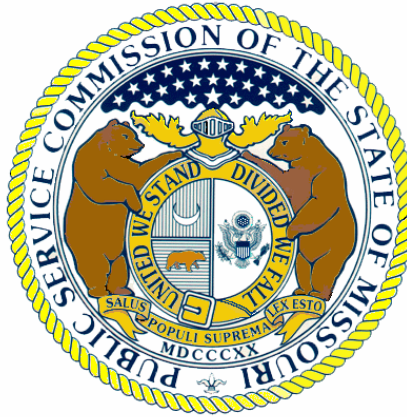


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of CenturyTel of Missouri, LLC, and)
Spectra Communications Group, LLC, d/b/a)
CenturyTel Tariff Filings to Grandfather Remote)
Call Forward Services to Existing Customers and)
Existing Locations.)

Case No. TC-2007-0307
Tariff Nos. JI-2007-0498
JI-2007-0499

REPORT AND ORDER

Issue Date: December 4, 2007

Effective Date: December 14, 2007

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Appearances

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Larry S. Dority, Fischer & Dority, P.C., 101 Madison, Suite 400, Jefferson City, Missouri 65101, for CenturyTel of Missouri, LLC and Spectra Communications Group, LLC, d/b/a CenturyTel.

REGULATORY LAW JUDGE: **Morris L. Woodruff, Deputy Chief Regulatory Law Judge**

REPORT AND ORDER

Syllabus: The Commission orders CenturyTel to fill Socket Internet's February 2007 order for additional remote call forwarding service. The Commission also rejects CenturyTel's tariffs that would restrict the future provision of its remote call forwarding service.

FINDINGS OF FACT

The Missouri Public Service Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Procedural History

On January 19, 2007, CenturyTel of Missouri, LLC, and Spectra Communications Group, LLC, d/b/a CenturyTel filed separate, but essentially identical, tariffs that would “grandfather” the Remote Call Forwarding service offered by the two companies. CenturyTel of Missouri’s tariff was assigned tariff number JI-2007-0498 and Spectra’s tariff was assigned tariff number JI-2007-0499.¹ The tariffs carried a February 18 effective date.

On February 14, Socket Telecom, LLC, and Socket Holdings Corporation, d/b/a Socket Internet, filed a motion asking the Commission to suspend or reject the CenturyTel tariffs. The Commission’s Staff responded on February 14 with a recommendation that the Commission suspend the CenturyTel tariffs to permit further investigation of Socket Telecom and Socket Internet’s allegations. CenturyTel responded on February 15 with a pleading opposing Socket Telecom and Socket Internet’s motion to suspend or reject the tariffs. On February 15, the Commission issued an order suspending CenturyTel’s tariffs until December 18.

The Commission established a procedural schedule that required the parties to prefile direct, rebuttal, and surrebuttal testimony. The Commission scheduled an evidentiary hearing for the purpose of cross-examination of those witnesses on August 27 and 28. In response to joint motions of the parties, the Commission initially rescheduled the hearing for September 18 and 19, and then for October 18 and 19. Ultimately, the parties agreed to waive their right to cross-examine the witnesses and asked the Commission to cancel the hearing. With the agreement of the parties, the Commission

¹ CenturyTel of Missouri and Spectra are legally distinct entities, but, for purposes of this Report and Order, the Commission will refer to them collectively as CenturyTel.

admitted the prefiled written testimony into evidence and cancelled the hearing. The parties filed briefs on October 31.

CenturyTel's Remote Call Forwarding Service

CenturyTel of Missouri and Spectra Communications Group, d/b/a CenturyTel are incumbent local exchange companies offering telephone services in specified Missouri exchanges under authority granted and tariffs approved by this Commission. The Remote Call Forwarding (RCF) Service currently offered by CenturyTel is a local switch-based telephone number forwarding service. The customer purchasing the RCF service has no telephone equipment associated with the telephone number assigned to them by CenturyTel. Instead, any telephone call to that number terminates in the CenturyTel switch, which automatically forwards the call to the distant telephone equipment specified by the purchaser of RCF service. The RCF service is typically used by a business that wants to provide a local number for its customers to call without actually having a physical presence in that area.² So, for example, a business based in Centralia, Missouri might believe that it will get more business from customers in Columbia if the Columbia customers can reach the business by dialing a Columbia phone number. The Centralia business could achieve that result by purchasing RCF service from CenturyTel. In that way, the Columbia customers would avoid toll charges in calling the Centralia business. Furthermore, the Centralia business would appear to have a local presence in Columbia, a useful illusion that would not occur if the business simply purchased the use of a toll-free, 1-800 number.³

² Martinez Direct, Ex. 2, Pages 4-5, Lines 22-23, 1-6.

