

***Exhibit No.:***

***Issue(s):*** Local Number Portability

***Witness:*** Susan W. Smith

***Type of Exhibit:*** Surrebuttal  
Testimony

***Sponsoring Party:*** CenturyTel of  
Missouri, LLC and Spectra  
Communications Group, LLC d/b/a  
CenturyTel

***Case No.:*** TC-2007-0341

***Date Testimony Prepared:*** June 25,  
2007

**SURREBUTTAL TESTIMONY**

**OF**

**SUSAN W. SMITH**

**ON BEHALF OF**

**CENTURYTEL OF MISSOURI, LLC AND SPECTRA**

**COMMUNICATIONS GROUP, LLC d/b/a CENTURYTEL**

**CASE NO. TC-2007-0341**

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

\* Socket Telecom, LLC,  
Complainant,

v.

CenturyTel of Missouri, LLC and  
Spectra Communications Group, LLC  
d/b/a CenturyTel,  
Respondents.

Case No. TC-2007-0341

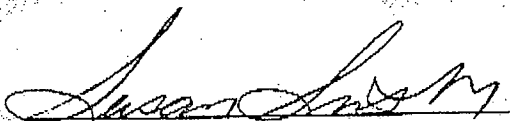
AFFIDAVIT OF SUSAN W. SMITH

STATE OF TEXAS

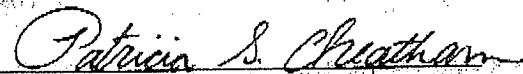
BOWIE COUNTY

SS

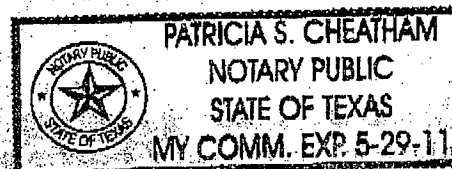
I, Susan W. Smith, of lawful age and being duly sworn, state: I am Director - External Affairs for CenturyTel Service Group, LLC, and am testifying on behalf of CenturyTel of Missouri, LLC and Spectra Communications Group, LLC d/b/a CenturyTel, collectively referred to herein as "CenturyTel." My business address is 911 North Bishop Rd., Suite C207, Texarkana, Texas 75501. Attached hereto and made a part hereof for all purposes is my Surrebuttal Testimony in the above-referenced case. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge, information and belief.

  
Susan W. Smith

Subscribed and sworn to before me this 25<sup>th</sup> day of June, 2007.

  
Notary Public

My Commission expires: 5-29-11



1                   **SURREBUTTAL TESTIMONY OF SUSAN W. SMITH**  
2                   **ON BEHALF OF CENTURYTEL OF MISSOURI, LLC AND SPECTRA**  
3                   **COMMUNICATIONS GROUP, LLC d/b/a CENTURYTEL**

4    **Q.     Please state your name.**

5    A.     Susan Wilson Smith

6    **Q.     Are you the same Susan Smith who filed rebuttal testimony in this case?**

7    A.     Yes.

8    **Q.     What is the purpose of your surrebuttal testimony?**

9    A.     The purpose of my testimony is to clarify, address and respond to points raised in  
10         Staff's Rebuttal Testimony.

11   **Q.     On page 6 of Staff's Rebuttal Testimony, Staff states the following as the**  
12         **basis for their recommendations. Will you please address each of their**  
13         **findings?**

- 14                 (1) Neither Congress nor the FCC have pre-empted the MO PSC's  
15                     authority to rule for nor against CenturyTel or Socket in this matter;  
16                 (2) Matters which are the focus of this complaint were generally  
17                     addressed by the commission previously in Case No. TO-2006-0299;  
18                 (3) While the Act and the FCC (through its rules and policy statements)  
19                     set forth a general number portability framework, the CenturyTel /  
20                     Socket Interconnection Agreement offers a more specific framework  
21                     for deciding the issues in this case.

22   A.     Yes, I will address each point and/or direct you to the appropriate CenturyTel  
23         witness for each.

24   **Q.     Are the Staff's findings accurate that neither Congress nor the Federal**  
25         **Communications Commission ("FCC") have pre-empted the Missouri Public**

1       Service Commission's ("Commission") authority to rule for or against  
2       CenturyTel or Socket in this matter?

3   A.   No. This is discussed in the testimony of Dr. Furchtgott-Roth.

4   Q.   As testified to by Staff, were matters that are the focus of this complaint  
5       generally addressed by the Commission previously in Case No. TO-2006-  
6       0299?

7   A.   No. Staff appears to be relating location porting to the findings on V-NXX  
8       service, which is addressed in detail below. V-NXX and FX are also discussed in  
9       the testimony of Dr. Furchtgott-Roth.

10  Q.   On page 6 of Staff's Rebuttal Testimony, Staff states that "the crux of this  
11       case may be addressed by examining the extent to which CenturyTel may be  
12       obligated to port telephone numbers that will be used in a virtual  
13       configuration (i.e. V-NXX)." (See Staff's Rebuttal Testimony, page 6.) Is that  
14       an accurate assessment of the dispute?

15  A.   No, not at all. Staff makes a long argument about V-NXX and, since Staff  
16       erroneously believes that V-NXX is exchange service, concludes that CenturyTel  
17       should port these numbers. Saving the discussion of the proper jurisdiction of V-  
18       NXX for later, the ports in question do not have anything to do with V-NXX.

19  Q.   How does the Interconnection Agreement<sup>1</sup> define V-NXX?

20  A.   Article V of the Interconnection Agreement defines V-NXX Traffic as a non-local  
21       service, where Socket assigns NPA/NXXs to a customer physically located  
22       outside of the CenturyTel Local Calling Area containing the Rate Center with

---

<sup>1</sup> The CenturyTel of Missouri, LLC and Spectra Communications Group, LLC d/b/a CenturyTel Interconnection Agreements with Socket Telecom, LLC will be referred to herein as the "CenturyTel/Socket Interconnection Agreement" or "Interconnection Agreement".

1 which the NPA/NXX is associated. By definition, V-NXX means service to a  
2 customer located outside of the exchange to which a Socket-provided NXX is  
3 rated. The numbers in question do not have Socket NXXs; they have CenturyTel  
4 NXXs. The CenturyTel NXXs are not V-NXXs; they are assigned only to  
5 customers who have a physical service location in the exchange; or who pay  
6 access to CenturyTel to transport locally-dialed calls across the exchange  
7 boundary. Therefore the question is not, as Staff asserts, is CenturyTel obligated  
8 to port to a V-NXX that is rated to the CenturyTel exchange? Rather, the  
9 question is: Does CenturyTel have an obligation to port one of its own non-V-  
10 NXX numbers to Socket when that customer will be physically relocating the  
11 service location outside of the exchange?

