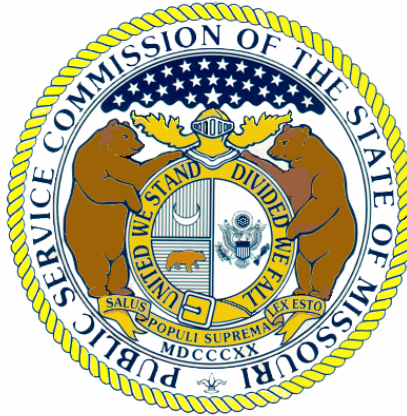


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



Socket Telecom, LLC,

Complainant,

v.

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

Respondents.

Case No. TC-2007-0341

REPORT AND ORDER

Issue Date: March 26, 2008

Effective Date: April 5, 2008

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

Appearances

Carl J. Lumley, , Curtis, Oetting, Heinz, Garrett & O'Keefe, 130 South Bemiston, Suite 200, Clayton, Missouri 63105-1913, for Socket Telecom, LLC.

Charles Brent Stewart, Stewart & Keevil, 4630 John Garry Drive, Suite 11, Columbia, Missouri 65203, for CenturyTel of Missouri, LLC, d/b/a CenturyTel, and Spectra Communications Group, LLC, d/b/a CenturyTel.

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

William K. Haas, Deputy General Counsel, General Counsel, Missouri Public Service commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

SENIOR REGULATORY LAW JUDGE: **Ronald D. Pridgin.**

REPORT AND ORDER

Procedural History

On March 19, 2007, Socket Telecom, LLC filed a complaint against CenturyTel of Missouri, LLC, d/b/a CenturyTel and Spectra Communications Group, LLC, d/b/a CenturyTel.¹ In that complaint, Socket alleged that CenturyTel failed to port two numbers in the Willow Springs exchange, and a number in the Ellsinore exchange, as required by federal law and by the parties' interconnection agreement. CenturyTel denies Socket's allegations, stating that neither federal law nor the agreements require the type of porting that Socket requests. Both parties filed motions for summary determination. The Commission held a hearing on July 11-12, 2007.

Findings of Fact

Socket is a certificated competitive local exchange company in the State of Missouri. Socket is a Missouri limited liability company in good standing, with its principal place of business located at 2703 Clark Avenue, Columbia, Missouri 65202. Socket is an authorized provider of intrastate switched and nonswitched local exchange and inter-exchange telecommunications services in Missouri under certificates granted and tariffs approved by the Commission. Socket is also an authorized provider of interstate telecommunications services in Missouri under the jurisdiction of the Federal Communications Commission.

Socket is a facilities-based competitive local exchange carrier and interexchange carrier. At present Socket operates in exchanges served by AT&T f/k/a SBC, CenturyTel,

¹ CenturyTel and Spectra are separate corporations and separate respondents, with separate interconnection agreements with Socket. For brevity's sake, however, this order will refer to the respondents as "CenturyTel".

and Embarq f/k/a Sprint, providing voice and data services to small and medium-sized business customers primarily in rural areas of the state. In providing these services, Socket uses its own switching and transport facilities as well as transport facilities and loops leased from other companies. Socket also provides telecommunications services to Internet Service Providers, including both its' affiliate, Socket Internet,² as well as unaffiliated Internet Service Providers. Socket is currently researching and testing products and services that will allow it to expand into the residential market.³

The two CenturyTel entities are Spectra Communications Group, LLC d/b/a CenturyTel ("CenturyTel – Spectra") and CenturyTel of Missouri, LLC ("CenturyTel – Missouri") collectively referred to as CenturyTel Operating Companies ("CTOC" or "CenturyTel"). Each is a wholly owned subsidiary of CenturyTel, Inc. Each entity obtained its franchise territory by purchasing assets from GTE Midwest, Inc. and its successor Verizon Midwest, Inc. in two separate transactions. Together, their Missouri franchise territory represents the territory originally served by GTE Midwest, Inc. Collectively, these entities serve nearly a half-million access lines in Missouri. Socket has separate but identical (other than incumbent name) interconnection agreements (ICAs) with each of them that were arrived at through the arbitration in Case No. TO-2005-0299 and approved by this Commission on or about October 13, 2006.⁴