Socket's Actions Regarding CenturyTel's RCF Service

The other parties to the dispute regarding CenturyTel's RCF service are two affiliated companies, Socket Telecom and Socket Internet. Socket Telecom is an authorized provider of intrastate switched and non-switched local exchange and interexchange telecommunications services in Missouri under certificates granted and tariffs approved by this Commission. Socket Telecom is a competitive local exchange company offering local phone service in competition with CenturyTel. Socket Holdings Corporation owns Socket Telecom, and also does business as Socket Internet. Socket Internet is an internet service provider offering its services in Missouri.⁴

In October 2006, Socket Internet purchased 39 RCF service arrangements from CenturyTel in various exchanges around Missouri.⁵ Socket Internet paid CenturyTel its tariffed rates for the RCF service.⁶ Thereafter, Socket Internet changed service providers to start taking an RCF-like service from its affiliate, Socket Telecom.⁷ At Socket Internet's request, Socket Telecom ported the phone numbers that Socket Internet had obtained from CenturyTel so that Socket Internet could continue to use those numbers while taking service from Socket Telecom.⁸

As an internet service provider, Socket Internet offers dial-up internet service to its customers. Socket Internet intended to use the RCF service numbers it obtained from

³ Kohly Direct, Ex. 1, Page 17, Lines 7-16.

⁴ Kohly Direct, Ex. 1, Page 3, Lines 7-18.

⁵ Kohly Direct, Ex. 1, Page 12, Lines 20-21.

⁶ Kohly Direct, Ex. 1, Page 13, Lines 9-11.

⁷ Socket Internet purchases a "DS3 Service with the Out of Calling Scope Option" from Socket Telecom. Kohly Direct, Ex. 1, Page 6, Lines 5-6.

⁸ Kohly Direct, Ex. 1, Pages 12-13, Lines 21-22, 1.

CenturyTel to offer its customers the ability to establish a data connection to the internet while making a local, non-toll, call. CenturyTel's tariff regarding RCF service provides that RCF service is not suitable for transmission of data. It also provides that RCF service cannot be used for toll by-pass, and can be used to forward only one call at a time.⁹ Socket Internet intended to avoid the restrictions in CenturyTel's tariff by porting the number it obtained from CenturyTel to Socket Telecom. It then used Socket Telecom's RCF-like foreign exchange service to provide dial-up internet service to its customers.

CenturyTel's Tariff to Grandfather RCF Service and Socket Internet's Response

CenturyTel reluctantly completed all of Socket Internet's October 2006 RCF number port orders.¹⁰ However, on January 19, 2007, CenturyTel filed tariffs that would "grandfather" its RCF service. CenturyTel's tariff revisions would limit its RCF service to "existing customers at existing locations". It provides that no new service will be offered.¹¹ CenturyTel gave those tariffs a thirty-day effective date of February 18. However, on February 15, the Commission suspended the tariffs before they could go into effect.

On February 8, Socket Internet placed an order for 61 additional RCF numbers from CenturyTel.¹² Claiming that Socket Internet's request for additional RCF numbers would violate its existing tariff and "interfere with and impede CenturyTel's ability to provide service to other customers", CenturyTel refused to fill that order.¹³

⁹ Martinez Direct, Ex. 2, Pages 5-7, Lines 10-21, 1-22, 1-2., *a/so*, Schedule APM #1.

¹⁰ Kohly Direct, Ex. 1, Page 13, Lines 1-11.

¹¹ Commission Tariff File Nos. JI-2007-0498 and JI-2007-0499.

¹² Kohly Direct, Ex. 1, Page 5, Lines 20-21.

The Issues

Two issues are presented for the Commission's determination. First is the relatively narrow issue of whether CenturyTel should be required to fill Socket Internet's February order for 61 additional RCF service arrangements. The second issue is the broader question of whether the Commission should approve CenturyTel's tariffs that would "grandfather" its RCF service offerings by limiting those offerings to existing customers.