12 **Q. Can the Commission now redefine V-NXX to include numbers ported away**  
13 **from an Incumbent Local Exchange Carrier's local exchange?**

14 A. No. Staff's apparent position notwithstanding, the FCC clearly distinguishes V-  
15 NXX from the Incumbent Local Exchange Company's ("ILEC") NXX and, in  
16 fact, uses the ILEC's NXX to define what constitutes a V-NXX. For example, in  
17 a 2003 Memorandum Opinion and Order, the FCC defines VNXX in the  
18 following way:

19 "Telephone numbers consist of ten digits in the form NPA-NXX-XXXX.  
20 The first three digits, or the 'NPA', refer to the area code. The second  
21 three digits, or the 'NXX', refer to the central office code. Pursuant to  
22 standard industry practice, an NXX code generally corresponds to a  
23 particular geographic area – or 'rate center' – served by a local exchange  
24 carrier ('LEC'). By contrast, 'virtual NXX' codes are central office codes  
25 that correspond to a particular rate center but are assigned to a customer  
26 located in a different rate center. For example, if a customer physically  
27 located in a rate center in Key West, Florida, received a telephone number

1 containing an NXX code associated with a rate center in Miami, Florida,  
2 that customer would have a virtual NXX code.”<sup>2</sup>

3 **Q. For the sake of argument, if a number ported away from CenturyTel could**  
4 **be included in the definition of V-NXX service, would Socket’s port order be**  
5 **valid?**

6 A. No. Staff’s entire premise for these ports being valid is the assertion that V-NXX  
7 should be exchange service. Note that even Staff says “should be,” not “is.”<sup>3</sup> The  
8 Commission is being asked to make a future determination retroactively  
9 applicable to a past action, when no legal basis for such a determination existed at  
10 the time of Socket’s order placement, or even exists today. Further, the  
11 Commission cannot find that V-NXX is exchange service in this instance, as the  
12 Commission is preempted by both the FCC and the Interconnection Agreement  
13 from doing so.

14 **Q. How has the FCC preempted the Missouri Public Service Commission from**  
15 **making a determination that V-NXX is an exchange service?**

16 A. It is important to recognize that the ports in question are Internet Service Provider  
17 (“ISP”) dial-up numbers. This is not in dispute. All traffic to these numbers is  
18 therefore ISP-bound traffic. The FCC stated unequivocally in the ISP Remand  
19 Order that ISP-bound traffic is interexchange traffic.<sup>4</sup> Further, both the First,  
20 Second and Eighth Circuit Courts of Appeal have ruled that ISP-bound traffic is

---

<sup>2</sup> In the Matter of STARPOWER COMMUNICATIONS, LLC v. VERIZON SOUTH INC., File No. EB-00-MD-19, November 7, 2003.

<sup>3</sup> “The first question the Commission needs to determine is whether V-NXX service should be considered an exchange service or an interexchange service.” Voight, page 6.

<sup>4</sup> In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-carrier Compensation for ISP-Bound Traffic, CC Docket No. 96-98, CC Docket No. 99-68, ORDER ON REMAND AND REPORT AND ORDER, April 27, 2001.

1 interexchange traffic.<sup>5</sup> In conformance with those rulings, if all traffic to the V-  
2 NXX number is interexchange, this V-NXX service cannot be exchange service.

3 **Q. Can Staff not argue that legitimate exchange service can be used to originate**  
4 **or terminate interchange calls?**

5 A. Yes, I suppose Staff can. But to do so, the interexchange calls must be dialed as  
6 interexchange calls so that those calls will not be treated as exchange traffic. This  
7 is accomplished by dialing 1+ or 0+ before the called number. In the Socket case,  
8 there would be no 1+ or 0+ to cause interexchange traffic to be handled  
9 differently than other calls to these numbers; assuming that there would be any  
10 other type of calls to ISP dial-up numbers except for the interexchange. Precisely  
11 because all calls to the numbers in question are dialed and treated identically, and  
12 all those calls are interexchange under FCC and Federal Court determinations, the  
13 service being provided is an interexchange service, not an exchange service.

14 **Q. Could there be some flavor of V-NXX that is exchange service and another**  
15 **flavor that is interexchange?**

16 A. Yes. There is ample precedent for this bifurcation of traffic jurisdiction of a  
17 telecommunications service. For example, a toll call can be either interstate or  
18 intrastate in nature. Both types of calls are dialed identically, both are  
19 interexchange, both route in the same fashion, but the compensation and  
20 regulatory jurisdiction are different for each type. There are even different flavors

---

<sup>5</sup> See, e.g., GLOBAL NAPS, INC. v. VERIZON NEW ENGLAND, INC., d/b/a Verizon Massachusetts, et al., Case No. 05-2657, United States Court of Appeals for the First Circuit, April 11, 2006; GLOBAL NAPS, INC. v. VERIZON NEW ENGLAND, INC., F/K/A NEW ENGLAND TELEPHONE & TELEGRAPH CO., D/B/A BELLATLANTIC VERMONT, INC., et al., Docket No. 04-4685-CV, United States Court of Appeals for the Second Circuit, July 5, 2006; and *In re AT&T Arkansas (f/k/a SBC Arkansas)* and Connect Communications Corp., Case No. 05-3698, United States Court of Appeals for the Eighth Circuit, October 27, 2006.

1 of exchange service. Some Manchester, Missouri customers, for example, can  
2 call to downtown St. Louis without additional charges as part of their local service  
3 plan. Some of their neighbors, however, living within the same exchange  
4 boundary, have to pay a per-minute-of-use interexchange toll charge for the exact  
5 same call because they have different kinds of local service plans from AT&T.

6 Additionally, the Commission may want to take note of the new law in  
7 Michigan where the ILEC is allowed to choose whether V-NXX will be treated as  
8 local or billed as toll. Here is a case where the same type of traffic will be treated  
9 differently in the same state on a carrier-by-carrier basis. But just because some  
10 traffic may be treated as local for compensation purposes between the carriers, it  
11 does not make it local traffic. ISP-bound V-NXX may be treated as local for  
12 compensation purposes in Michigan in some cases but the traffic has clearly been  
13 ruled to be interexchange.

14 **Q. So the treatment of traffic for compensation purposes does not change the**  
15 **nature or jurisdiction of the traffic?**

16 A. No. I think we just proved that point in our discussions of V-NXX, interstate vs.  
17 intrastate toll, and differing exchange service plans. The type of compensation, or  
18 lack thereof, does not, *de facto*, define the type or jurisdiction of the traffic.

19 **Q. You said earlier in your testimony that V-NXX cannot be found to be**  
20 **exchange service pursuant to the Interconnection Agreement. Can you**  
21 **explain?**

22 A. Yes. Staff apparently missed the terms in the Agreement under Article V, Section  
23 9.2.3, V-NXX Traffic:



1 "If Socket assigns NPA/NXXs to a customer physically located outside of  
2 the CenturyTel Local Calling Area containing the Rate Center with which  
3 the NPA/NXX is associated, traffic originating from CenturyTel  
4 customers within that CenturyTel Local Calling Area to Socket customers  
5 physically located outside of the CenturyTel Local Calling Area shall *not*  
6 *be deemed Local Traffic* but shall be at Bill-and-Keep." [emphasis added]

7 The Agreement clearly says that V-NXX is not Local Traffic. Therefore, the  
8 Commission cannot retroactively find that V-NXX should be treated as exchange  
9 service under the Agreement.

10 **Q. On page 14 of Staff's Rebuttal Testimony, Staff claims that, "[i]f Socket's**  
11 **VNXX service was an interexchange service, exchange access charges would**  
12 **apply, which clearly is not the case with the CenturyTel/Socket**  
13 **Interconnection Agreement." Is this a valid argument?**

14 **A.** No. Staff appears to be referring to last year's arbitration decision when stating  
15 "[w]hether state commissions could assess exchange access charges to  
16 "interexchange VNXX ISP-bound calls" was "an issue that was addressed by the  
17 Commission in the recent CenturyTel/Socket arbitration under Issues 7 and 10."  
18 The previously-referenced Federal Court decisions have already said that access  
19 charges can be applied to V-NXX pursuant to a State Commission decision. Last  
20 year's decision was not whether the Commission *could* assess access but rather if  
21 the Commission *would* choose to do so. Further, just because the traffic is  
22 exchanged at bill and keep does not make it an exchange service. For example,  
23 with the Enhanced Service Provider ("ESP") exemption, the FCC clearly  
24 forebears the application of access charges upon interexchange traffic that falls  
25 under the enhanced services definition. And Staff is correct in believing that, in  
26 the arbitration, the Commission has already decided this question. The arbitration

1 decision is established in the previously referenced Agreement text: "[V-NXX]  
2 shall *not be deemed Local Traffic* but shall be at Bill-and-Keep". [emphasis  
3 added]

4 **Q. If V-NXX is not exchange service but interexchange service, how does that**  
5 **affect this dispute?**

6 A. I will let Staff's own words answer that question:

7 "This question is important because if it is an exchange service, V-NXX is  
8 subject to certain interconnection obligations of CenturyTel whereas, if it  
9 is an interexchange service, it is not." (See Staff's Rebuttal Testimony,  
10 page 6.)

