interconnection agreements expressly call for the Commission to resolve these disputes. (Article III, Section 18.3). Federal law also calls for state commissions to resolve such disputes. See, e.g., SWBT v. Connect Comm., 225 F3d 942, 947 (8<sup>th</sup> Cir. 2000). Mr. Voight confirmed the Commission's dispute resolution powers. (Voight Tr. 164).

Another diversion interjected by CenturyTel requires refutation at the outset, and that is CenturyTel's contention that it only has to comply with the provisions of the interconnection agreements that are expressly mandated by the Act. (Kohly Direct p 19). Such a contention is of course ludicrous in light of the efforts of the parties and the Commission to establish lengthy and complete interconnection agreements. Moreover, even the provisions cited by CenturyTel do not stand for its ridiculous proposition.

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<sup>27</sup> Arbitration Decision, p. 27-28, 44-46.

Article I of the agreements requires compliance with both the agreement and the law. The definition of “Applicable Law” (Article II, Section 1.8) includes the common law, which in turn includes the law of contract. Article III, Section 50.0 requires CenturyTel to provide number portability in accordance with the Act and also the “specific requirements” of Article XII. Article XII requires compliance with the Act (Section 1.1) as well as all the other provisions of Article XII (otherwise, there would not be any other provisions besides Section 1.1). Sections 3.2.1, 6.4.4 and 6.4.5 of Article XII requires compliance with both FCC requirements and industry practices concerning number portability. There simply is no basis for CenturyTel’s contention that it does not have to comply with the full terms and conditions of the interconnection agreements. Ultimately, CenturyTel abandoned this baseless argument at hearing. (Smith Tr. 267).

With the foregoing background, the Commission can properly address the specific issues at hand, which are:

**Issue 1.** Does federal law require CenturyTel to fulfill the number port orders specifically at issue in this case and similar orders submitted since the filing of the complaint and into the future?

**Issue 2.** Do the Socket/CenturyTel interconnection agreements require CenturyTel to fulfill the number port orders specifically at issue in this case and similar orders submitted since the filing of the complaint and into the future?

**Issue 3.** Are network capacity issues grounds for denial of a number port order?

**Issue 4.** Is Socket required to have a block of numbers assigned to it for a rate center before CenturyTel has to fulfill number port orders from Socket for that rate center?

## **Argument**

**Issue 1. Does federal law require CenturyTel to fulfill the number port orders specifically at issue in this case and similar orders submitted since the filing of the complaint and into the future?**

[Relates to Staff Issue (a) Is CenturyTel required to port the telephone numbers in question to Socket?]

[Relates to CenturyTel Issue 1. *Under applicable Federal law, Federal Communications Commission (“FCC”) rules, regulations and orders, is CenturyTel or Spectra required to fulfill the two port requests specifically at issue in this case when the customer is physically relocating outside the customer’s exchange? ]*

**Socket’s Position:** Federal law requires CenturyTel to fulfill the number port orders referenced in the complaint and similar orders submitted since the filing of the complaint and into the future under its obligation to provide service provider local number portability. In the circumstances presented, there is no change in customer location as the word “location” has been interpreted by the FCC under the Telecommunications Act of 1996, applicable regulations, and in particular the FCC’s Intermodal Order, because call rating (rate center assignment) will not change and call routing will be the same as if Socket assigned a new foreign exchange number to the customer. Additionally, federal law requires CenturyTel to fulfill such number port orders pursuant to the terms and conditions of the applicable interconnection agreements as discussed under issue 2. The customers are entitled to keep their numbers in the course of changing providers under these circumstances.

**Argument:**

As indicated above, 47 USC 153 (46) defines “number portability” as “the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.” The FCC regulations at

47 CFR 52.21 define “number portability” and “service provider portability” in exactly the same way, using the same language as the statute. (Kohly Direct p. 33; Kistner Direct p. 3). The Telecommunications Act of 1996 requires all local exchange carriers to provide number portability. Section 47 USC 251(b)(2) requires all local exchange carriers “to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.” The FCC requires all carriers, both wireless and wireline, to provide LNP/service provider portability, so that customers can keep their telephone numbers when they change providers.<sup>28</sup>

Out of one side of its mouth, CenturyTel argues that the statute and rule are “unambiguous” and should be strictly interpreted.<sup>29</sup> Yet, out of the other side of its mouth, it presents testimony acknowledging that the word that is central to the dispute in this case, “location”, has not been defined and that reference to common definitions reveals a wide disparity in potential meanings that ultimately shed no light on the FCC’s intent. (Furchtgott-Roth Rebuttal, p. 8; see also Kohly Surrebuttal, p. 3-4; Kistner Direct p. 4, Surrebuttal p. 4). Courts that have examined the matter confirm that the absence of a definition of location renders the statute and rules ambiguous. See USTA v. FCC, 400 F3d 29, 31 (DC Cir. 2005); Central Texas Telephone Cooperative v. FCC, 402 F3d 205, 207 (DC Cir. 2005); In the Matter of Starnet, 355 F3d 634, 638 (7<sup>th</sup> Cir. 2004)(location could mean rate center, end of loop, customer premise, or something else).

It might seem strange that such a key concept would not be precisely defined. One might classify it as more sloppy rulemaking by the FCC. See Furchtgott-Roth, *A Tough Act to Follow? The Telecommunications Act of 1996 and the Separation of*

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<sup>28</sup> First LNP Order; Intermodal LNP Order.

<sup>29</sup> See, e.g., CenturyTel Motion for Expedited Ruling on Respondents’ Pending Motion to Dismiss and Motion for Summary Determination, p. 6.