Should CenturyTel be Required to Fill Socket Internet's February Order for Additional RCF Service?

CenturyTel's tariff that would "grandfather" its RCF service offerings clearly was not in effect on February 8, when Socket Internet submitted its request for additional service. Therefore, CenturyTel would be justified in refusing to supply that service only if Socket Internet's use of RCF service would violate CenturyTel's preexisting tariff.

CenturyTel claims that it can refuse to honor Socket Internet's request because that company intended to use the CenturyTel numbers that it obtained through its RCF service orders to provide multi-channel services for the provision of dial-up internet service. CenturyTel contends such a use of its numbers would overload its network to the clear detriment of CenturyTel's other customers.¹⁴ Socket Internet concedes that it intends to use the numbers it obtains from CenturyTel to provision dial-up internet service but denies that its actions would violate CenturyTel's tariffs or overload its network. The Commission finds that Socket Internet is correct.

The key to understanding the dispute between CenturyTel and Socket Internet is to realize that Socket Internet could purchase everything it needs to provision dial-up internet

¹³ Martinez Direct, Ex. 2, Page 12, Lines 15-19.

¹⁴ Martinez Direct, Ex. 2, Page 13, Lines 5-8.

service to its customers directly from Socket Telecom without porting any numbers from CenturyTel. Socket Telecom can obtain its own numbering resources in CenturyTel's exchanges and can, and indeed does, offer its own RCF-like service to Socket Internet and other customers.¹⁵ Why then does Socket Internet want to obtain those numbers from CenturyTel? And why does CenturyTel want to prevent Socket Internet from obtaining the numbers it seeks?

The answer is competition. In the small, rural exchanges in which Socket Internet is seeking to obtain internet customers, CenturyTel, as the incumbent local exchange carrier, controls the NXX code that has, for many years, been used for dialing local calls. So, for example, a customer in the St. James exchange would recognize 573-265-xxxx as a local number. Socket Telecom also controls a block of numbers in the St. James exchange, but a number assigned to a customer by Socket Telecom would include a 899 prefix, such as 573-899-xxxx. Socket Internet is concerned that its customers in the St. James exchange might not recognize that the 899 number is indeed a local number and that confusion could result.¹⁶ Indeed, a customer could mistakenly dial a 1 before the unfamiliar local number and thereby incur toll charges on their dial-up connection.¹⁷ By obtaining a familiar local number from CenturyTel and then exercising its right to port that number to Socket Telecom,¹⁸ Socket Internet establishes a means by which its customers can dial a familiar number to obtain internet service.

¹⁵ Martinez Direct, Ex. 2, Pages 13-14, Lines 20-23, 1-2.

¹⁶ Kohly Direct, Ex. 1, Page 7, Lines 3-17.

¹⁷ Kohly Direct, Ex. 1, Pages 7-8, Lines 18-20, 1-8.

¹⁸ In a recent arbitration decision, the Commission required the interconnection agreement between Socket and CenturyTel to include a provision permitting the porting of telephone numbers associated with remote call forwarding. Voight Rebuttal, Ex. 5, Page 6, Lines 5-10. That obligation is found in Article XII, Section 6.2.2 of

CenturyTel argues that it should be able to deny Socket Internet's request for RCF service because its planned use for those numbers would violate CenturyTel's tariff and would overload its system with multiple calls transmitting data to and from the internet. However, CenturyTel did not demonstrate any violation of its tariffs. On the contrary, while using the RCF service it obtained from CenturyTel, before switching service to Socket Telecom and porting the number, Socket Internet complied with all requirements of CenturyTel's tariff.¹⁹ CenturyTel presented no evidence to show that Socket Internet has not complied with its tariffs. Indeed, CenturyTel's witness stated that when Socket Internet has requested RCF service in the past it has directed that the RCF number be forwarded to a number used for customer service or technical support.²⁰ That witness concedes that such use of the RCF service is appropriate.²¹

CenturyTel concern about Socket Internet's intentions does not start until after Socket Internet has switched its service and had the number ported to Socket Telecom. After that change is made, Socket Internet intends to use the ported number to provide its customers with dial-up internet access. CenturyTel complains that this use of the ported number would be inconsistent with its tariff and could cause congestion on its system. However, once Socket Internet has switched service providers to take service from Socket Telecom it must comply with Socket Telecom's tariffs, and is no longer bound by the terms of CenturyTel's tariffs.

the interconnection agreement. Kohly Rebuttal, Ex. 4, Page 7, Lines 14-18.