CenturyTel of Missouri, LLC d/b/a CenturyTel is a limited liability company organized and existing under the laws of the State of Louisiana and authorized to conduct business in the State of Missouri. It is a public utility subject to the jurisdiction of the Commission and

² Socket Telecom is owned by Socket Holdings Corporation which does business under the name Socket Internet.

³ Ex. 1, pp. 3-4.

⁴ *Id.* at 4.

provides telecommunications services in its service areas within the State of Missouri under authority granted and tariffs approved by the Commission. It is an incumbent local exchange carrier as defined in Section 251(h) of the Telecommunications Act of 1996 and a noncompetitive large local exchange carrier as defined in Sections 386.020, 392.361, and 392.245, RSMo. CenturyTel's principal place of business is located at 100 CenturyTel Drive, Monroe, Louisiana 71203, and it has local offices at 220 Monroe Street, 1st Floor, Jefferson City, Missouri 65101.⁵

Spectra Communication Group, LLC d/b/a CenturyTel is a limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of Missouri. It is a public utility subject to the jurisdiction of the Commission and provides telecommunications services in its service areas within the State of Missouri under authority granted and tariffs approved by the Commission. It is an incumbent local exchange carrier as defined in Section 251(h) of the Telecommunications Act of 1996 and a noncompetitive large local exchange carrier as defined in Sections 386.020, 392.361, and 392.245, RSMo. Spectra's principal place of business is located at 100 CenturyTel Drive, Monroe, Louisiana 71203, and it has local offices at 220 Monroe Street, 1st Floor, Jefferson City, Missouri 65101.

Socket asks the Commission to require CenturyTel to port numbers so that customers can both be served by their provider of choice and retain their telephone number. The customers in question want to change providers from CenturyTel to Socket, keep their telephone numbers, and obtain from Socket a form of foreign exchange service, also known as VNXX service, so that they can make and receive calls rated as local to the

⁵ *Id.* at 5.

same rate center as when they were obtaining service from CenturyTel with those telephone numbers (i.e., their location on the network does not change), even though their place of business has geographically moved from one exchange to another.

Socket Telecom's affiliate, Socket Internet, wants to port two Willow Springs numbers that are used for local internet dial-up access and technical support so it can be served by Socket Telecom. Computer Magic wants to port Jamestown, Prairie Home, and Wooldridge numbers and use Socket Telecom services.⁶ Poplar Bluff Internet wants to port Lesterville,⁷ Ellsinore⁸ and Boss numbers and use Socket services. Mississippi Valley Internet wants to port Paris, Clarence,⁹ LaPlata, and Macon numbers and use Socket services. MCM Systems wants to port Hunnewell, Shelbyville, Santa Fe, Shelbyna, Monroe City, Laddonia, Perry, and Stoutsville numbers and use Socket services. Texas County Rural Area Information Network (TRAIN) wants to port Houston, Summersville, Licking, and Cabool numbers and use Socket services.¹⁰

Conclusions of Law

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact and

⁶ Ex. 1, pp 15, 24.

⁷ CenturyTel completed the Lesterville port but then later ported it back. Ex. 1, pp. 26-28).

⁸ CenturyTel did ultimately complete the Ellsinore port, but still contends that it should not have done so. (Ex. 1, p. 23).

⁹ CenturyTel told Socket it would not complete the Clarence port, but then did it anyway, causing an outage for the customer, and then reversed it. (Ex.1, pp. 24-25, Ex. 2, p. 37).