*Powers*, p. 147 (“Indeed, it appears that the FCC was sloppy in writing rules under the 1996 Act and unable to restrain regulatory uncertainty.”)(see also p. 41, 43, 78). But on further examination, the FCC has in fact made clear that a change in “location” for purposes of number portability rules only occurs if the rate center assignment changes. (Kohly Direct p 34, 40; Kistner Surrebuttal p. 5).<sup>30</sup> In other words, as the FCC applies its own rules, a customer is entitled to keep their telephone number when changing providers even if they move their residence or office, so long as the number remains assigned to the same rate center.<sup>31</sup>

In its November 2003 Intermodal LNP decision (para. 28), the FCC determined that it is service provider portability, and not location portability, if the rate center assignment remains the same, such that “calls to the ported number will continue to be rated in the same fashion as they were prior to the port” and “as to the routing of calls to ported numbers, it should be no different” than if the customer were assigned “a new number rated to that rate center.” The FCC explained that it had limited wireline-to-wireline service provider ports to situations involving preservation of rate center assignment “based on **wireline** carriers’ inability to receive numbers from foreign rate centers.” (Id. at para. 24, Kistner Tr. 135-38)(emphasis added). To the same effect it stated: “We note that **wireline** carriers are not able to port a number to **another wireline** carrier if the rate center associated with the number does not match the rate center

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<sup>30</sup> The Furchtgott-Roth testimony concerning similar “rates” rather than “rate centers” is totally off the mark. (Kohly Surrebuttal p 7-8; F-R Rebuttal p 16).

<sup>31</sup> Additionally, in general number portability has been an area where carriers have worked together to their mutual advantage to iron out various issues themselves. (Kistner Direct p. 12; Tr. 132-33). Thus, regardless of the outcome of the Commission’s consideration of issue 1, it should still rule in Socket’s favor under issue 2 because industry standards call for CenturyTel to port the numbers at issue.

associated with the customer's physical location.” (Id. para. 43)(emphasis added).<sup>32</sup>

Under this decision, it is the association with the rate center that determines location, and in the context of this case (as discussed below) Socket's foreign exchange service preserves the association with rate center so that location does not change. (Kohly Direct, p. 41; Kistner Direct p. 8-9, Surrebuttal p. 9, 16-17; Voight Tr. 175).<sup>33</sup>

The decision to focus on rate centers as announced in the Intermodal LNP Order is consistent with the FCC's First LNP Order, when it declined to order location portability because of concerns about customers being confused over how calls will be rated or having to dial more than seven digits to place locally rated calls. See, e.g., para. 184-187. When the rate center assignment remains the same, such concerns do not arise. (Kohly Direct p. 41-42; Kistner Direct p. 6-10).<sup>34</sup>

Indeed, customers have for many years (even before number portability) been able to retain their telephone numbers when moving from one building to another “within” the same rate center, or if moving “between” rate centers when purchasing

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<sup>32</sup> CenturyTel tries to dispose of the FCC's November 2003 order by classifying it as a wireless decision, but that is not accurate. The focus of the order is on intermodal ports which by definition always involve a wireline carrier. Moreover, the statements quoted above expressly pertain to wireline-to-wireline ports. There is only one set of porting rules and they apply to all carriers. (Kistner Surrebuttal p. 10). CenturyTel acknowledges this point at page 13 of its response to Socket's Cross-motion for Summary Judgment.

<sup>33</sup> The reviewing court affirmed the FCC's decision and explicitly recognized that the FCC had substantively changed from a focus on the geographic site of the end user to rate center assignment in terms of the pertinent location for porting purposes. *USTA v. FCC*, 400 F3d 29 (DC Cir. 2005). In fact, in all aspects of wireline number porting, the FCC focuses on rate center assignment. For wireline-to-wireline ports, the customer must be served by the same rate center because of the inability of switches to receive a number from a foreign rate center. First LNP Order, para. 172; Intermodal LNP Order, para. 24. For wireline-to-wireless ports, porting is mandated if the rate center matches up (and if there is no match, foreign exchange service may still allow for porting to occur). Intermodal LNP Order, para. 22, 44. For wireless-to-wireline ports, the port must occur if the wireline carrier maintains the originating rate center. Intermodal LNP Order, para. 22. Even when the FCC grants emergency waivers from its porting rules, it recognizes that it is the fact that the relationship between ported number and rate center will be broken that requires it to issue a temporary waiver. (Ex 15, 16; Kistner Tr. 121-31, 157; Voight Tr. 186).

<sup>34</sup> The FCC's website does not (indeed cannot) contradict its official decisions. (Voight Tr. 169). While the website acknowledges that customers can move to some degree and still port their numbers, the generic level of the discussion on the website does not delve into details such as foreign exchange offerings. (Kistner Surrebuttal, p. 7-8, 12-13). At best, the FCC's website is incomplete and misleading. (Voight Rebuttal p. 20-21; Tr. 169).

foreign exchange service. (Kohly Direct p. 35, 42; Surrebuttal p. 6-7; Kistner Direct, p. 5; Smith Rebuttal p 5).<sup>35</sup> There is nothing unique about Socket's foreign exchange/VNXX offerings in terms of preservation of the rate center association and local calling scope of the customer's telephone number. That is the essential purpose of all such services. Even CenturyTel offers such services. (Kohly Direct p. 35-37; Ex 20).

The evidence shows without question that the porting requests at issue meet the FCC's standards and are eligible service provider portability requests, not location portability requests. Mr. Kohly demonstrated in detail, with various scenarios and diagrams, that in each instance the telephone numbers would remain assigned to the same rate center and that routing would be the same as compared to Socket assigning the customer a new number assigned to that rate center. (Kohly Direct, p. 37-43, Surrebuttal, p. 46). Ms. Kistner concurred. (Kistner Surrebuttal, p. 5). Thus, consistent with FCC requirements, Socket's foreign exchange service preserves the rate center assignment. (Voight Tr. 175).

Likewise, there are no routing concerns. As the FCC recognizes, irrespective of whether foreign exchange service is provided when a number is ported, when a customer changes carriers the routing of the traffic by definition changes so that it can be exchanged over the interconnection facilities between the carriers. (Kohly Direct p 37). However, in the instances in question, the routing of the calls will be the same regardless of whether Socket ports the customer's existing telephone number or assigns a new number. (Kohly Direct p 37-38). As a result, the FCC's requirements again are met. (Intermodal LNP Order para. 28).

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<sup>35</sup> See supra note 13 regarding the incompleteness of geographic representations of rate centers, exchanges and calling scopes.