¹⁹ Kohly Direct, Ex. 1, Page 11, Lines 13-18.

²⁰ Martinez Direct, Ex. 2, Page 10, Lines 7-12.

²¹ Martinez Direct, Ex. 2, Page 12, Lines 3-7.

The internet dial-up calls made by Socket Internet customers would be transported over CenturyTel's lines so CenturyTel has some basis for its concerns about congestion. However, that traffic will flow over the network in exactly the same manner whether Socket Internet is allowed to obtain and port an RCF number from CenturyTel or obtains a number directly from Socket Telecom.²² Furthermore, once Socket Internet switches its service to Socket Telecom, Socket Telecom is the party responsible for the flow of traffic. As a result, CenturyTel's concerns about congestion are properly addressed to Socket Telecom, not Socket Internet.

Socket Telecom and CenturyTel have interconnection agreements in place that include provisions to deal with the potential congestion problems identified by CenturyTel. If CenturyTel is concerned about congestion problems, its remedy may be found in those interconnection agreements. However, CenturyTel's concerns about potential congestion problems are not a basis for refusing to honor Socket Internet's order for additional RCF connections.

Socket Internet's request for additional RCF connections complies with the requirements of CenturyTel's tariffs and the Commission will order CenturyTel to honor those requests.

Should the Commission Approve CenturyTel's Tariffs that Would "Grandfather" its RCF Service?

As previously indicated, CenturyTel has proposed tariffs that would limit its offering of RCF service to existing customers at existing locations. If the tariffs are approved, CenturyTel would not offer any new RCF service. Obviously, the tariff revisions are related

²² Kohly Surrebuttal, Ex. 8, Page 11, Lines 11-14.

to CenturyTel's dispute with Socket Internet and Socket Telecom. If the tariffs were approved, CenturyTel would not have to honor any new orders from Socket Internet for RCF service to obtain numbers to be ported to Socket Telecom. The Commission has already found that Socket Internet's practices do not violate CenturyTel's current tariffs, but the question of whether CenturyTel should be allowed to change its tariffs is legally distinct and must be separately addressed.

In support of its tariffs, CenturyTel contends that it should be allowed to restrict its offering of RCF service to reduce the risk of enabling the fraudulent avoidance of toll charges. In part, CenturyTel bases this argument on its contention that Socket Internet is engaging in such fraudulent activity. The Commission has already addressed that contention. CenturyTel also cites an incident at a Washington state prison in which prisoners used stolen social security numbers and a false billing address to set up an inappropriate RCF service that cost CenturyTel \$600,000. That scam was the rationale for CenturyTel's decision to "grandfather" its RCF service in that state in 2005.²³ CenturyTel did not offer any evidence to demonstrate that its RCF service in Missouri has been subject to a similar scam.

CenturyTel also contends that RCF service is not really an important service and its decision not to offer that service to new customers would not harm the public interest. In support of that argument, CenturyTel points out that only one half of one percent of CenturyTel's Missouri customers purchase RCF service²⁴ Furthermore, CenturyTel argues

²³ Martinez Direct, Ex. 2, Page 8, Lines 2-10.

²⁴ Martinez Direct, Ex. 2, Page 14, Lines 17-18.

that RCF is becoming an antiquated service for which alternative services would remain available.²⁵

The expert testimony offered by Staff reaches a different conclusion about the continued utility of CenturyTel's RCF service. Staff's witness, William L. Voight explained that RCF service could be very useful in response to natural or man-made disasters. For example, a tornado could destroy a home or business, forcing the family or business to temporarily relocate. RCF service would allow a customer to retain the same phone number and have calls to that number redirected to another location. Unlike standard versions of call forwarding service, a unique feature of RCF service is that customer premise equipment is not required to make the service function properly.²⁶ The Commission accepts the expert opinion of Staff's witness that "[t]his unique characteristic of *Remote* Call Forwarding makes the service indispensable for emergency and disaster contingency planning purposes."²⁷ Based on Voight's impartial expert opinion, the Commission finds that "there is no close substitute for Remote Call Forwarding telephone service."²⁸

Finally, CenturyTel argues that the Commission has no authority to interfere with its decision to "grandfather" its RCF service because that service is not "a technology or service feature constituting the minimum elements necessary for basic local and

²⁵ Martinez Direct, Ex. 2, Page 14, Line 9.

