

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 25th day of
September, 2008.

Socket Telecom, LLC,)	
)	
Complainant,)	
)	
v.)	<u>Case No. TC-2008-0225</u>
)	
CenturyTel of Missouri, LLC, and)	
Spectra Communications Group, LLC,)	
d/b/a CenturyTel,)	
)	
Respondents.)	

ORDER DENYING CENTURYTEL'S MOTION TO DISMISS

Issue Date: September 25, 2008

Effective Date: September 25, 2008

On January 8, 2008, Socket Telecom, LLC, filed a complaint against CenturyTel of Missouri, LLC and Spectra Communications Group, LLC, d/b/a CenturyTel (jointly referred to as CenturyTel). Following a delay that resulted from an attempt at mediation, CenturyTel filed its answer and counterclaim on September 12. At the same time, CenturyTel filed a motion asking the Commission to dismiss Socket's complaint for a failure to state a claim upon which relief can be granted. Socket responded to that motion on September 22.

The standard for review for consideration of a motion to dismiss for failure to state a claim upon which relief can be granted has been clearly established by Missouri's courts as follows:

A motion to dismiss for failure to state a cause of action is solely a test of the adequacy of the plaintiff's petition. It assumes that all of plaintiff's averments are true, and liberally grants to plaintiff all reasonable inferences therefrom. No attempt is made to weigh any facts alleged as to whether they are credible or persuasive. Instead, the petition is reviewed in an almost academic manner to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case.¹

By that standard, the Commission must consider CenturyTel's motion to dismiss based on the facts alleged in Socket's complaint.

Socket's complaint alleges that CenturyTel has refused to allow Socket to interconnect with its phone system in the manner allowed by the interconnection agreements between the parties that this Commission has previously approved. The three paragraphs of CenturyTel's motion to dismiss allege that Socket's actions are contrary to the terms of the interconnection agreements, but do not challenge Socket's right to ask this Commission to interpret and enforce those interconnection agreements.

Section 252(e)(1) of the Federal Telecommunications Act of 1996² grants this Commission authority to interpret and enforce approved interconnection agreements. Indeed, CenturyTel conceded the Commission has such authority in paragraph 5 of its Answer. Socket's complaint asks the Commission to compel CenturyTel to comply with the requirements of the Commission approved interconnection agreements. Clearly, that is a claim upon which the Commission can grant relief. CenturyTel's Motion to Dismiss is without merit and will be denied.

In denying CenturyTel's Motion to Dismiss, the Commission is finding only that Socket has stated a claim upon which the Commission can grant relief. Whether Socket

¹ *Eastwood v. North Central Missouri Drug Task Force*, 15 S.W.3d 65, 67 (Mo. App. W.D. 2000).

² 47 U.S.C. §251(e)(1).

will be able to present sufficient evidence to support such relief is, of course, a question that remains to be resolved.

IT IS ORDERED THAT:

1. The Motion to Dismiss filed by CenturyTel of Missouri, LLC, and Spectra Communications Group, LLC, d/b/a CenturyTel is denied.

2. This order shall become effective immediately upon issuance.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', with a stylized, cursive script.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Clayton, Gunn, CC., concur.
Jarrett, C., absent.

Woodruff, Deputy Chief Regulatory Law Judge