Moreover, because rating and routing are not affected, CenturyTel is not affected. CenturyTel injects confusion by making various comparisons between the circumstances under which it serves the customer versus Socket serving the customer. But CenturyTel is not entitled to keep customers against their will, and the telephone numbers do not belong to CenturyTel.<sup>36</sup> CenturyTel has lost the customer and the pertinent comparison under the FCC's requirements is between Socket assigning a new number (which CenturyTel cannot obstruct) and Socket porting the customer's existing number (which CenturyTel has unlawfully obstructed). As the record shows, either way the traffic is exchanged at the point of interconnection and there is no different impact on CenturyTel one way or the other.<sup>37</sup> (Kohly Direct p 37-40, 44, Tr. 103-04; Kistner Tr. 146; Voight Rebuttal p. 32, Tr 177, 201-02)).

Because Socket preserves the association of rate center and telephone number by providing foreign exchange service, the FCC's standards are met and by law CenturyTel must port the numbers. The Commission previously acknowledged this conclusion under similar circumstances in the Socket/CenturyTel arbitration when it ordered CenturyTel to port numbers served by Remote Call Forwarding (RCF), because "the number will continue to be geographically assigned to the rate center." (Arbitration Order, p. 55-57)(Voight Tr. 166).

**Issue 2. Do the Socket/CenturyTel interconnection agreements require CenturyTel to fulfill the number port orders specifically at issue in this case and similar orders submitted since the filing of the complaint and into the future?**

[Relates to Staff Issue (a) Is CenturyTel required to port the telephone numbers in question to Socket?]

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<sup>36</sup> Ms. Smith's testimony shows how far CenturyTel is removed from reality. She describes the numbers as belonging to CenturyTel, in total violation of the principals of number porting. (Smith Surrebuttal p. 3).

<sup>37</sup> On Socket's side of the POI, it is up to Socket to get the traffic to and from its customer, which again has no impact on CenturyTel. (Kohly Direct p. 40).

[Relates to CenturyTel Issue 1. *Under applicable Federal law, Federal Communications Commission (“FCC”) rules, regulations and orders, is CenturyTel or Spectra required to fulfill the two port requests specifically at issue in this case when the customer is physically relocating outside the customer’s exchange? ]*

**Socket’s Position:** The interconnection agreements require CenturyTel to fulfill the number port orders referenced in the complaint and similar orders submitted since the filing of the complaint and into the future, both because federal law requires it as discussed under issue 1 and because such port orders are routinely fulfilled by other carriers pursuant to practices and guidelines developed by the industry. The customers are entitled to keep their numbers in the course of changing providers under these circumstances.

**Argument:**

In addition to CenturyTel’s obligation to comply with FCC requirements regarding number portability, under the interconnection agreements it is also required to port numbers in compliance with industry practices and guidelines. Specifically, Article XII (Local Number Portability – Permanent Number Portability), Section 3.2.1 states:

The Parties agree that the industry has established local routing number (LRN) technology as the method by which permanent number portability (PNP) will be provided in response to FCC Orders in FCC 95-116 (i.e. First Report and Order and subsequent Orders issued as of the date this Agreement was executed). As such, the Parties agree to provide PNP via LRN to each other as required by such FCC Orders or industry agreed-upon practices.

In this provision, the parties recognize that number portability (PNP) is supposed to be provided by the LRN method and agree to port numbers in compliance with FCC requirements and also in compliance with “industry agreed-upon practices”.<sup>38</sup> Likewise,

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<sup>38</sup> CenturyTel attempted to inject confusion by contending that this provision (3.2.1) ONLY applied to LRN porting. (See, e.g., CenturyTel Position Statement, Issue 2(a), Tr 38). But as the parties acknowledge in the

in section 6.4.4, the parties agreed that: “Industry guidelines shall be followed regarding all aspects of porting numbers from one network to another.” And in section 6.4.5, the parties agreed: “Each Party shall abide by the guidelines of the North American Numbering Council (NANC) and the associated industry guidelines for provisioning and implementation processes.”<sup>39</sup> In other words, CenturyTel made it absolutely clear that it promised to comply with industry practices and guidelines in addition to regulatory mandates, by means of contract provisions that it voluntarily placed in the agreements. (Voight Rebuttal, p. 7, Tr. 164).

Socket provided ample and unrefuted evidence that industry agreed-upon practices and guidelines call for provision of the number ports at issue in this case. Mr. Kohly testified that AT&T, Embarq and every CLEC that Socket has dealt with “routinely” provide such number ports, as Socket does for them. (Kohly Direct p. 44-45; see also Voight Tr. 180-81; Kohly Tr. 79-81, 98-99). Ms. Kistner confirmed these industry practices. (Kistner Direct, p. 10, Tr. 132-33). Mr. Kohly testified: “CenturyTel is the only local exchange company that Socket has encountered who takes the position that it is not obligated to complete Socket’s port orders in these situations.” (Kohly Direct p. 44-45).<sup>40</sup>

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contract section, ALL porting is LRN porting. At hearing, Ms. Smith agreed. (Tr. 296). Mr. Voight confirmed this as well. (Tr. 164). LRN is the established national method of handling number portability. See Second LNP Order, CC Docket 95-116, para. 8, 45 et seq (8/18/97). And the agreement states that the parties will provide permanent number portability (PNP) per FCC requirements and industry practices. (Article XII, Section 3.2.1).

<sup>39</sup> Again CenturyTel sought to confuse the Commission by contending that sections 6.4.4 and 6.4.5 only apply to porting of DID numbers. (See, e.g., CenturyTel Position Statement, Issue 2(a), Tr. 38). The express language of the contract section shows this argument to be specious. Section 6.4.4 could not be any more clear that “industry guidelines shall be followed **regarding all aspects of porting numbers**” (emphasis added). Moreover, CenturyTel bases its argument on the content of a section heading (6.4), even though its own witness acknowledged that the interconnection agreements provide that section headings are not to be used to interpret contract sections (see Article III, section 25.0). (Tr. 284).