²⁶ Voight Rebuttal, Ex. 5, Pages 2-3, Lines 18-23, 1-2.

²⁷ Voight Rebuttal, Ex. 5, Page 3, Lines 2-3.

²⁸ Voight Rebuttal, Ex. 5, Page 3, Lines 3-4.

interexchange telecommunications service.”²⁹ In other words, CenturyTel is claiming the right to manage its business affairs in whatever way it deems appropriate.

As a public utility, CenturyTel has an obligation to “furnish and provide with respect to its business such instrumentalities and facilities as shall be adequate and in all respects just and reasonable.”³⁰ RCF is a well-established and useful service that benefits CenturyTel’s customers. The primary reason CenturyTel wants to limit the future availability of that service is to erect barriers in front of its competitor. The Commission will not approve tariffs that would limit the availability of a service that is necessary to provide adequate and just and reasonable service to CenturyTel’s customers.

CONCLUSIONS OF LAW

The Missouri Public Service Commission has reached the following conclusions of law:

1. CenturyTel of Missouri, LLC, and Spectra Communications Group, LLC, d/b/a CenturyTel are “Telecommunications Companies” and “Public Utilities,” as those terms are defined at Subsections 386.020 (51) and (42), RSMo Supp. 2006. As such, they are subject to regulation by this Commission.

2. Section 392.200.1, RSMo Supp. 2006 states:

Every telecommunications company shall furnish and provide with respect to its business such instrumentalities and facilities as shall be adequate and in all respects just and reasonable.

²⁹ Joint Brief of CenturyTel of Missouri, LLC and Spectra Communications Group, LLC, d/b/a CenturyTel, Page 6.

³⁰ Section 392.200.1, RSMo Supp. 2006.

3. Section 392.200 RSMo 2000 requires telecommunications companies to file tariffs with the Commission establishing the services they will offer and the rates they will charge for those services.

DECISION

Based on the facts as it has found them, and its conclusions of law, the Commission finds that CenturyTel is obligated under its existing tariff to fill Socket Internet's February 2007 order for additional RCF service. Furthermore, the Commission finds that CenturyTel's proposed tariffs "grandfathering" its RCF service are not in the public interest and must be rejected.

Pending Motion to Strike Portions of CenturyTel's Brief

On November 7, Socket Telecom and Socket Internet filed a motion urging the Commission to strike specified portions of CenturyTel's brief that Socket contends are unfounded and inappropriate. No party has responded to Socket's motion.

The Commission agrees with Socket that its decision must be based on the evidence in the record before it. CenturyTel's brief is not evidence and to the extent that it contains references to material that is not in evidence, the Commission has not relied on that material in making its decision. There is, however, no need to strike any portion of CenturyTel's brief. Socket's motion will be denied.

IT IS ORDERED THAT:

1. The proposed tariff sheets (JI-2007-0498) submitted on January 19, 2007, by CenturyTel of Missouri, LLC, are rejected.
2. The proposed tariff sheets (JI-2007-0499) submitted on January 19, 2007, by Spectra Communications Group, LLC, d/b/a CenturyTel, are rejected.

3. CenturyTel of Missouri, LLC, and Spectra Communications Group, LLC, d/b/a CenturyTel are ordered to fulfill all pending retail orders for remote call forwarding service for Socket Internet.

4. CenturyTel of Missouri, LLC, and Spectra Communications Group, LLC, d/b/a CenturyTel are ordered to fulfill all pending resale orders for remote call forwarding service for Socket Telecom, LLC.

5. Socket Telecom, LLC and Socket Internet's Motion to Strike Portions of CenturyTel's Brief is denied.

6. This Report and Order shall become effective on December 14, 2007.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', is written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Clayton, Appling, and Jarrett, CC., concur;
Murray, C., dissents with separate dissenting opinion to follow;
and certify compliance with the provisions
of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 4th day of December, 2007.