¹⁰ Ex. 1, pp. 15, 22-24; Ex. 2, pp. 44-50. Willow Springs, Jamestown, Prairie Home, Wooldridge, Cabool, and Summersville are CenturyTel exchanges. Lesterville, Ellsinore, Boss, Paris, Clarence, LaPlata, Macon, Hunnewell, Shelbyville, Santa Fe, Shelbyna, Monroe City, Laddonia, Perry, Stoutsville, Houston, and Licking are Spectra exchanges.

conclusions of law. 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. When making findings of fact based upon witness testimony, the Commission will assign the appropriate weight to the testimony of each witness based upon their qualifications, expertise and credibility with regard to the attested to subject matter.¹¹

This Commission has jurisdiction and authority over telecommunications companies who provide service within Missouri.¹² The Commission has jurisdiction to interpret and enforce interconnection agreements it has approved.¹³

List of Issues

Regrettably, the parties were unable to even agree on a List of Issues that the Commission should resolve. Therefore, the Commission has coalesced the parties' issues, and will resolve them below.

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

¹¹ Witness credibility is solely within the discretion of the Commission, who is free to believe all, some, or none of a witness' testimony. *State ex. rel. Missouri Gas Energy v. Public Service Comm'n*, 186 S.W.3d 376, 389 (Mo. App. 2005)..

¹² Section 386.250(2), .320, .330, 392.200, .240.

¹³ *Bellsouth Telecommunications, Inc. v. MCImetro Access Transmission Services*, 317 F.3d 1270 (11th Cir. 2003); *SWBT v. Connect Comm.*, 225 F.3d 942, 947 (8th Cir. 2000).

Findings of Fact

There are no additional findings of fact for this issue.

Conclusions of Law

All local exchange carriers have the statutory obligation “to provide, to the extent technically feasible, number portability in accordance with the requirements prescribed by the Commission (FCC).”¹⁴ Number portability is “the ability of **users** of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.”¹⁵

However, they need not provide location number portability.¹⁶ That is “the ability of **users** of telecommunications services to retain existing telecommunications numbers without impairment of quality, reliability, or convenience when moving from one physical location to another.”¹⁷

The FCC has issued a number of decisions respecting number portability. In its First Report and Order and Further Notice of Proposed Rulemaking, *Telephone Number Portability* (“First Order”), the FCC required all carriers to provide “service provider portability”, which it made synonymous with the statutory definition of “number portability”. It also expanded the number portability obligation to porting between wireline and wireless

¹⁴ 47 U.S.C. § 251(b)(2).

¹⁵ 47 U.S.C. § 153(30) (emphasis added).

¹⁶ In the Matter of Telephone Number Portability, 11 F.C.C. Rcd. 8352, 8447 (1996).

¹⁷ 47 C.F.R. § 52.21(j) (emphasis added).

carriers (“intermodal portability”).¹⁸ In this order, the FCC specifically declined to mandate “location portability” between wireline carriers.¹⁹

The FCC in its Second Report and Order, *Telephone Number Portability* (“Second Order”)²⁰, and in related subsequent proceedings, again considered wireline to wireline portability but once again decided not to change the definition of “location portability” nor require “location portability” among wireline carriers, even within the same exchange area.²¹

In 2003, the FCC issued its *Intermodal Order*²² wherein it mandated number portability between *wireless and wireline* carriers. Not only did the FCC *not* mandate wireline-to-wireline “location portability” in this order, it explicitly noted “that wireline carriers are not able to port a number to another wireline carrier if the rate center [exchange] associated with the number does not match the rate center [exchange] associated with the customer’s physical location”.²³ Simply put, the *Intermodal Order* changed nothing with respect to wireline-to-wireline porting.

To date the FCC has reviewed, considered and deliberately decided not to require location portability under Section 251(b)(2) in wireline porting situations although it has reserved its prerogative to mandate it in the future under a different section of the Act:

¹⁸ 11 F.C.C.R. 8352 (1996).

¹⁹ 11 F.C.C.R. 8352, at 8443.

²⁰ 12 F.C.C.R. 12, 281 (1997).