11 \* \* \*

12 "The central question in this case is whether the V-NXX service described  
13 in the Parties' Interconnection Agreement is an "exchange service" or an  
14 "interexchange service." If it is an exchange service, then it is subject to  
15 the congressional requirements; if it is an interexchange service, it is not."  
16 (See Staff's Rebuttal Testimony, page 11.)

17 \* \* \*

18 "However, if the Commission were to find in this case that Socket's V-  
19 NXX service was an interexchange service, and in particular if it were to  
20 find such traffic subject to exchange switched access charges, the  
21 Commission would be deciding in favor of CenturyTel, Socket's  
22 complaint should be denied, and this case should be closed." (See Staff's  
23 Rebuttal Testimony, page 15.)

24 **Q. Do you agree, that while the Act and the FCC, through its rules and policy**  
25 **statements, set forth a general number portability framework, the**  
26 **CenturyTel/Socket Interconnection Agreement offers a more specific**  
27 **framework for deciding the issues in this case?**

28 A. The Staff's position is that, while the Act and the FCC do not require any form of  
29 location portability, the industry and industry standards have moved beyond the  
30 Act and the FCC, and this was somehow contemplated, and therefore location  
31 portability is required, under the CenturyTel/Socket Interconnection Agreement.  
32 My testimony shows that this is not the case. In fact, the intent and scope of the

1 entire Interconnection Agreement is specifically stated to be only "to the extent  
2 required by the Act". Therefore, the Act, the FCC rules and the Interconnection  
3 Agreement are in parity. CenturyTel's testimony also shows that Staff does not  
4 have a clear understanding of the term "industry standards" and, as a result,  
5 reaches erroneous conclusions regarding the industry's treatment and  
6 endorsement of location portability. The testimony of Dr. Harold Furchtgott-Roth  
7 will address the Act, FCC rules, and industry standards; and CenturyTel Witness  
8 Michael Penn's testimony will also address industry standards.

9 **Q. Does Staff acknowledge that the Act, and by extension, the FCC, does not**  
10 **require any form of location portability such as that requested by Socket?**

11 A. Yes. On page 8 of Staff's Rebuttal Testimony, "Staff acknowledges that the  
12 CenturyTel/Socket Interconnection Agreement does refer generally to the Act  
13 (and by extension, the FCC), which, in the Staff's opinion, does not require any  
14 form of location portability such as that requested by Socket. In addition, Staff  
15 states on page 19: "From the Staff's perspective, in the 1996 Act the Congress  
16 defined number portability between carriers to include retention of telephone  
17 numbers at the same physical location."

18 **Q. Does the CenturyTel/Socket Interconnection Agreement require it to be in**  
19 **accordance with the provisions of the Act and other applicable provisions of**  
20 **federal and state law?**

21 A. Yes. The following excerpts from the CenturyTel/Socket Interconnection  
22 Agreement clarify that the parties will operate to the extent required by and in  
23 accordance with the Act and other applicable provisions of federal and state law:

1 **SCOPE AND INTENT OF AGREEMENT**

2 Pursuant to this Agreement, and **to the extent required by the Act** and  
3 other applicable provisions of federal and state law, . . . .

4 \* \* \*

5 **ARTICLE II**

6 1.8 Applicable Law - All laws, statutes, common law, regulations,  
7 ordinances, codes, rules, guidelines, orders, permits, and approvals  
8 of any governmental authority, including, without limitation, the  
9 Missouri Public Service Commission and FCC, that apply or relate  
10 to the subject matter of this Agreement.

11 \* \* \*

12 1.10 As Defined in the Act" means as specifically defined by the Act.

13 \* \* \*

14 1.75 Local Number Portability (LNP) - As Defined by the Act.

15 **ARTICLE III: GENERAL PROVISIONS**

16 **13.0 COMPLIANCE WITH LAWS AND REGULATIONS**

17 Each Party **shall comply with all federal, State, and local statutes,**  
18 **regulations, rules, ordinances, judicial decisions, and administrative**  
19 **rulings applicable to its performance under this Agreement.** [emphasis  
20 added]  
21

22 \* \* \*

23 **35.0 REGULATORY AGENCY CONTROL**

24 This Agreement shall at all times be subject to changes, modifications,  
25 orders, and rulings by the Federal Communications Commission and/or  
26 the Commission to the extent the substance of this Agreement, or any  
27 portion thereof, is or becomes subject to the jurisdiction of such agency.

28 \* \* \*

29 **50.0 DIALING PARITY; NUMBER PORTABILITY**

30 CenturyTel further agrees to provide Number Portability **in accordance**  
31 **with the requirements of the Act.** Specific requirements concerning  
32 Number Portability are set forth in Article XII - Local Number Portability.  
33 [emphasis added]

34 \* \* \*

35 **ARTICLE XII: LOCAL NUMBER PORTABILITY - PERMANENT**  
36 **NUMBER PORTABILITY**

37 **1.0 PROVISION OF LOCAL NUMBER PORTABILITY -**  
38 **PERMANENT NUMBER PORTABILITY**

39 1.1 CenturyTel and Socket shall provide to each other, on a reciprocal  
40 basis, Permanent Number Portability (PNP) **in accordance with the**  
41 **requirements of the Act.** [emphasis added]

1   **Q.    Does Staff acknowledge that the Interconnection Agreement refers to the Act**  
2       **and to the FCC, and does not require any form of location portability such as**  
3       **that requested by Socket?**

4   A.    Yes. On page 8 of Staff's Rebuttal Testimony, "Staff acknowledges that the  
5       Socket/CenturyTel Interconnection Agreement does refer generally to the Act  
6       (and by extension, to the FCC), which, in the Staff's opinion, does not require any  
7       form of location portability such as that requested by Socket."

8   **Q.    How does Staff condition this acknowledgement that the Act and the FCC do**  
9       **not require any form of location portability such as requested by Socket?**

10 A.    First, Staff opines that the Agreement requires the parties to adhere to industry  
11       practices. (*See* Staff's Rebuttal Testimony, page 8.)

12       Second, Staff asserts they have reviewed "various industry practices and  
13       the CenturyTel/Socket Interconnection Agreement." (*See* Staff's Rebuttal  
14       Testimony, page 5); and has concluded that CenturyTel's policies are not  
15       consistent with industry practice in Missouri, conclusively finding that industry  
16       practices have dramatically leapfrogged the FCC's rules in this matter. (*See*  
17       Staff's Rebuttal Testimony, page 8.)

18 **Q.    What Section(s) of the Interconnection Agreement does Staff reference to**  
19       **determine that the Agreement requires the parties to adhere to industry**  
20       **practices, and do you agree with Staff's conclusion?**

21 A.    Staff used Section 3.2.1 of Article XII and Section 6.4 to support this conclusion.  
22       Close review of both of these Sections will indicate that the actual terms do not  
23       support Staff's conclusion.