<sup>40</sup> Throughout these proceedings, CenturyTel has erroneously protested that Socket cannot prove the actions of industry members without all the other companies actually testifying themselves. (Tr. 37). Of

Because of CenturyTel's obstinacy, Socket took this issue to the industry, presenting it to the Local Number Portability Administration – Working Group (LNPA-WG). (Kohly Direct, p. 28). As Mr. Voight stated: “The LNPA-WG, as a part of the NANC, represents the closest thing to a definitive standards body that one might expect to find in the area of number portability.” (Voight Rebuttal, p. 24, see also Tr. 195-96). Ms. Kistner independently confirmed that view. (Kistner Surrebuttal, p. 11). CenturyTel witness Penn described it as “a one-stop shop, one place to go to see what the industry has discussed in their opinion”, that is relied upon by “entities that do make those rules such as the FCC and NANC.” (Tr. 230). He indicated in pre-filed testimony that the Group's purpose “is to arrive at industry consensus” and that it was appropriate for Socket to present the issue to the Group. (Penn Rebuttal p. 4, Surrebuttal p. 13). Mr. Furchtgott-Roth testified: “Whether those constitute an industry standard, I think Mr. Voight addressed this earlier, it is – it certainly is one form.” (Tr. 218). As Mr. Kohly and Ms. Kistner demonstrated, the Working Group frequently works to resolve these types of porting disputes. (Kohly Direct, p. 28-30, Surrebuttal p. 26-35, Tr. 52-57; Kistner Surrebuttal, p. 15-16; Tr. 132-33).

The Working Group thoroughly considered this matter from March through July. Notwithstanding substantial efforts by CenturyTel to prevent or delay a decision, the Group not only reached consensus that CenturyTel should fulfill Socket's

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course, such an argument has no merit. Socket provided expert testimony based upon its actual experience in the industry, as well as the experience of its outside expert. CenturyTel did not refute that testimony. Further, CenturyTel's various efforts to “rally” other LECs around its solitary hold-out position all failed, which further demonstrates the accuracy of Socket's testimony. (Tr. 228). CenturyTel's argument is akin to a contention that in a medical malpractice action, the victim could not rely upon an expert witness to establish the standard of care, but rather would have to have all doctors from the area come in and testify. Obviously, that is not how such industry and professional standards are established in litigation. Experts are routinely allowed to establish such standards by their testimony. See, e.g., Missouri Evidence (Gard), section 14.07.

port requests, but also decided to incorporate that view into its Number Porting Best Practices document, which sets out industry practices for carriers to follow regarding number porting. (Kohly Direct, p. 28-30, Surrebuttal p. 26-35, Tr. 52-57; Kistner Surrebuttal, p. 15-16; Tr. 132-33).

Mr. Kohly described the specifics of the Working Group decision at pages 30-31 of his surrebuttal and further testified that Socket meets all aspects of the decision at pages 31-35 of his surrebuttal. He updated his testimony from the stand to reflect the final action of the Working Group that occurred the day before the hearing in this case. As Mr. Kohly testified:

The group did reach a consensus that Socket's Willow Springs port request should be worked given these agreed-upon caveats.

1. The Socket customer would like to receive calls to their Willow Springs number(s) at a location of theirs that is physically outside of the Willow Springs Rate Center.
2. The customer understands that these numbers must continue to be rated as Willow Springs numbers and does not want them to take on the rating characteristics of the Rate Center of their new location.
3. Socket already serves the Willow Springs Rate Center out of the same switch to which they want to port this customer's Willow Springs number(s).
4. The Socket switch that already serves the Willow Springs Rate Center has an existing POI at the ILEC's tandem over which calls to Willow Springs-rated numbers are routed. If this customer's Willow Springs number(s) are ported into the Socket switch, they would be routed over the same POI, and then Socket would deliver the calls to the customer's premise that is located outside of the Willow Springs Rate Center.
5. Socket has a tariffed or publicly posted as required by state regulation foreign exchange (FX) service that would cover this situation. Calls to and from customers located in the Willow Springs exchange and the customer served by Socket will be routed exactly the same whether Socket assigns the customer a phone number from its 1K block of Willow Springs numbers or whether Socket ports the numbers. This customer will be



served out of the Socket FX tariff or publicly posted price list as required by state regulation.

6. The LSR submitted by Socket reflects the customer's original service location as recorded by the Old SP.

With these caveats, the LNPA-WG concluded that Socket's number port order should be worked.

(Kohly Surrebuttal, p. 30-31 and Schedule MK-22, Tr. 52-57). As indicated, Mr. Kohly also explained in depth how Socket's port requests meet all the foregoing items. (Kohly Surrebuttal, p. 31-35).<sup>41</sup> Mr. Voight concurred. (Voight Tr. 194-95).

CenturyTel witness Penn, who participated in the LNPA-WG proceedings, confirmed that Mr. Kohly accurately described the outcome of the Working Group's deliberations. (Tr. 224-26). CenturyTel also provided such an admission in response to Staff discovery. (Tr. 195). Again, Mr. Penn also testified that it was appropriate for Socket to bring the matter to the Working Group for consideration. (Penn Surrebuttal, p. 13).

Mr. Penn did at one point try to cut too fine a line with the Commission, first stating that the Group had declined to determine whether Socket's port requests met the foregoing criteria. (Tr. 226). But he then volunteered that "the caveats do support whether the LNP working group believes that a port similar in nature to what Socket has brought up would be considered legitimate port requests." (Tr. 231). He added: "To the LNP working group, the LNP working group co-chair Paula Jordan, would say there is

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<sup>41</sup> CenturyTel seemed to implicitly attempt to argue at hearing that Socket did not meet item 3, apparently contending that Socket does not serve a rate center through its switch if it does not have loop facilities in the exchange. But Socket has NXX codes for the exchanges in question and seeks to port numbers as well. (Tr. 90). Indeed, CenturyTel agrees Socket has NXX codes for every CenturyTel exchange. (Tr. 264)(see issue 4). Under the interconnection agreement, CenturyTel agreed that either opening an NXX code or porting a number constitutes "offering service" in the exchange. (Article II, Section 1.93; Tr. 90-91). As Mr. Voight confirmed, the interconnection agreements do not require Socket to have loop facilities in the exchange to port a number. (Voight Rebuttal, p. 23). Other than this rather oblique attack on item 3, CenturyTel did not even attempt to refute Socket's compliance with the LNPA-WG caveats. (Tr. 232).

consensus on this issue, that as long as the six caveats spelled out by the LNPA working group are met, that ports such as the ones that Socket is suggesting should be considered legitimate port requests.” (Tr. 232).

