

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

PETITION OF SOCKET TELECOM, LLC)
FOR COMPULSORY ARBITRATION OF)
INTERCONNECTION AGREEMENTS WITH) CASE NO. TO-2006-0299
CENTURYTEL OF MISSOURI, LLC AND)
SPECTRA COMMUNICATIONS, LLC)
PURSUANT TO SECTION 252(b)(1) OF THE)
TELECOMMUNICATIONS ACT OF 1996)

PUBLIC (REDACTED)
COMMENTS OF SOCKET TELECOM, LLC
ON THE ARBITRATOR'S FINAL REPORT

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attempting to properly to generate call records for Socket.⁶³ It is only this language in the current agreement that has permitted Socket to bill terminating switched access for last eighteen months.

No CLEC competitor can be expected to compete in the local market place if the tandem owner, who also is its main competitor, repeatedly and consistently fails to provide the call records that it is obligated to provided. Ironically, if Socket were to somehow able to avail itself of the Chapter 29 Rules (which do not apply to the meet point traffic in question) and seek to block to all IXC-carried traffic terminating to Socket's customers, CenturyTel could benefit even more because Socket likely would not be able to compete in the marketplace if switching to Socket meant end-users would receive no long distance calls carrier by third party interexchange carriers.

The Commission should reverse the Arbitrator's decision on this matter because the Commission's rules do not apply to the traffic in question, because the language is in the parties' current agreement, and because allowing CenturyTel to avoid responsibility for its failure to provide data to Socket is likely to harm both Socket and Missouri consumers.

Article V, Issue No. 31 – Should Socket's proposed language regarding the exchange of enhanced/information service traffic be included in the agreement?

Socket's proposed language regarding exchange of enhanced/information services traffic is the same language the Commission approved last year in Case No. TO-2005-0336 (the M2A Arbitration) and which the Commission currently is defending in federal court against a pending appeal of that decision taken by AT&T (SBC Missouri). Socket urges that the Commission reconsider the Arbitrator's decision here, which is inconsistent with the Commission's prior decision as well as its litigation position in federal court.

⁶³ *Id.* at 81.

The language proposed by Socket addresses an important issue: the intercarrier compensation for traffic including Voice Over Internet Protocol (“VOIP”) and other Information Access Traffic. In the decision on Article II issues, the Arbitrator approved, with one revision, Socket’s proposed definition of “Information Access Traffic.”⁶⁴ When faced with the question of how such traffic should be treated for intercarrier compensation purposes in Article V of the interconnection agreement, however, the Arbitrator stated:

This issue has been addressed in previous sections of this Article. Socket’s language will not be accepted by the Arbitrator as it conflicts with these previous determinations and previously offered language.⁶⁵

No other basis for the Arbitrator’s determination was included in the Arbitrator’s Final Report.

Socket respectfully suggests that this determination should be reversed for two reasons. First, it is not clear which other Article V decisions address the Information Access Traffic compensation issue identified by Socket. Unfortunately, the sparse rationale presented forces Socket to speculate as to the Arbitrator’s intentions. The Arbitrator held with reference to Article V proposals regarding language for traffic governed by interLATA or intraLATA tariffs that such proposed contract language is “not necessary” because it “references non-local traffic not subject to an interconnection agreement.”⁶⁶ In those cases, however, parties could simply refer to a tariff governing the traffic to determine the compensation system that applies to the traffic.

⁶⁴ The approved definition, with the revision ordered by the Arbitrator included, reads as follows: “Information Access Traffic” is traffic arising from the provision of Information Access Services, are specialized exchange telecommunications services in connection with the origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of a provider of information services. *See* Arbitrator’s Final Report, at 4; Joint Decision Point List, Article II, Issue 14.

⁶⁵ Arbitrator’s Final Report, at 42.

⁶⁶ *See* Arbitrator’s Final Report, at 30-31.

In the case of Information Access Traffic, there is no tariff that governs the traffic in the same way and, more importantly, the Socket proposal assists the parties in determining what types of Information Access Traffic are subject to local interconnection rules and compensation. The Socket proposed language focuses on IP-PSTN traffic that has undergone a “net protocol conversion.” This protocol conversion qualifies the traffic as “enhanced services traffic,” which the FCC has long exempted from being subject to access charges.⁶⁷ Since such traffic is not subject to access charges, it is important for the interconnection agreement to make clear that it qualifies for reciprocal compensation, at least in the circumstances detailed in Socket’s proposed language.

Without the Socket language, the parties are left without guidance on when and how VOIP and similar traffic is eligible for compensation as local traffic. If contract language is not included, the Parties will not have a contractual method of navigating the unsettled landscape regarding compensation for carrying VOIP and other enhanced services traffic. “Without definitive provisions in the ICA,” Mr. Kohly testified, “Socket is concerned that CenturyTel may attempt to refuse to interconnect for the exchange of [Information Services] traffic, or may demand undue compensation for [Information Services] or other types of traffic that it does exchange with Socket.”⁶⁸

The Arbitrator addressed compensation for ISP-Bound Traffic (a subset of Information Access Traffic) in other provisions of Article V. The Arbitrator’s determinations that bill-and-keep applies to the transport and termination of such traffic does not resolve the issue raised by Socket’s proposed language. Socket’s language recognizes the growing importance of enhanced services traffic, including VOIP. The Socket proposal would have the parties carry such traffic

⁶⁷ See 47 C.F.R. § 64.702(a).