1                   **3.0 LOCAL ROUTING NUMBER – PERMANENT NUMBER**  
2                   **PORTABILITY (LRN-PNP)**

3                   3.2.1 The Parties agree that the industry has established local routing  
4                   number (LRN) technology as the method by which permanent number  
5                   portability (PNP) will be provided in response to FCC Orders in FCC 95-  
6                   116 (*i.e.*, First Report and Order and subsequent Orders issued as of the  
7                   date this Agreement was executed). As such, the Parties agree to provide  
8                   PNP via LRN to each other as required by such FCC Orders or industry  
9                   agreed-upon practices.

10                  As stated above, Article I, Article III, and Section 1 of Article XII all require the  
11                  parties to provide portability in accordance with the Act. Section 3 of Article XII,  
12                  is specifically discussing use of the Local Routing Number (LRN) describing  
13                  technically how a port is completed. The industry agreed-upon practices referred  
14                  to are technical standards for the use of the LRN. The term “industry agreed-  
15                  upon practices” is discussed in further detail by Dr. Harold Furchtgoth-Roth and  
16                  Michael Penn. They will show that Section 52.26 of the FCC’s rules leaves to  
17                  North American Numbering Council (“NANC”), not to State Commissions or  
18                  individual industry members or group of industry members “ongoing oversight of  
19                  number portability administration”, subject to FCC review. The procedure for the  
20                  implementation of industry LNP standards is one of industry consensus,  
21                  formalized at the LNPA-WG and the NANC, and the subsequent adoption of the  
22                  policy via NANC and the FCC Bureau procedures. Industry standards are not set  
23                  by individual companies, nor even the coordinated actions of multiple industry  
24                  participants. Section 3.2.1 clearly does not support the Staff’s conclusion or even  
25                  apply to what can be legally ported, but merely addresses technical standards for  
26                  porting standards using an LRN.

27                  6.4 Porting of DID Numbers.

28                  6.4.4 Industry guidelines shall be followed regarding all aspects of  
29                  porting numbers from one network to another.

1 Section 6.4 is specifically and only referring to porting direct-inward-dial (DID)  
2 numbers. Again, this term in the Agreement refers to technical guidelines  
3 concerning these specific types of ports. This section when reviewed in context  
4 does not support the Staff's conclusion.

5 **Q. What industry practices did Staff review to conclude that CenturyTel's**  
6 **policies are not consistent with industry practice in Missouri and that**  
7 **industry practices have dramatically leapfrogged the FCC's rules in this**  
8 **matter?**

9 A. Staff's review of the "industry practices" appears to fall into two categories.  
10 First, Staff notes that CenturyTel admits (Smith Rebuttal Page 5, lines 1-19) and  
11 Socket acknowledges (Kohly Direct, page 35, line 1) that customers are allowed  
12 to port their number when moving within the same exchange. Staff concludes that  
13 this is indicative of widespread instances of location (also called "geographic")  
14 telephone number porting. (*See Staff's Rebuttal Testimony, page 8.*)

15 Second, Staff's apparent acceptance of Socket's testimony that both  
16 AT&T, and the other large incumbent carrier in Missouri, Embarq, have adopted  
17 a policy of allowing location ports. (*See Staff's Rebuttal Testimony, page 8.*) The  
18 only evidence on which to base this assertion appears to be a response to a data  
19 request from Socket acknowledging that Socket has requested, and AT&T and  
20 Embarq have completed some port orders that Socket now admits were location  
21 ports. (*See Staff's Rebuttal Testimony, Schedule 10.*)

22 **Q. Staff's Rebuttal Testimony concludes that since CenturyTel is willing to port**  
23 **a number when the customer is also moving within the exchange, this**

1       **“represent[s] an attempt by CenturyTel to make the law work in instances it**  
2       **agrees with, and not work in instances it disagrees with.”** (*See Staff’s*  
3       **Rebuttal Testimony, page 17.) Is this a reasonable conclusion, or otherwise**  
4       **indicative of widespread instances of location telephone number porting?**

5     A.    No. Staff is using an unrelated set of circumstances to reach a conclusion that if  
6       one type of activity can be called location porting and is practiced by the industry,  
7       then all types of location porting must be allowed as well. As I previously  
8       testified, incumbent telephone companies have for decades permitted a customer  
9       to keep his/her number if moving within the same exchange. This practice  
10      predates even the concept of “portability” and was never called by that name.  
11      The type of order used in this practice is called a “from and to” or “F&T” order.  
12      The reason a telephone company permitted this type of order was a combination  
13      of technical, cost and customer service practicalities. From a technical  
14      perspective, a number that resides within a switch can be assigned to any physical  
15      address that is served by that switch. The only costs the telephone company  
16      incurred in moving the number were personnel costs to perform the work. These  
17      costs could be fully recovered in the form of non-recurring charges to the ordering  
18      customer. Therefore, it made sense to permit a customer to keep his/her number  
19      upon request if moving to a different address that was also served by the same  
20      switch. Under no circumstances, however, could a customer take his/her number  
21      if moving to an address that was not served by the original switch since there  
22      were significant technical and cost issues with that type of move. At best, the  
23      customer could keep the number active in the original switch and pay for private



1 line or switched access service that could be used to forward calls from the old  
2 switch to the new.

3 Because telephone companies do allow F&T orders, and because  
4 incumbent telephone companies are obligated under law to provide a competitor  
5 with what it will provide for itself, incumbents like CenturyTel will permit a  
6 customer to "F&T" from CenturyTel to a competitor in the same exchange. This  
7 is consistent with our requirements under the Act as well as Article III, Section 52  
8 of the CenturyTel/Socket Interconnection Agreement. This is not the wholesale  
9 acceptance and practice of location porting as Staff would suggest. It is a practice  
10 that is bound by vastly different technical, legal, and cost circumstances than the  
11 situation requested by Socket and accepted by Staff.

12 The logic apparently used by Staff could be applied to an unlimited  
13 number of situations to come up with technically possible but legally improper  
14 conclusions. For example, because I can keep the same power company service if  
15 moving to a new house within my neighborhood, I should be able to keep the  
16 same power company service if moving to a higher-priced power company's  
17 franchise area in the next town. There is certainly no technical reason why my  
18 original power company cannot transmit the same amount of power that I  
19 consume to my new incumbent company and bill me at the lower rates. Under  
20 Staff's logic, all location portability circumstances are the same.

21 **Q. Has the FCC acknowledged this practice of keeping the same number when**  
22 **moving within the areas served by their current central office?**

1 A. Yes, in the FCC's First Report and Order, and again in the Intermodal Order, the  
2 FCC clarifies that keeping the number when moving within the areas served by  
3 your current central office is expected.

4 "First, the FCC points to a single sentence in the *First Order* that, it  
5 maintains, provided notice of the interpretation later adopted in the  
6 *Intermodal Order*. That sentence, which comes directly after one that  
7 defines 'location portability,' reads as follows:

8  
9 "Today, telephone subscribers must change their telephone numbers when  
10 they move outside the area served by their current central office." *First*  
11 *Order* ¶ 174, 11 F.C.C.R. at 8443.<sup>6</sup>

12 This sentence thus made clear that *unless* the Commission were to impose  
13 location portability – which it declined to do and insists it still has not done –  
14 subscribers would have to change their numbers if they moved outside the area  
15 served by their current carrier's central office. Thus, CenturyTel is not trying to  
16 make the law work in one case and not another; rather CenturyTel is in  
17 compliance with both pre-LNP industry practice and with FCC LNP Orders.