CenturyTel never offered any evidence contrary to Socket’s regarding industry practices and guidelines.<sup>42</sup> Instead, it argues that Socket’s evidence is not enough. Ultimately that is for the Commission to decide, but in truth the evidence shows that CenturyTel stands alone in its refusal to make such ports. (Voight, Tr. 204). Socket has proven that national incumbent carriers like AT&T and Embarq, competitive CLECs, and the nationally-recognized industry Local Number Portability Working Group all find the requested ports should be provided.<sup>43</sup> Such evidence proves that CenturyTel is required to provide the ports pursuant to the provisions of the interconnection agreements that require compliance with industry practices and guidelines.<sup>44</sup> That is the conclusion Staff “conclusively” recommends to the Commission. (Voight Rebuttal, p. 8, 34).

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<sup>42</sup> CenturyTel did make an effort to misrepresent that Socket’s testimony concerning Embarq’s practices was incorrect, by providing incomplete information about Embarq’s arguments in a Pennsylvania arbitration. (Smith Surebuttal, p. 17). However, the complete information shows that Embarq remained willing to port numbers under similar circumstances for another carrier, provided the carrier established interconnection with Embarq with one POI per LATA/tandem switch and with each party responsible for the facilities on their side of a POI. (Smith Tr. 285-87; Smith Surrebuttal Schedule SS-1, Maples Direct, p. 21; Ex. 21, Fox Direct, p. 11-12). In other words, Embarq’s Pennsylvania testimony shows that if the CLEC interconnects on terms and conditions like Socket does with CenturyTel (at least one POI per LATA and the CLEC bearing responsibility for facilities on its side of the POI), then Embarq willingly would port the numbers. (Ex. 21 Fox Direct, p. 12).

<sup>43</sup> CenturyTel apparently contends that it does not have to abide by the LNPA-WG action because appeals are possible. (Tr. 220, 233). However, the interconnection agreements require compliance with current industry standards and the Working Group has confirmed those standards. A potential appeal by a holdout like CenturyTel does not change current standards. CenturyTel did not offer any evidence of any “stay” of industry practices.

<sup>44</sup> While the LNPA-WG itself cannot compel CenturyTel to provide the ports at issue (Kohly Direct p 29), its actions dovetail with the contractual provisions that require CenturyTel to comply with such standards, such that Commission can and should enforce those provisions and compel CenturyTel to provide the ports.

**Issue 3. Are network capacity issues grounds for denial of a number port order?**

[Relates to Staff Issue (b) Is CenturyTel required to transport the traffic in question to a single Point of Interconnection?]

**Socket's Position:** Network capacity issues are not grounds for denial of a number port order. Each party is responsible to have sufficient capacity on its side of a point of interconnection so that traffic can be exchanged properly, including when more traffic is to be exchanged, such as when customers are added by means of the completion of number ports. The interconnection agreements establish procedures for creation of additional points of interconnection based on traffic volumes, but under such contract provisions actual traffic volumes are to be determined over time after numbers are ported and are not to be estimated in anticipation of a number port. If there is a legitimate capacity issue related to a port order, CenturyTel should promptly contact Socket upon receipt of the port order and provide information about the issue, including a plan and time frame for promptly adding any necessary trunking on CenturyTel's side of the POI (Socket would do likewise on its side) so that the port order can be fulfilled and the traffic exchanged in a timely manner.

**Argument:** CenturyTel has added great confusion to this proceeding by asserting on the one hand that purported lack of capacity justifies its refusal to provide number ports (Smith Rebuttal p. 14-19), and yet on the other hand arguing that this purported justification of its refusal to port numbers is not at issue (Smith Surrebuttal p. 25). The record unequivocally shows that CenturyTel refused to provide the two port requests that led to the filing of the complaint, and other subsequent port requests, on the grounds that

it lacked capacity. (Kohly Direct, p. 22-24; Surrebuttal p. 44-48). Purported lack of capacity has been part of the dispute from the beginning, the dispute went through informal dispute resolution, and then the complaint was filed with the Commission. (Kohly Direct p. 16-18, 23, 28). The complaint includes this capacity question as part of the dispute presented. (See, e.g., Complaint p. 5, 9). And as indicated, in testimony CenturyTel continued to present lack of capacity as a purported justification of its refusal to provide the requested ports, thereby confirming that this is an issue to be tried and resolved by the Commission (Smith Rebuttal p. 14-19).

Unfortunately, the testimony concerning this capacity issue spun out of control into lengthy debates over the parties' respective general interconnection obligations under their interconnection agreements. This is not an arbitration to establish terms and conditions of interconnection, so the Commission certainly cannot alter the agreements in this proceeding. Nonetheless, it has become essential that the Commission fully understand the pertinent provisions of the interconnection agreements, in order to resolve this issue concerning the impropriety of CenturyTel's refusal to port numbers based on purported lack of capacity.<sup>45</sup> At bottom, CenturyTel is obligated on a continuing basis to make certain that there is sufficient capacity on its side of any point of interconnection (just as Socket is responsible on its side) to exchange traffic between the parties, including as exchanged traffic increases when Socket adds customers by porting numbers or otherwise.<sup>46</sup>

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<sup>45</sup> Likewise, the Commission will see that the current provisions of the interconnection agreements show that the answer to Staff's issue (b) is without question "yes, CenturyTel must transport traffic to a single point of interconnection until such time as actual traffic rises to a level that requires the parties to establish additional points of interconnection". Mr. Voight explained that this was the Commission's prior decision. (Voight Tr. 203-05).