²¹ FCC, RM 8535, Second Memorandum Opinion and Order on Reconsideration, Released October 20, 1998, cited in relevant part in Ex. 6, Furchtgott-Roth Rebuttal, page 11.

²² *In the matter of Telephone Number Portability*, FCC CC Docket No. 95-116, 18 F.C.C.R. 23697 (November 10, 2003).

²³ *Id.*, at paragraph 43. This order in paragraph 22 also limited the wireless/wireline porting obligation to only those circumstances where the wireless carrier’s coverage area overlapped the geographic location of the rate center (exchange) in which the customer’s wireline number is provisioned. The FCC found that this type of intermodal porting would be consistent with the requirement to port *when customers remained in the same location*.

“The Commission concluded in the First Report and Order that the requirement that all LECs provide local number portability (i.e., service provider portability) pursuant to section 251(b)(2) does not include location portability because the Act’s number portability mandate is limited to situations when users remain ‘at the same location’ when switching from one telecommunications carrier to another. Although we did not require LECs to provide location portability when the First Report and Order was issued, we nevertheless concluded that nothing in the Act would preclude us from mandating location portability if, in the future, we determine that location portability is in the public interest”²⁴

That the FCC has not yet mandated “location portability” in the wireline-to-wireline setting is reflected in an FCC order issued as recently as June 29, 2007. The FCC actually found it necessary to waive its rules to temporarily *permit* wireline geographic number porting due to a natural disaster.²⁵

Socket agrees that location portability is not required; however, it states that what it is requesting is not location portability, but number portability.²⁶ It states that location, in the context of the Telecommunications Act, means rate center, and that because the customers want their numbers to remain in their current rate centers, what they are requesting is number portability. So, despite the customer wanting to move perhaps 200 miles or more away, in Socket’s view, the location does not change, because the rate center of the phone number to be ported would not change.

²⁴ FCC, RM 8535, Second Memorandum Opinion and Order on Reconsideration, Released October 20, 1998 at paragraph 29.

²⁵ Ex. 16, *In the Matter of Telephone Number Portability Numbering Resources Optimization*, CC Docket No. 95-116 and CC Docket No. 99-200 (released June 29, 2007). See, also Ex. 15.

²⁶ Ex. 1, p. 34.

The question ultimately is: what does “location” mean? Courts that have examined the matter confirm that the absence of a definition of location renders the statute and rules ambiguous.²⁷

Perhaps a more fundamental question is what location is being measured? Is it the location of the customer, or the location of the phone number if, indeed, a phone number even *has* a location? Because, if a phone number truly cannot have a “location”, then it follows that it is the customer’s, or users, location that is pertinent.

Indeed, as the Commission noted above, both Congress and the FCC refers to the **users’** location as being determinative in distinguishing between number and location portability.²⁸ With this in mind, the Commission can only conclude that Socket is requesting location portability. The FCC apparently believes so as well, or else it would not have concluded as recently as this year that it needed to waive location portability rules to permit carriers to port customer’s numbers to remote locations in the wake of Hurricane Katrina and severe damage from tornadoes in Kansas.²⁹

Decision: Federal law does not require CenturyTel to fulfill the number port orders specifically at issue in this case and similar orders submitted since the filing of the complaint and into the future. The Commission finds this issue in favor of CenturyTel.

²⁷ See *USTA v. FCC*, 400 F.3d 29, 31 (DC Cir. 2005); *Central Texas Telephone Cooperative v. FCC*, 402 F.3d 205, 207 (DC Cir. 2005); *In the Matter of Starnet*, 355 F.3d 634, 638 (7th Cir. 2004)(location could mean rate center, end of loop, customer premise, or something else).

²⁸ See *United States Telecom Association v. FCC*, 400 F.3d 29, 37 (D.C. Cir. 2005)(fn. 14 – in a companion case, FCC counsel’s conceded that a number really has no physical location.)

²⁹ See *In the Matter of Telephone Number Portability Number Resources Optimization*, CC Docket No. 95-116, 99-200 (Orders dated September 1, 2005 and June 29, 2007).