18 **Q. Does CenturyTel agree with Staff's apparent acceptance of Socket's**  
19 **testimony that both AT&T and Embarq have adopted a policy of allowing**  
20 **location ports? (See Staff's Rebuttal Testimony, page 8.)**

21 A. Definitely not. The only evidence on which the Staff bases this assertion is a  
22 response to a data request from Socket acknowledging that Socket had requested,  
23 and AT&T and Embarq had completed, some orders that were for location ports.  
24 (See Staff's Rebuttal Testimony, page 8.) Staff appears to limit their response to  
25 just AT&T and Embarq since these are the two companies shown in Socket's

---

<sup>6</sup> United States Court of Appeals for the District of Columbia Circuit, March 11, 2005 No. 03-1414,  
UNITED STATES TELECOM ASSOCIATION AND CENTURYTEL, INC., PETITIONERS v.  
FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES OF AMERICA.

1 testimony and its data request response. (See Staff's Rebuttal Testimony,  
2 Schedule 10.) However, the Missouri Independent Telephone Group's  
3 Application to File a Brief as Amicus Curiae clearly shows that these local  
4 carriers do not endorse a policy of allowing location ports. I am also attaching  
5 copies of public testimony filed by James M. Maples on behalf of Embarq in  
6 Pennsylvania on April 27, 2007 and June 4, 2007 that contradicts any assertion  
7 that Embarq has adopted a policy of allowing location ports (Schedule SS-1).

8 On page 16, of his April 27 testimony Mr. Maples testifies to the following:

9 **Q. Can the end user keep their telephone number if they change their**  
10 **location?**

11 A. The end user can change location when porting their telephone number  
12 from one wireline service provider to another wireline service provider  
13 as long as that location is within the same rate center. The FCC has not  
14 ordered geographic portability and its rules prohibit porting a telephone  
15 number outside of the rate center to which it is assigned. Doing so can  
16 lead to problems with rating, routing, dialing parity, customer  
17 confusion, and E911/911.

18 **Q. What rules are you referring to?**

19 A. The FCC adopted and codified the recommendation of the North  
20 American Numbering Council (NANC) Local Number Portability  
21 Administration Selection Working Group Report, dated April 25,  
22 1997(Working Group Report) in the Code of Federal Regulations, Title  
23 47 §52.26(a). Section 7.3 of Appendix D of that report states that  
24 "location portability is technically limited to rate center/rate district  
25 boundaries of the incumbent LEC due to rating/routing concerns" and  
26 that additional limitations might be required for various reasons such as  
27 E911 operability.

28 **Q What alternatives are available to customer that want geographic**  
29 **portability?**

30 A. The FCC addressed this in the First Report and Order that mandated  
31 service provider portability and rejected geographic portability stating:  
32 "Also, users who strongly desire location portability can use non-  
33 geographic numbers by subscribing to a 500 or toll free number."<sup>7</sup> In  
34 spite of this instruction from the FCC some carriers take advantage of  
35 "gaps" in LNP processes to geographically port numbers to end users

---

<sup>7</sup> *In the Matter of Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-286, Released July 2, 1996, ¶184.

1                   that are located outside of the rate center to which the number is  
2                   assigned.

3                   On page 18 of his testimony, Mr. Maples states "*had we recognized this*  
4                   when we received the port requests from Core, **we could and should have**  
5                   **disputed them.**" [emphasis added]

6                   On Page 19 of his Rebuttal Testimony filed June 4, 2007, Mr. Maples  
7                   states, "That is one of the reasons why the FCC prohibits porting telephone  
8                   numbers outside of the rate center to which they are assigned." On Page 20 of his  
9                   Rebuttal Testimony, Mr. Maples states, "The Guidelines do not pre-empt the FCC  
10                  rules that explicitly prohibit porting telephone numbers outside of the rate center."  
11                  "Furthermore, there are also other guidelines clearly prohibiting porting numbers  
12                  outside of the rate center. For example, the Telecordia Local Exchange Routing  
13                  Guide ("LERG"), which Telecordia Technologies will not allow any carrier to use  
14                  in a proceeding without its expressed permission, clearly states that service  
15                  provider portability does not equate to location/geographic portability." On Page  
16                  21 of his Rebuttal Testimony, Mr. Maples describes a location porting practice by  
17                  Core that is identical to the ports processed by Socket, as a "misuse of Local  
18                  Number Portability ("LNP")....flawed and suspect." On page 23 of his Rebuttal  
19                  Testimony, Mr. Maples describes Core's practice as a "charade by manipulating  
20                  the LNP process and inappropriately porting telephone numbers outside of the  
21                  rate centers, introducing rating and routing errors."

22                  Embarq's testimony would support the conclusion that like CenturyTel,  
23                  any ports that were completed for Socket that constituted location ports were  
24                  unknowingly and mistakenly processed, and not the result of any industry

1 practice. In fact, it must be found that it was Socket who submitted invalid port  
2 requests for processing.

3 **Q. Do you agree that CenturyTel may be in violation of Section 4 of Article V of**  
4 **the Socket/CenturyTel Interconnection Agreement? (See Staff's Rebuttal**  
5 **Testimony, page 7.)**

6 A. Absolutely not. The only issue before this Commission deals with CenturyTel's  
7 obligation to complete a port when the customer is relocating outside of the  
8 exchange. Section 4 of Article V has to do with establishing and  
9 decommissioning Points of Interconnection ("POIs"). CenturyTel's refusal to  
10 completed Socket's illegal ports is a totally different issue that establishing and  
11 decommissioning POIs.

12 **Q. Do you agree that CenturyTel may be in violation of the Interconnection**  
13 **Agreement as to the number porting dispute? In particular, Section 3.2.1 of**  
14 **Article XII holds that number portability between Socket and CenturyTel**  
15 **will be provided to each other as required by FCC Orders *or industry agreed***  
16 ***upon practices* and, Section 6.4.4 holds that *industry guidelines shall be***  
17 ***followed regarding all aspects of porting numbers from one network to another.***  
18 **(See Staff's Rebuttal Testimony, page 7)**

19 A. No. As I have discussed above, I believe Staff has taken 3.2.1 and 6.4.4 out of  
20 context and Staff also appears to ignore the numerous terms of the Agreement that  
21 obligate the Parties to abide by Applicable Law or that limit an obligation to the  
22 extent required by Applicable Law. If any party is in violation of the

1 Interconnection Agreement it can only be Socket who is submitting invalid  
2 location port requests for all the reasons stated above.

3 **Q. Is there sufficient evidence for Staff to conclude that "industry practices" do**  
4 **exist, and the FCC's rules do not address all forms of number portability**  
5 **permitted under the CenturyTel/Socket Interconnection Agreement?**

6 A. No, for all the reasons stated above. The industry practices referenced in the  
7 Agreement have nothing to do with location portability, and the evidence clearly  
8 shows that there is no industry acceptance of this type of port, merely a few  
9 companies like Socket who abuse the existing LNP process.

10 **Q. On page 11 of Staff's Rebuttal Testimony, Staff characterized FX and V-**  
11 **NXX as similar because: (1) a subscriber may physically reside in one**  
12 **exchange while receiving telephone service from another area; and, (2) as**  
13 **proposed by Socket, call rating is the same for V-NXX service as with FX**  
14 **service. Are FX and V-NXX similar?**

15 A. Not in my opinion. Under FCC rules, FX service, contrary to what the Staff says,  
16 is a form of private line interexchange service, not a local exchange service. FX  
17 is "bolted on" to an exchange service. The exchange service is provisioned out of  
18 the original wire center and the FX service is an attached interexchange service to  
19 transport the calls to and from the customer's new premises that does not use  
20 exchange service but some other mode of tariffed interexchange service.  
21 Importantly, in such an arrangement, the number continues to "reside" in the  
22 original switch. As used in the Agreement, Virtual NXX Traffic or V-NXX  
23 Traffic is defined as calls in which a Party's customer is assigned a telephone

1 number with an NXX Code (as set forth in the LERG) assigned to a Rate Center  
2 that is different from the Rate Center associated with the customer's actual  
3 physical premises location. The Agreement further defines V-NXX as a non-local  
4 service.