<sup>46</sup> Further, CenturyTel is responsible for establishing appropriate trunking for its 911 services and it is not entitled to use any inadequacies of its 911 arrangements as an excuse to refuse to provide number ports.

The Commission approved all provisions of the two identical interconnection agreements between Socket and CenturyTel/Spectra, including those itemized below,<sup>47</sup> and further made pertinent express rulings in the arbitration on disputed points between the companies as noted by footnotes accompanying the itemized list of interconnection provisions. The Commission should address the issues presented in this case, including issues concerning network capacity, in the context of these prior approvals and determinations:

1. As provided in Section 4.1 of Article V of the approved interconnection agreement between the parties: “When the Parties **directly interconnect** for the mutual exchange of traffic covered by this Agreement, the Parties will initially interconnect their network facilities at a minimum of **one** technically feasible **POI** on CenturyTel’s network **in each LATA** in which Socket offers telecommunications services.” (emphasis added). Section 4.4 states that, subject to the sections described in item 2 below, “the Parties agree that **Socket has the right to choose a single POI** or multiple POIs within the LATA.” (emphasis added).<sup>48</sup>

2. Section 4.3 et seq. of Article V then describes how Socket is required to establish **additional POIs** for **direct** interconnection **over time** “as the volume of traffic exchanged between the parties increases”, based on traffic “at peak over three consecutive months,” and based on the size of the exchange. Additional POIs are to be added within 90 days of a threshold being met for an exchange (so at least six months

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(Kohly Surrebuttal p. 19). In any event, Socket’s proposal to use direct trunking eliminates 911 concerns. (Voight Rebuttal p. 33).

<sup>47</sup> Orders Approving Interconnection Agreement, Case No. TO-2006-0299 (October 13, 2006).

<sup>48</sup> Arbitration Decision, p. 13-18, 37-38. (Voight Tr. 203-05).

**after** traffic has been added and after the start of traffic measurement). If traffic decreases, POIs may be decommissioned based on similar standards.<sup>49</sup>

3. Sections 4.8 and 4.9 of Article V specify that each **party is responsible** for the network, equipment and facilities **on its side of a POI**.<sup>50</sup> Likewise Section 8.1 states that “Each Party is responsible for bringing its facilities and trunks to the POI.” This point is reiterated yet again in Section 11.1.5. Per Section 6.1.5.1 Socket may lease interconnection facilities for its side of a POI from CenturyTel.

4. Per Section 11.1.1 of Article V, **each party** must “establish trunk groups of **sufficient capacity** from the interconnecting facilities...” Both Article V Section 11 and Article III Section 12 require the parties to work from forecasts for the relevant forecast periods. Article III, Section 12.3 specifies that **CenturyTel cannot delay** fulfilling Socket orders for interconnection.<sup>51</sup>

5. Section 7.1 of Article V expressly authorizes Socket to choose to **interconnect indirectly** through a third party transit provider, rather than to directly interconnect as discussed above. In such instances of indirect interconnection, “**the third party must have a POI** with the originating and terminating carrier in the same LATA as the originating and terminating Parties’ Local Routing Numbers (“LRNs”) as defined in the LERG. Each Party must have a connection to the third party.” (emphasis added).<sup>52</sup>

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<sup>49</sup> Id., Notice Regarding Motion for Reconsideration and Notice of Clarification, Case No. TO-2006-0299 (July 27, 2006). Additional POIs are to be established based on actual traffic over time, not based on statistical projections. (Kohly Surrebuttal p. 12).

<sup>50</sup> Arbitration Decision, p. 18-19. The FCC has made clear that this responsibility includes VNXX traffic. (17 FCC Rcd 27039, para. 52-54).

<sup>51</sup> Arbitration Decision, p. 33-34.

<sup>52</sup> Arbitration Decision, p. 21-22. In the Socket/CenturyTel arbitration, the Commission reiterated its findings in the M2A arbitration that CLECs are free to choose indirect interconnection rather than direct interconnection and rejected CenturyTel’s attempts to restrict such choices as “not conducive to Section 251(a)(1) and the Commission’s previous interpretation of that section.” See also Arbitration Decision at page 32.

6. Section 10.0 et seq of Article V authorizes Socket to obtain **indirect interconnection (i.e. transit) services** from CenturyTel to other carriers, which includes the separate CenturyTel carrier (i.e. Socket is entitled to transit services from CenturyTel to interconnect indirectly with Spectra, and vice versa).

According to the foregoing provisions of the interconnection agreements, each party is continuously responsible to have sufficient capacity on its side of a point of interconnection so that traffic can be exchanged properly, including when traffic is to be added such as for the customers involved in the subject porting requests after the completion of the number ports. The interconnection agreements establish procedures for creation of additional points of direct interconnection based on actual traffic volumes, but under such contract provisions actual traffic volumes are to be determined over time after numbers are ported and are not to be estimated in anticipation of a number port.<sup>53</sup> When the parties indirectly interconnect, their respective arrangements with the third party will determine whether additional POIs are needed.

All of the foregoing provisions demonstrate what should in any event be obvious: interconnecting carriers are expected to cooperate so that there is always sufficient capacity for their mutual exchange of traffic. Socket fully understands its responsibilities.

As Mr. Kohly testified:

**Q. Is Socket willing to address legitimate capacity issues?**<sup>54</sup>

A. Yes. Socket, like CenturyTel, does not want blockage to occur on the network. That said, CenturyTel is obligated to provide the facilities on its side of the POI. As stated in my Direct Testimony [p. 31-33], Socket is willing to address capacity issues in the following fashion:

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<sup>53</sup> Hence, Ms. Anderson's statistical studies, involving use of Erlang tables, are not relevant. (Kohly Surrebuttal p. 12; Anderson Rebuttal). CenturyTel itself does not even act on these tables immediately. (Smith Tr. 275).

<sup>54</sup> Socket seriously questions the legitimacy of many of CenturyTel's assertions regarding capacity. (Kohly Direct p. 31-32).