⁶⁸ Kohly Direct at 82.

for one another over interconnection trunks, to ensure that customer traffic flow is not interrupted. The proposal also creates a factoring approach to ensure that the parties account for (and properly compensate one another) for enhanced services traffic. Moreover, the Socket proposal includes an audit provision that CenturyTel or Socket could use to protect its interests if either company believes enhanced services traffic is not being accounted for properly. The Socket language provides a way for the parties to determine when Information Access Traffic will and will not qualify for bill-and-keep. None of the Arbitrator's other determinations address this issue, and the parties would be left without contractual guidance on such issues if Socket's language is not included in the interconnection agreement.

Second, as noted above, the determination is directly at odds with the Commission's treatment of the same issue (and the exact same contract language) in the M2A Successor Arbitration. Socket's proposed language was taken directly from decisions made in the recent M2A Successor Arbitration and is identical to the language currently contained in Socket's interconnection agreement with SBC Missouri. This same language was originally proposed by MCI in Case No. TO-2005-0336, and was approved by the Arbitrator. In selecting this language the Arbitrator noted:

MCI argues that its language should be adopted because it is consistent with the FCC's pronouncements on enhanced service traffic. MCI does not propose that "IP in the middle" traffic be counted as an enhanced service in that the traffic undergoes no net protocol change. The IP-PSTN traffic, on the other hand falls squarely within the "net protocol change" portion of the FCC's multi-part enhanced service definition and is therefore appropriately charged at reciprocal compensation rates instead of switched access rates.⁶⁹

After the Arbitrator issued his report, Socket requested that the Commission rule that MCI's language should be included in the Agreement between the CLEC Coalition (of which

⁶⁹ M2A Arbitration, Final Arbitrator's Report, Appendix VI Intercarrier Compensation (June 21, 2005).

Socket was a member) and SBC. In its Final Arbitration Order, the Commission affirmed the Arbitrator's ruling and also ruled the language should be included in the CLEC Coalition's Agreement as well. In doing so, the Commission found:

[T]he Arbitrator held with respect to MCI RC Issue 15 that "[t]he IP-PSTN traffic, on the other hand falls squarely within the 'net-protocol change' portion of the FCC's multi-part enhanced service definition and is therefore appropriately charged at reciprocal compensation rates instead of switched access rates." The Commission agrees that this traffic should be treated consistently and the Final Arbitrator's Report is thus modified to provide that the Coalition's ICA will also provide that IP-PSTN traffic be charged under the reciprocal compensation regime rather than be subject to access charges.⁷⁰

When CenturyTel's corporate affiliate, LightCore, established its interconnection agreement with SBC Missouri, LightCore accepted this language as part of its agreement.⁷¹ CenturyTel's affiliate was willing to take advantage of the Commission's determination on Information Access Traffic even as CenturyTel continues to oppose the language.

When SBC appealed the Commission's decision to federal court, the Commission defended its approval of the contract language in its opposition to SBC's motion for summary judgment.⁷² The Commission's brief stated the legal basis for the contract language as follows:

The FCC has since 1983 specifically exempted Enhanced Service Providers from paying access charges. More recently, in the *Access Charge Reform Order*, the FCC found that "maintaining the existing pricing structure ... avoids disrupting the still-evolving information services industry." These policy decisions have not been reversed by the FCC.

The parties asked the Commission to decide whether IP-PSTN traffic is subject to access charges or reciprocal compensation. Because the FCC has held that

⁷⁰ M2A Arbitration, Arbitration Order at 16 (July 11, 2005).

⁷¹ See Case No. TO-LK-2006-0095 (2005).

⁷² Defendant Missouri Public Service Commission's Memorandum In Opposition To Motions for Summary Judgment of SBC Missouri and Charter Fiberlink-Missouri LLC, *Southwestern Bell Telephone, L.P. d/b/a SBC Missouri v. The Missouri Public Service Commission*, Case No. 4:05-CV-01264CAS (pending in the federal district court for the Eastern District of Missouri)(filed Nov. 30, 2005) ("PSC M2A Brief").

enhanced services are exempt from access charges, and IP-PSTN traffic is an enhanced service, it follows that IP-PSTN traffic is subject to reciprocal compensation.⁷³

The Commission was correct to incorporate the disputed language in the M2A Successor Agreements, and the rationale supporting the language is no different in this case. Moreover, with the appeal of the M2A Successor Arbitration still pending, Socket urges the Commission to avoid reaching a conclusion in this proceeding that is at odds with the determination made less than a year ago in the M2A proceeding.

Article V, Issue No. 32 – How should the interconnection agreement define the term “Foreign Exchange”?

The Arbitrator’s Final Report notes that the Commission approved a definition of “Foreign Exchange” (“FX”) last year in the M2A Successor Arbitrations (Case No. TO-2005-0336), and concludes that the Socket-CenturyTel “Agreement shall contain this definition or no definition of FX service.”⁷⁴ Socket is satisfied with accepting the Commission-approved definition of FX. Socket strongly urges the Commission not to leave this controversial term without a definition in the Agreement. The Parties should be ordered to incorporate the Commission-approved definition in their Agreement. The question of whether to incorporate a definition of FX in the Agreement should not be left to the discretion of either Socket or CenturyTel.

⁷³ PSC M2A Brief, at 16.

⁷⁴ Arbitrator’s Final Report at 43.