5 Rating and routing are not the same for V-NXX service as they are for FX  
6 service, which I will explain further. The cost of FX service is totally borne by  
7 the end user purchasing the FX service. The end user is responsible for the  
8 dedicated facility from their premise to the home central office and then to the  
9 distant end office. In this case the customer would be responsible for a dedicated  
10 facility from the CenturyTel Willow Springs central office to the customer's  
11 serving central office to the customer's premise in St. Louis. With FX service,  
12 the customer, not the originating carrier (CenturyTel) or the end user calling the  
13 FX number, bears all of the costs of transporting the calls from the rate center  
14 where the number is assigned to the geographic location of the customer. In the  
15 case of Ellsinore, where Spectra and AT&T are involved, the FX customer is  
16 responsible for all costs to both carriers, and calls are routed over the customer's  
17 dedicated facility, not a common wholesale carrier facility as proposed by Socket.  
18 FX calls do maintain appropriate rating and routing since all calls are routed  
19 through the appropriate central office providing dial tone or the open end. In  
20 other words, all calls to the FX customer are routed and rated identical to any call  
21 that would terminate to an Ellsinore customer. FX rating requires the customer  
22 to pay for transport from the Ellsinore central office, to the AT&T Sikeston  
23 office, to the AT&T St. Louis office, and then to the Socket central office, and

1        then to the customer premise, and calls are routed over these dedicated facilities,  
2        not common facilities. All calls to the customer's Ellsinore number our routed  
3        through Ellsinore; therefore, they are appropriately rated. In this case, Socket is  
4        requesting that the Ellsinore number be moved to a customer location in St. Louis.  
5        Now calls originating in St. Louis will terminate in St. Louis, but the originating  
6        customer will be billed toll, even though there were no costs associated with  
7        transport facilities; however, when a CenturyTel Ellsinore customer calls the  
8        Ellsinore customer in St. Louis, CenturyTel and AT&T, not the customer will be  
9        responsible for almost 200 miles of transport, while the customer is not  
10       responsible for anything since they are collocated with Socket in St. Louis. Rating  
11       and routing are not the same. FX service recognizes that there are interexchange  
12       transport costs, while merely porting the number to a customer outside the  
13       exchange demands that Spectra and AT&T's customers subsidize Socket's St.  
14       Louis customer. Illegally porting the number to a St. Louis customer, results in  
15       an immediate shift in existing costs from Socket's customer to CenturyTel and  
16       AT&T's customers. If Socket actually planned to provide local competition in  
17       Ellsinore, Socket would establish a collocation allowing for access to local loop  
18       facilities in Ellsinore, and all calls would be handed to Socket at the Ellsinore  
19       location, not St. Louis.

20    **Q.    Please address Kohly's description of CenturyTel's FX service to Computer**  
21    **Magic in Prairie Home (page 37, lines 1-5 and page 24, line 6).**

22    **A.**    All FX service that is provided allows for two-way communications; however, I  
23    acknowledge Socket and Staff's point that not every customer may desire or use



1 the provided service for two communications. Also, in every instance the cost of  
2 dedicated facilities from the serving central office, or open end, to the customer  
3 premise is built into the rates for the tariffed service provided to the customer. In  
4 no instance has CenturyTel asked another carrier to subsidize the provision of a  
5 foreign exchange service to our retail customer or affiliate as Socket is proposing.

6 **Q. Is FX service an exchange service as claimed by Staff on page 12, lines 10-17**  
7 **of Staff's Rebuttal Testimony?**

8 A. No. As Dr. Furchtgott-Roth testifies, under FCC rules, FX service is a form of  
9 private line interexchange service, not a local exchange service.

10 Also, Staff has ignored previous findings that FX service is not exchange  
11 service. I respectfully refer Staff again to page 29 of the final arbitration order in  
12 Case No. TO-2006-0299, effective June 30, 2006, where the Commission found  
13 "that the reference to Foreign Exchange Traffic should be removed because it had  
14 been deemed non-local traffic." This is consistent with the FCC's definition of  
15 Foreign Exchange, hence the term "Foreign Exchange". Staff cannot now  
16 determine that Foreign Exchange service is exchange service when it has already  
17 been deemed non-local traffic. I again refer you to Staff's testimony concerning  
18 interexchange service.

19 "[I]f it is an exchange service, ...it is subject to certain interconnection  
20 obligations of CenturyTel whereas, if it is an interexchange service, it is  
21 not." (Staff Rebuttal Testimony, page 6.)

22 \* \* \*

23 "If it is an exchange service, then it is subject to the congressional  
24 requirements; if it is an interexchange service, it is not." (Staff Rebuttal  
25 Testimony, page 11.)

26 \* \* \*

27 "However, if the Commission were to find ...service was an  
28 interexchange service, and in particular if it were to find such traffic

1 subject to exchange switched access charges, the Commission would be  
2 deciding in favor of CenturyTel, Socket's complaint should be denied, and  
3 this case should be closed."(Staff Rebuttal Testimony, page 15.)

4 **Q. Do you agree with Staff's statement on page 14 of Staff's Rebuttal Testimony**  
5 **that it is the telephone rate center that forms the basis of legal and regulatory**  
6 **treatment and the associated intercarrier compensation scheme, not the**  
7 **physical end points of the telephone connection?**

8 A. No. The simplest example to understand is an interexchange call. For a  
9 traditionally-dialed voice toll call, it is the fact that the called rate center is  
10 different than the calling rate center that implies access compensation is due to the  
11 originating and terminating local carriers. But it is the physical end points of the  
12 telephone connection that determines if the compensation and regulatory  
13 oversight is interstate or intrastate.

14 More relevant to the arguments in this case, as another example, the called  
15 rate center and the calling rate center are the same with FX and Remote Call  
16 Forwarding, but varying access compensation is due to the originating local  
17 carrier based on the physical end points of the telephone connection. The  
18 regulatory treatment may vary as well if the end points are in different states.

19 **Q. On Page 15 of Staff's Rebuttal Testimony, Staff acknowledges that Socket**  
20 **has generally asked the Commission to address location portability, but**  
21 **characterizes the market or issue before them as dealing with "dial-up"**  
22 **Internet access service only. Do you agree with this characterization?**

23 A. This is not just a "dial-up" Internet access market issue as characterized by Staff.  
24 Competitive Local Exchange Carriers ("CLECs") like Socket, are telling  
25 businesses that they can relocate to other cities, take their telephone numbers with

1       them, and not have to pay for the cost of transport. This is not a marketing plan  
2       unique to ISP services but could be used by any Socket subscriber. However, we  
3       recognize that dial-up internet access is a big problem because of the call  
4       volumes, holding times, and associated high transport costs. Under this scheme,  
5       Socket does not compensate CenturyTel for the interexchange transport  
6       associated with this customer who is no longer located in the exchange. To make  
7       the sale, Socket passes some of that savings on to the end user buying the service  
8       but most likely Socket increases its profits, while shifting the financial burden to  
9       CenturyTel. CenturyTel does not and cannot port telephone numbers out of the  
10      appropriate rate center.