Upon receipt of Socket's order, CenturyTel should review the order to determine if it raises capacity issues. If there are legitimate capacity issues, CenturyTel should contact Socket with information on the capacity issue and provide a plan and time frame for adding any necessary trunking on its side of the point of interconnection. This should be done promptly within the FOC process. Once the capacity is added, CenturyTel would notify Socket, we would supplement the order, and the port would be completed on the new due date.

Following this process, CenturyTel would be required to augment its facilities that are on its side of the POI. That is what is required under the ICA and it is what CenturyTel is supposed to do; regardless of whether numbers are ported or not. Similarly, Socket would augment its facilities on its side of the POI. Pursuant to Article V, Section 11.1.2.5, Socket is willing to agree to direct trunking, where possible, when traffic volumes warrant direct trunking. Socket does this with other carriers with which it interconnects. Agreeing to direct trunking would take the traffic off of the common trunk group and alleviate CenturyTel's stated concerns about blockage on common facilities on the network. However, by definition direct trunking is not possible in the case of indirect interconnection because the companies are not directly connected. Finally, I want to make it clear that agreeing to direct trunking does not change the POI or the financial responsibility each carrier bears for its facilities and trunking on its side of the POI.

(Kohly Surrebuttal p. 10-11). Further, the parties should rely on forecasting to avoid surprises. (Kohly Direct p. 17).<sup>55</sup> Staff supports Socket's position. (Voight Rebuttal, p. 30).

As indicated, all the foregoing points have already been resolved by the Commission in the prior arbitration and approval of the interconnection agreements. These points are not subject to being revised. Yet, in large part, if not entirely, CenturyTel's opposition to Socket's simple porting requests boils down to CenturyTel's dissatisfaction with the Commission's prior arbitration determinations. Indeed, CenturyTel's opposition specifically boils down to dissatisfaction with the Commission's

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<sup>55</sup> Mr. Kohly fully addressed CenturyTel's false assertions that Socket was not complying with the requirements of the interconnection agreements concerning the establishment and decommissioning of POIs. (Kohly Surrebuttal p. 13-19). He also outlined other areas of disagreement between the parties that will apparently have to be addressed soon by the Commission. (Id).



decision to accept CenturyTel's proposed contract language which **expressly allows** Socket to provide VNXX service and assign numbers to customers physically outside the calling area containing the rate center with which the number is associated, **but not** to accept CenturyTel's accompanying proposal to include in that contract language a requirement of POIs in every exchange.<sup>56</sup> Stripped down to its essence, CenturyTel's position is plainly untenable – it is not entitled to reconsideration of the arbitration or alteration of the provisions of the interconnection agreements, nor can it legitimately hold required number ports hostage in its effort to coerce such reconsideration/alteration from Socket. CenturyTel simply must abide by the contract terms concerning points of interconnection and capacity of interconnection facilities. (Kohly Surrebuttal p 9).<sup>57</sup>

On the specific question of whether lack of capacity is grounds to refuse to port a number, the answer is unequivocally, “No.” (Kohly Direct p. 17, 31-33; Surrebuttal p. 9; Kistner Direct p. 12; Voight Rebuttal p. 32). The FCC has repeatedly stated that “carriers **may not impose non-porting related restrictions** on the porting out process.”<sup>58</sup> Likewise, it has stated that “carriers are required to port a number when they receive a valid request and **may not refuse to port** a number while attempting to collect fees, or settle an account, or **for other reasons unrelated to validating a customer's identity**.”<sup>59</sup> Consistent with the foregoing, in the Intermodal LNP Order, the FCC indicated that disputes over transport costs and facilities were not grounds to deny porting

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<sup>56</sup> See Arbitration Decision, p. 27-28, 44-46.

<sup>57</sup> In particular, CenturyTel must promptly augment its interconnection facilities to keep up with changes in traffic levels. (Kohly Surrebuttal p. 9-11). These are routine matters for other carriers and should be for CenturyTel as well. (Kohly Surrebuttal p. 11, 41-43).

<sup>58</sup> October 2003 LNP Order, CC Docket 95-116, para. 11 (emphasis added). Porting out and porting in refer to the actions of the two carriers executing a port. (Kistner, Tr. 154-55).

<sup>59</sup> Id at para. 8 (emphasis added).

requests.<sup>60</sup> NPAC (the national portability administration center) does not allow a party to challenge a port based on capacity issues. (Kohly Direct p. 10, 31). No other carrier refuses to port numbers based on capacity issues. (Kohly Surrebuttal p. 41 n. 51). Thus, porting requests are to be handled through the porting process independent of other issues, including capacity.<sup>61</sup>

**Issue 4. Is Socket required to have a block of numbers assigned to it for a rate center before CenturyTel has to fulfill number port orders from Socket for that rate center?**

**Socket's Position:** Socket has already obtained number blocks for all the pertinent rate centers at CenturyTel's insistence. However, in many instances there is no need for Socket to have these number blocks except for CenturyTel's insistence. If Socket is only serving customers with ported numbers, it does not yet need a number block for a rate center. Socket could return many blocks but for CenturyTel's insistence.

In the interconnection agreement, CenturyTel agreed that Socket could offer service simply by porting numbers, in lieu of opening a new NXX code. (Article II, Section 1.93)(Kohly Tr. 91).

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<sup>60</sup> Intermodal LNP Order, para. 28 and n. 75.

<sup>61</sup> Interconnection capacity has nothing to do with the technical feasibility of a port, contrary to Ms. Smith's assertions. Her testimony references FCC concerns about the overall methodology of number porting (expressed during the process by which the FCC selected LNR as the method to resolve such concerns), not specific porting requests. (Kistner Surrebuttal p. 15; Smith Rebuttal p. 18). As the record amply demonstrates, CenturyTel is fully capable of completing the ports at issue. (Kohly Direct p. 25-28, 33-34, Surrebuttal p. 9, 25; Kistner Tr. 144; Smith Rebuttal p. 27-28).

**Argument:**

This issue presents a matter of public policy that should be important to the Commission, even though it does not affect the outcome of the case. Socket has testified and CenturyTel has confirmed that Socket currently has NXX codes for every CenturyTel exchange, at CenturyTel's insistence as a precondition of porting numbers to Socket. (Kohly Direct, 22 n. 22 and p. 45, Tr. 90; Smith Tr. 264). But the public policy question is, should Socket be required to retain these codes at CenturyTel's insistence if it does not actually need to use them? If the Commission remains committed to number conservation, its answer should clearly be "no."