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

Findings of Fact

The next question then becomes whether CenturyTel is required to port the numbers, anyway, due to clauses in the interconnection agreements requiring porting according to industry standards. In particular, Socket argues that the interconnection agreements the Commission approved in a prior arbitration case require CenturyTel to port numbers according to “industry agreed-upon practices” and “industry guidelines.”³⁰ The parties disagree about the meaning of these sections, even though they were not imposed via arbitration, but *agreed* upon through negotiation.³¹

Telecommunications technology moves at warp speed compared to the speed at which FCC and Congress move. If the industry wants to do something more than required by federal law, it may do so; indeed, interconnection agreements are often rife with agreed-upon provisions that Congress would not force upon them. In fact, the interconnection agreements themselves state that the parties will provide permanent number portability via local routing numbers as required by the FCC **or** industry agreed-upon practices.³² As stated above, CenturyTel and Socket *agreed* to that portion of the agreements. Thus, they apparently recognized that the industry could go beyond the requirements of the FCC in porting numbers.

³⁰ See Commission Case No. TO-2006-0299, Notice of Filing of Conformed Agreements (filed September 15, 2006)(Art. XII, Section 3.2.1, Section 6.4.4)(hereafter referred to as the agreement or agreements).

³¹ Ex. 5, p.7.

³² See *id.*, Art. XII, Sec. 3.2.1.

Industry agreed-upon practices and guidelines call for provision of the number ports at issue in this case. AT &T, Embarq and every CLEC that Socket has dealt with “routinely” provide such number ports, as Socket does for them.³³ In addition, Socket took this issue to the industry, presenting it to the Local Number Portability Administration – Working Group (LNPA-WG).³⁴

As Staff witness Voight stated: “The LNPA-WG, as a part of the NANC (North American Numbering Council), represents the closest thing to a definitive standards body that one might expect to find in the area of number portability.”³⁵ Socket witness Kistner confirmed that view.³⁶ Even CenturyTel witness Penn described it as “a one-stop shop, one place to go to see what the industry has discussed in their opinion.” The LNPA-WG is relied upon by “entities that do make those rules such as the FCC and NANC.”³⁷ Further, Mr. Penn indicated that the LNPA-WG’s purpose “is to arrive at industry consensus” and that it was appropriate for Socket to present the issue to the LNPA-WG.³⁸ Mr. Furchtgott-Roth testified: “Whether those constitute an industry standard, I think Mr. Voight addressed this earlier, it is – it certainly is one form.”³⁹ The LNPA-WG frequently works to resolve these types of porting disputes.⁴⁰

³³ Ex. 1, pp. 44-45; Tr. 79-81, 98-99, 132-33, 180-81.

³⁴ Ex. 1, p. 28.

³⁵ Ex. 5, p. 24; Tr. 195-96.

³⁶ Ex. 4, p. 11.

³⁷ Tr. 230.

³⁸ Ex. 8, p. 4; Ex. 9, p. 13.

³⁹ Tr. 218.

⁴⁰ Ex. 1, pp. 28-30; Ex. 2, pp. 26-35; Ex. 4, pp. 15-16; Tr. 52-57, 132-33.

The LNPA-WG reached a consensus that a port request should be worked given these agreed-upon caveats.

1. The customer would like to receive calls to their number(s) at a location of theirs that is physically outside of the Rate Center.
2. The customer understands that these numbers must continue to be rated with its current rate center and does not want them to take on the rating characteristics of the Rate Center of their new location.
3. The new service provider already serves the Rate Center out of the same switch to which they want to port this customer's number(s).
4. The new service provider's switch that already serves the Rate Center has an existing POI (Point of Interconnection) at the ILEC's tandem over which calls to these numbers are routed. If this customer's number(s) are ported into the new service provider's switch, they would be routed over the same POI, and then the new service provider would deliver the calls to the customer's premise that is located outside of the Rate Center associated with the customer's number(s).
5. The new service provider has a tariffed or publicly posted as required by state regulation foreign exchange (FX) service that would cover this situation. Calls to and from customers located in the exchange and the customer served by the new service provider will be routed exactly the same whether the new service provider assigns the customer a phone number from its 1K block of numbers or whether the new service provider ports the numbers. This customer will be served out of the new service provider's FX tariff or publicly posted price list as required by state regulation.
6. The LSR (Local Service Request) submitted by the new service provider reflects the customer's original service location as recorded by the Old SP (Service Provider).⁴¹