11   **Q.   Does CenturyTel agree with Staff's statement on Page 3, lines 13-15 of Staff's**  
12   **Rebuttal Testimony, that, "Although Socket asks the Commission to address**  
13   **the specifics of its complaint, Socket also requests the Commission more**  
14   **globally address CenturyTel's overall policy of fulfilling Socket's orders to**  
15   **port telephone numbers."?**

16   A.   No, as described in further detail below there is only one issue that has and can be  
17       brought before this Commission for dispute resolution.

18   **Q.   What is the only issue before this Commission for resolution?**

19   A.   CenturyTel, pursuant to the 1996 Telecommunications Act and the FCC rules, has  
20       maintained that we are not required to port an existing telephone number when  
21       the customer physically moves to a site located outside of the exchange. Socket  
22       admits that the customers subject to this dispute are relocating outside of the  
23       exchange, yet argues that CenturyTel is still required to port the number.

1   **Q.     Has Staff attempted to address several other issues that are not part of this**  
2       **complaint proceeding?**

3   A.     Yes.   Respectively, Staff has addressed several issues that were mentioned by  
4       Socket in its testimony as Socket attempted to cloud the only real issue before this  
5       Commission. These issues are not part of, and cannot be addressed under this  
6       complaint proceeding.

7   **Q.     What provision of the interconnection agreement allowed Socket to file this**  
8       **complaint?**

9   A.     Article III, Section 18 contains the dispute resolution provisions of the  
10       CenturyTel/Socket Interconnection Agreement:

11               **18.0   DISPUTE RESOLUTION**

12               18.1   Alternative to Litigation.

13               Except as provided under Section 252 of the Act with respect to  
14               the approval of this Agreement by the Commission, the Parties  
15               desire to resolve disputes arising out of or relating to this  
16               Agreement without litigation. Accordingly, except for action  
17               seeking a temporary restraining order or an injunction related to  
18               the purposes of this Agreement, or suit to compel compliance with  
19               this dispute resolution process, the Parties agree to use the  
20               following alternative dispute resolution procedures with respect to  
21               any controversy or claim arising out of or relating to this  
22               Agreement or its breach.  
23

24               18.2   Negotiations.

25               Upon written notice from either Party initiating the dispute  
26               resolution process, each Party will appoint a knowledgeable,  
27               responsible and empowered representative to meet and negotiate in  
28               good faith to resolve any dispute arising out of or relating to this  
29               Agreement. The Parties intend that these negotiations be  
30               conducted by business representatives. The location, format,  
31               frequency, duration, and conclusion of these discussions shall be  
32               left to the discretion of the representatives, except that the Parties'  
33               representatives will hold an initial discussion within ten (10) days  
34               of the written request initiating the dispute resolution process.  
35

1 Written requests may be provided via electronic mail followed by  
2 registered mail to the contacts listed in this Agreement.  
3

4 18.3 Arbitration.

5 If the negotiations do not resolve the dispute within thirty (30)  
6 days of the initial written request, the dispute shall be submitted to  
7 binding arbitration. The Parties may mutually agree to postpone  
8 submitting the dispute to binding arbitration. At the election of  
9 either Party, arbitration shall be before the Commission, FCC, or  
10 court of competent jurisdiction. Otherwise, arbitration shall be by  
11 a single arbitrator pursuant to the Commercial Arbitration Rules of  
12 the American Arbitration Association ("AAA") except that the  
13 Parties may select an arbitrator outside American Arbitration  
14 Association rules upon mutual agreement. If the Commission is  
15 selected as the arbitrator, its arbitration rules shall apply.  
16 Otherwise, the rules described in part (a) below shall be applicable.  
17 Nothing herein shall limit the right of either Party to bring a matter  
18 to court for injunctive relief or to address matters outside the scope  
19 of the Agreement.  
20

21 (a) A Party may demand arbitration in accordance with  
22 the procedures set out in the AAA rules. Discovery shall be  
23 controlled by the arbitrator and shall be permitted to the extent set  
24 out in this section. Each Party may submit in writing to a Party,  
25 and that Party shall so respond to, a maximum of any combination  
26 of thirty-five (35) (none of which may have subparts) of the  
27 following: interrogatories, demands to produce documents, or  
28 requests for admission. Each Party is also entitled to take the oral  
29 deposition of the other Party on subject areas identified in advance,  
30 and the other Party shall produce the appropriate individuals to  
31 respond. Additional discovery may be permitted upon mutual  
32 agreement of the Parties or order of the arbitrator. The arbitration  
33 hearing shall be commenced within sixty (60) Business Days of the  
34 demand for arbitration. The arbitration shall be held in a mutually  
35 agreeable city or as determined by the arbitrator. The arbitrator  
36 shall control the scheduling so as to process the matter  
37 expeditiously. The Parties may submit written briefs. The  
38 arbitrator shall rule on the dispute by issuing a written opinion  
39 within thirty (30) Business Days after the close of hearings. The  
40 times specified in this section may be extended upon mutual  
41 agreement of the Parties or by the arbitrator upon a showing of  
42 good cause.  
43

44 (b) Judgment upon the award rendered by the arbitrator,  
45 whether it is the Commission or an AAA or other arbitrator, may  
46 be entered in any court having jurisdiction.

1  
2 18.4 Expedited Resolution Procedures.

3 If the issue to be resolved through the negotiations referenced in  
4 Section 18.2 directly and materially affects or threaten to  
5 materially affect service to either Party's end-user customers or the  
6 ability of one Party to provide service to an end-user customer, the  
7 period of resolution of the dispute through negotiations before the  
8 dispute is to be submitted to binding arbitration, or at the election  
9 of either, directly to the Commission, FCC, or court shall be five  
10 (5) Business Days. Once such a service-affecting dispute is  
11 submitted to arbitration, and if arbitration with the Commission is  
12 not selected, the arbitration shall be conducted pursuant to the  
13 expedited procedures rules of the Commercial Arbitration Rules of  
14 the American Arbitration Association (*i.e.*, rules 53 through 57).  
15 Nothing herein shall limit the right of either Party to bring a matter  
16 to court for injunctive relief or to address matters outside the scope  
17 of the agreement.

18 **Q. What issue was submitted by Socket to CenturyTel for dispute resolution**  
19 **pursuant to Section 18.2 of the parties' Interconnection Agreement, and was**  
20 **this addressed in previous testimony?**

21 A. The issue submitted to CenturyTel under section 18.2 initiating the dispute  
22 resolution process, and subsequently submitted to this Commission by Socket  
23 under section 18.4, for negotiations and expedited resolution, dealt with  
24 CenturyTel's obligation to complete location ports, specifically the Willow  
25 Springs ports. Pursuant to the Interconnection Agreement all disputed issues must  
26 be submitted in writing under section 18.2. If the issue referenced in Section 18.2  
27 cannot be resolved, the issue may be submitted for expedited resolution under  
28 Section 18.4, if it directly and materially affects or threaten to materially affect  
29 service to either Party's end-user customers or the ability of one Party to provide  
30 service to an end-user customer, to binding arbitration, the Commission, FCC, or  
31 court for resolution.

1 I did address this issue in my Rebuttal Testimony as can be seen in the  
2 following Q&A (Susan W. Smith Rebuttal Testimony, page 3):

3 **Q. What is the actual dispute between Socket and CenturyTel in this**  
4 **case?**

5 A. As stated by Mr. Kohly on page 8 of his testimony, CenturyTel,  
6 pursuant to the Telecommunications Act and the FCC rules, has  
7 maintained that we are not required to port an existing telephone  
8 number when the customer physically moves to a site located outside  
9 of the exchange. Socket admits that the customers subject to this  
10 dispute are relocating outside of the exchange, yet argues that  
11 CenturyTel is still required to port the number.