CenturyTel contends that there is a requirement that a CLEC like Socket must have either facilities or numbering resources in a rate center to be eligible for porting. (Kohly Direct p. 18, 22, 45; Surrebuttal p. 38; Smith Tr. 266). CenturyTel bases its contention on a statement in the FCC's Intermodal LNP Order. (Smith Rebuttal p. 22; Surrebuttal, p. 30-31, Tr. 266-67).<sup>62</sup>

CenturyTel accurately quotes from the FCC order, but the inquiry should not end there.

The purpose of the order was to "provide guidance to the industry on local number portability (LNP) issues relating to porting between wireless and wireline carriers (intermodal porting)." (Intermodal LNP Order, para. 1).<sup>63</sup> In the background summary, at para. 7, the FCC included the statement on which CenturyTel relies. It repeated the

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<sup>62</sup> CenturyTel did not always take this position. But on October 31, 2006 (three years after the FCC Order), CenturyTel began refusing to process number port orders without any advance notice and ultimately provided the explanation that it was relying on this FCC Order. Again, CenturyTel changed its practices without Socket consent, in violation of Article III, Section 24.1 of the interconnection agreements. (Kohly Direct, p. 22, n. 22, 26, Surrebuttal, p. 38-39).

<sup>63</sup> Interestingly, CenturyTel has no problem relying on an intermodal order to establish an obstacle to wireline porting for Socket, notwithstanding its protests that Socket cannot legitimately rely upon intermodal orders as shedding light on wireline porting requirements.

statement again at para. 24. The FCC expressly based its statements on citations to the document that was admitted into evidence in this Missouri PSC proceeding as Ex. 17. (Intermodal LNP Order, para. 7, footnote 13). (Voight Tr. 172-73).

An examination of the source document (Ex. 17), however, shows that the FCC was in error. There is no such requirement anywhere in the document, much less “at 6” as cited by the FCC (which could mean section 6 or page 6, but either way there is no such statement). Presumably, this was the result of the same sloppy work by the FCC that Mr. Furchtgott-Roth extensively critiqued in his book, *A Tough Act to Follow? The Telecommunications Act of 1996 and the Separation of Powers* (p. 41, 43, 78, 147). In truth, it appears the contended restriction actually simply came from arguments of certain ILECs seeking to unduly restrict intermodal porting. (Intermodal LNP Order, para. 13, 25).

In contrast to its erroneous dicta in its Intermodal LNP Order, in other orders the FCC has expressly stated that one of the purposes of number portability is to conserve numbering resources. (Voight, Tr. 174). See Third Order on Reconsideration, CC Docket 95-116, para. 7 (March 2002); Fourth LNP Order, para. 9.

CenturyTel seized upon this erroneous dictum from the FCC and demanded Socket open NXX codes for exchanges when Socket was at least at first only going to be serving customers by ported numbers. In other words, the new NXX codes would just sit idle and unused, but be unavailable for others. CenturyTel slowed Socket down a little, but in the end the only result is a waste of numbering resources.

Mr. Kohly demonstrated the waste in his Direct Testimony (p. 45). He indicated Socket had to get 151,000 telephone numbers that it did not otherwise need, because

CenturyTel demanded it. He also testified that no other carrier makes such demands. (Kohly Direct, fn 22). Mr. Voight testified to Staff's view that such a waste of numbering resources is inappropriate and that Socket should not have to obtain numbering resources that it does not need. (Voight Rebuttal, p. 25).

In light of the FCC's express goal of using number portability to conserve numbering resources, the absence of any actual holding on its part that NXX codes must be opened without regard to need, and the fact that its dicta references to such a requirement in other documents were erroneous, the Missouri Commission can and should determine that there is no such requirement.<sup>64</sup>

### **Conclusion**

Congress and the FCC have required number portability to make changing carriers as convenient as possible for customers, which in turn promotes competition. The industry in general has cooperated to achieve these purposes. Yet, CenturyTel alone contravenes Congressional, FCC and industry requirements by withholding number portability from Socket and its customers in an effort to coerce Socket into renegotiating its interconnection agreements. (Kohly Tr. 110; Kistner Tr. 144). The customers are the

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<sup>64</sup> Likewise, there is no such companion requirement that a CLEC must have facilities in an exchange to port a number. If a customer is to be served by foreign exchange/VNXX service, there is no need for facilities in the exchange. The FCC plainly was in error in referencing purported statements from the source document regarding facilities as well as NXX codes. (Ex 17). The Commission needs to be clear in its statements in this case, for if it only addresses the NXX code aspect, then CLECs that do not yet have loops in an exchange will still have to open NXX codes to avoid CenturyTel's obstacles to porting numbers in conjunction with foreign exchange/VNXX service. Otherwise, in many instances, competition will be totally impossible. (Kohly Surrebuttal p. 49-50). Staff agrees facilities are not a prerequisite to porting. (Voight Rebuttal, p 23). In the interconnection agreement, CenturyTel agreed that Socket could offer service simply by porting numbers, in lieu of opening a new NXX code. (Article II, Section 1.93)(Kohly Tr. 91).

ultimate losers in the process. (Kohly Direct p. 43-44; Kistner Tr. 150-51; Voight Tr. 176). Without porting, customers have to bear all the costs, disruption and inconvenience of changing their telephone numbers. (Kohly Tr. 102, 111-12). The Commission should not tolerate such actions. Instead, the Commission should order CenturyTel to provide the ports at issue, to handle capacity issues in an appropriate manner rather than by denying ports, and to cease imposing other unnecessary conditions on Socket's port requests.

Respectfully submitted,

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### ***Certificate of Service***

A true and correct copy of the foregoing was served upon the parties identified on the attached service list on this 10th day of September, 2007, by email or by placing same in the U.S. Mail, postage paid.

/s/ Carl J. Lumley

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