With these caveats, the LNPA-WG concluded that such a number port order would be legitimate.⁴² Socket's port requests meet all the foregoing items.⁴³ The Commission's

⁴¹ Ex. 2, pp. 30-31.

⁴² Id., see also Tr. 52-57.

⁴³ Ex. 2, pp. 31-35; Tr. 194-95.

order in this case is limited to the unique dispute that Socket and CenturyTel bring to the Commission to resolve, which include the above-listed caveats the LNPA-WG stated.⁴⁴

CenturyTel seemed to implicitly attempt to argue at hearing that Socket did not meet item 3, apparently contending that Socket does not serve a rate center through its switch if it does not have loop facilities in the exchange. But Socket has NXX codes for the exchanges in question and seeks to port numbers as well.⁴⁵ Indeed, CenturyTel agrees Socket has NXX codes for every CenturyTel exchange.⁴⁶ Under Article II, Section 1.93 of the interconnection agreement, CenturyTel agreed that either opening an NXX code or porting a number constitutes “offering service” in the exchange.⁴⁷ The interconnection agreements do not require Socket to have loop facilities in the exchange to port a number.⁴⁸

CenturyTel witness Penn, who participated in the LNPA-WG proceedings, confirmed that Mr. Kohly accurately described the outcome of that group’s deliberations.⁴⁹ CenturyTel also provided such an admission in response to Staff discovery.⁵⁰ Mr. Penn also testified that it was appropriate for Socket to bring the matter to the LNPA-WG for consideration.⁵¹ Mr. Penn did at one point try to cut too fine a line with the Commission, first stating that the Group had declined to determine whether Socket’s port requests met the foregoing

⁴⁴ Tr. 207, 208.

⁴⁵ Tr. 90.

⁴⁶ Tr. 264.

⁴⁷ Tr. 90-91.

⁴⁸ Ex. 5, p. 23.

⁴⁹ Tr. 224-26.

⁵⁰ Tr. 195.

⁵¹ Ex. 9, p. 13.

criteria.⁵² But he then volunteered that “the caveats do support whether the LNP working group believes that a port similar in nature to what Socket has brought up would be considered legitimate port requests.”⁵³ He added: “To the LNP working group, the LNP working group co-chair Paula Jordan, would say there is consensus on this issue, that as long as the six caveats spelled out by the LNPA working group are met, that ports such as the ones that Socket is suggesting should be considered legitimate port requests.”⁵⁴

Socket provided ample and unrefuted evidence that industry agreed-upon practices and guidelines call for provision of the number ports at issue in this case. CenturyTel argued that Embarq’s practices were to not port in a situation like this.⁵⁵ However, the complete information shows that Embarq remained willing to port numbers under similar circumstances for another carrier, provided the carrier established interconnection with Embarq with one POI per LATA/tandem switch and with each party responsible for the facilities on their side of a POI.⁵⁶ In other words, Embarq’s Pennsylvania testimony shows that if the CLEC interconnects on terms and conditions like Socket does with CenturyTel (at least one POI per LATA and the CLEC bearing responsibility for facilities on its side of the POI), then Embarq willingly would port the numbers.⁵⁷

The evidence shows that CenturyTel stands alone in its refusal to make such ports.⁵⁸ Socket has proven that national incumbent carriers like AT&T and Embarq, competitive CLECs, and the LNPA-WG, a nationally recognized representative of the

⁵² Tr. 226.

⁵³ Tr. 231.