12 **Q. Is Staff mistaken when they claim there have been service outages as a result**  
13 **of CenturyTel denying completion of the location ports?**

14 A. Yes, as discussed on page 18 of my rebuttal testimony no outages occurred as a  
15 result of CenturyTel denying completion of the location ports; more specifically  
16 in Clarence, Missouri, where Socket seems to have had an outage, it was not due  
17 to any action by CenturyTel.

18 **ISSUES ADDRESSED BY STAFF NOT BEFORE THIS COMMISSION FOR**  
19 **RESOLUTION**

20 **Q. On page 22 of Staff's Rebuttal Testimony, has Staff properly characterized a**  
21 **prior dispute discussed by Mr. Kohly, (Kohly page 18, line 12 and page 20,**  
22 **line 4), and is that even a part of the complaint now before the Commission?**

23 A. Yes. It became obvious to CenturyTel that Socket was relocating existing  
24 customers to locations outside of the exchange and requesting location ports.  
25 Socket was not prepared to provide basic local service in the questioned  
26 exchanges, they did not have any local facilities in the exchange, nor had they  
27 implemented any E911 services. CenturyTel questioned Socket if the customer  
28 was relocating. While Socket did not initially admit that the customer was

1 moving from the exchange, they also did not deny that the customer was  
2 relocating in St. Louis. Later, Socket did acknowledge that the customer was  
3 relocating to St. Louis, which is the subject of this complaint. Pending resolution  
4 of this complaint, CenturyTel has requested that Socket, when requesting a port  
5 where it has no facilities, to merely provide a statement on their LSR certifying  
6 that the customer is not relocating outside of the rate center.

7 **Q. On page 25 of Staff's Rebuttal Testimony, Staff addresses the same**  
8 **numbering resource issue raised by Socket (Kohly, page 45, line 10): "[In**  
9 **Staff's view, carriers such as Socket should not have to obtain numbering**  
10 **resources in order to serve exchange areas unless they are needed,**  
11 **CenturyTel should not be permitted to unilaterally impose such a**  
12 **requirement on another carrier. Did the Staff accurately reflect the issue**  
13 **between the companies?**

14 **A.** First, this is again not part of the complaint now before the Commission, and has  
15 nothing to do with whether CenturyTel is required to complete location ports.

16 Second, CenturyTel did not unilaterally impose any requirement on  
17 another carrier. We merely referred Socket to ¶ 7. FCC Local Number Portability  
18 Second Report and Order, where the FCC adopted recommendations from the  
19 North American Numbering Council (NANC) for the implementation of wireline-  
20 to-wireline number portability. Under the guidelines developed by NANC,  
21 porting between LECs was limited to carriers with facilities or numbering  
22 resources in the same rate center to accommodate technical limitations associated



1 with the proper rating of wireline calls. In addition, the following references  
2 were provided to Socket:

3 § 52.26 NANC Recommendations on Local Number Portability  
4 Administration.

5 (a) Local number portability administration shall comply with the  
6 recommendations of the North American Numbering Council (NANC) as  
7 set forth in the report to the Commission prepared by the NANC's Local  
8 Number Portability Administration Selection Working Group, dated April  
9 25, 1997 (Working Group Report) and its appendices, which are  
10 incorporated by reference pursuant to 5 U.S.C. 552(a) and 1 CFR part 51.  
11 Except that: Section 7.10 of Appendix D of the Working Group Report is  
12 not incorporated herein.

13 The FCC understands the NANC report to require that the requesting carrier have  
14 facilities or numbering resources in the rate center as seen in the following quote  
15 from the Intermodal LNP Order:.

16 7. In 1997, in the Local Number Portability Second Report and  
17 Order, the Commission adopted recommendations from the North  
18 American Numbering Council (NANC) for the implementation of  
19 wireline-to-wireline number portability. Under the guidelines developed  
20 by NANC, porting between LECs was limited to carriers with facilities or  
21 numbering resources in the same rate center to accommodate technical  
22 limitations associated with the proper rating of wireline calls.

23 MO&O and FNPRM released November 10, 2003 in CC Docket No. 95-116 (at  
24 paragraph 7).

25 **Q. Can you address Staff's discussion of the Firm Order Commitment process?**

26 **(See Staff's Rebuttal Testimony, page 27.)**

27 **A.** First, discussion of an FOC is again not part of this complaint and has nothing to  
28 do with whether CenturyTel is required to complete location ports.

29 Second, an FOC is a Firm Order **Confirmation**, not a Firm Order  
30 Commitment. This is a common industry term defined in Newton's Telecom  
31 Dictionary, and testified to by Michael Penn, and consistently defined and

1 explained in the CenturyTel Service Guide, which is part of the Interconnection  
2 Agreement.

3 Third, the process flow that Mr. Kohly produced as his understanding of  
4 an FOC specifically deals with Special Access Circuits requested via an Access  
5 Service Request, and is appropriately titled as such. Access service orders follow  
6 different guidelines, and an FOC is not received by the requesting carrier until day  
7 five. This allows for adequate time to verify available facilities. This is not the  
8 case with a port order. There is no system, process or set of guidelines that would  
9 require or allow for CenturyTel to verify that interexchange facilities are in place  
10 within the 48 hours required to process a port request.

11 Fourth, it should be noted that the vast majority of ports are associated  
12 with single line residential and business lines, and this is not an issue.

13 **Q. Can you respond to Staff's response on page 28 of Staff's Rebuttal**  
14 **Testimony concerning POIs?**

15 A. First, POIs are again not part of the complaint pending before the Commission.  
16 Traffic studies were produced to show the effect on the network of these types of  
17 location ports and the illegal shifting of exchange access costs associated with  
18 location ports. The traffic studies were produced in each instance where Socket  
19 provided the porting request detail to show the integrity of our traffic reports and  
20 verify our capacity limitations.

21 Second, CenturyTel adamantly disagrees with any characterization that we  
22 are attempting to reargue interconnection issues that were resolved in the  
23 arbitration in Case No. TO-2006-0299. It has been Socket, not CenturyTel that

1 has attempted to avoid and evade any requirements to establish and/or  
2 compensate CenturyTel or Spectra for POIs.

3 Third, it is unfathomable in any situation that Socket Telecom should be  
4 allowed to shift costs from their existing affiliate, Socket Internet, to CenturyTel  
5 and their customers, to allow Socket to move a customer outside of the exchange  
6 area.

7 Fourth, under no existing circumstances can the Commission require  
8 CenturyTel to establish direct trunking from each end office to Socket, or any  
9 other CLEC, for the provision of VNXX traffic.

10 **Q. What are your conclusions?**

11 **A.** The following are my conclusions:

- 12 1. As discussed by Dr. Harold Furchgott-Roth, Section 251(d)(3) by itself is  
13 not a source of authority for state commission decisions.
- 14 2. Location Portability was not generally addressed by the commission  
15 previously in Case No. TO-2006-0299.
- 16 3. Staff has correctly acknowledged that the Act and FCC rules do not  
17 require location porting.
- 18 4. The Interconnection Agreement requires the parties to provide local  
19 number portability according to the Act and FCC orders.
- 20 5. The "industry practices" referenced in the Interconnection Agreement  
21 would not require location porting. Staff refers to the concept of "industry  
22 practices," but offers no reliable evidence or documentation of "industry  
23 agreed-upon practices."

1           6.     Evidence shows that it is Socket ignoring and abusing industry practices,  
2                   the Act and FCC orders, and not CenturyTel.

3     **Q.     Does this conclude your surrebuttal testimony?**

4     A.     Yes.