⁵⁴ Tr. 232.

⁵⁵ Ex. 12, p. 17.

⁵⁶ Tr. 285-87; Ex. 12, Sch. SS-1 Maples Direct, p. 21; Ex. 21, Fox Direct, pp. 11-12.

⁵⁷ Ex. 21, Fox Direct, p. 12.

⁵⁸ Tr. 204.

industry, all find the requested ports should be provided.⁵⁹ Such evidence proves that CenturyTel is required to provide the ports pursuant to the provisions of the interconnection agreements that require compliance with industry practices and guidelines.⁶⁰ That is the conclusion Staff “conclusively” recommended to the Commission.⁶¹

Conclusions of Law

Article XII (Local Number Portability – Permanent Number Portability), Section 3.2.1 of the agreement states:

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

In this provision, the parties recognize that number portability (PNP) is supposed to be provided by the LRN method and agree to port numbers in compliance with FCC requirements and also in compliance with “industry agreed-upon practices.” CenturyTel contends that this provision applies only to LRN porting.⁶² But Staff and CenturyTel agree with Socket that ALL porting is LRN porting.⁶³ LRN is the established national method of

⁵⁹ CenturyTel apparently contends that it does not have to abide by the LNPA-WG action because appeals are possible. (Tr. 220, 233). However, the interconnection agreements require compliance with current industry standards and the Working Group has confirmed those standards. A potential appeal by a holdout like CenturyTel does not change current standards. CenturyTel did not offer any evidence of any “stay” of industry practices.

⁶⁰ While the LNPA-WG itself cannot compel CenturyTel to provide the ports at issue (Ex.1, p. 29), its actions dovetail with the contractual provisions that require CenturyTel to comply with such standards, such that Commission can and should enforce those provisions and compel CenturyTel to provide the ports.

⁶¹ Ex. 5, pp. 8, 34.

⁶² Tr. 38.

⁶³ Tr. 164, 296.

handling number portability.⁶⁴ And the agreement states that the parties will provide permanent number portability (PNP) per FCC requirements and industry practices. (Article XII, Section 3.2.1).

Likewise, in Section 6.4.4, the parties agreed that: “Industry guidelines shall be followed regarding all aspects of porting numbers from one network to another.” And in Section 6.4.5, the parties agreed: “Each Party shall abide by the guidelines of the North American Numbering Council (NANC) and the associated industry guidelines for provisioning and implementation processes.”

Decision: The Respondents’ interconnection agreements with Socket require Respondents to port these numbers.

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

Findings of Fact

CenturyTel asserts on one hand that purported lack of capacity justifies its refusal to provide number ports⁶⁵, and yet on the other that this purported justification of its refusal to port numbers is not at issue.⁶⁶ CenturyTel refused to provide the two port requests that led to the filing of the complaint, and other subsequent port requests, on the grounds that it lacked capacity.⁶⁷

CenturyTel’s opposition to Socket’s porting requests specifically boils down to dissatisfaction with the Commission’s decision to accept CenturyTel’s proposed contract

⁶⁴ See Second LNP Order, CC Docket 95-116, para. 8, 45 et seq (8/18/97).

⁶⁵ Ex. 11, pp. 14-19.

⁶⁶ Ex. 12, p. 25.

⁶⁷ Ex. 1, pp. 22-24; Ex. 2; pp. 44-48.

language which **expressly allows** Socket to provide VNXX service and assign numbers to customers physically outside the calling area containing the rate center with which the number is associated, **but not** to accept CenturyTel's accompanying proposal to include in that contract language a requirement of a point of interconnection in every exchange.⁶⁸ Stripped down to its essence, CenturyTel's position is plainly untenable – it is not entitled to reconsideration of the arbitration or alteration of the provisions of the interconnection agreements, nor can it legitimately hold required number ports hostage in its effort to coerce such reconsideration/alteration from Socket. CenturyTel simply must abide by the contract terms concerning points of interconnection and capacity of interconnection facilities.⁶⁹

Each party is continuously responsible to have sufficient capacity on its side of a point of interconnection so that traffic can be exchanged properly, including when traffic is to be added such as for the customers involved in the subject porting requests after the completion of the number ports. The interconnection agreements establish procedures for creation of additional points of direct interconnection based on actual traffic volumes, but under such contract provisions actual traffic volumes are to be determined over time after numbers are ported and are not to be estimated in anticipation of a number port.⁷⁰ When the parties indirectly interconnect, their respective arrangements with the third party will determine whether additional POIs are needed.

⁶⁸ See Arbitration Decision, p. 27-28, 44-46.

⁶⁹ Ex. 2, p. 9.

⁷⁰ Hence, Ms. Anderson's statistical studies, involving use of Erlang tables, are not relevant. (Ex. 2, p. 12). CenturyTel itself does not even act on these tables immediately. (Tr. 275).

NPAC (the national portability administration center) does not allow a party to challenge a port based on capacity issues.⁷¹ No other carrier refuses to port numbers based on capacity issues.⁷² Thus, porting requests are to be handled through the porting process independent of other issues, including capacity.

Interconnection capacity has nothing to do with the technical feasibility of a port, contrary to CenturyTel witness Smith's assertions. Her testimony references FCC concerns about the overall methodology of number porting (expressed during the process by which the FCC selected LNR as the method to resolve such concerns), not specific porting requests.⁷³ CenturyTel is fully capable of completing the ports at issue.⁷⁴

Interconnecting carriers are expected to cooperate so that there is always sufficient capacity for their mutual exchange of traffic. Further, the parties should rely on forecasting to avoid surprises.⁷⁵

Conclusions of Law

The FCC has stated that "carriers may not impose non-porting related restrictions on the porting out process."⁷⁶ Likewise, it has stated that "carriers are required to port a number when they receive a valid request and may not refuse to port a number while attempting to collect fees, or settle an account, or for other reasons unrelated to validating a customer's identity."⁷⁷ Consistent with the foregoing, in the Intermodal LNP Order, the

⁷¹ Ex. 1, pp. 10, 31.

⁷² Ex. 2, p. 41.

⁷³ Ex. 4, p. 15; Ex. 11, p. 18.

⁷⁴ Ex. 1, pp. 25-28, 33-34; Ex. 2, pp. 9, 25; Ex. 11, pp. 27-28; Tr. 144.

⁷⁵ Ex. 1, p. 17; Ex. 5, p. 30.

⁷⁶ October 2003 LNP Order, CC Docket 95-116, para. 11. Porting out and porting in refer to the actions of the two carriers executing a port. (Tr. 154-55).

⁷⁷ Id at para. 8.

FCC indicated that disputes over transport costs and facilities were not grounds to deny porting requests.⁷⁸

Decision: Network capacity issues are not grounds for denial of a number port order. The Commission finds this issue in favor of Socket.

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

Findings of Fact

Socket has NXX codes for every CenturyTel exchange.⁷⁹

Conclusions of Law

Because Socket already has those codes, this issue does not affect the outcome of this case. Even Socket admits as much in its brief. Because the issue does not affect the outcome of this case, the issue is moot, and the Commission will decline to decide this issue.⁸⁰

IT IS ORDERED THAT:

1. The Petition for Leave to File Amicus Brief filed by the Small Telephone Company Group is granted.
2. CenturyTel of Missouri, LLC shall immediately complete the pending number port orders submitted by Socket Telecom, LLC on October 30, 2006 for 573-322-8421 and

⁷⁸ Intermodal LNP Order, para. 28 and n. 75.

⁷⁹ Ex. 1, p. 22, 45; Tr. 90, 264.

⁸⁰ See, e.g., *In re Southwestern Bell*, 18 S.W.3d 575, 577 (Mo. App. 2000); *C.C. Dillon Co. v. City of Eureka*, 12 S.W.3d 322, 325 (Mo. banc 2000).

on February 23, 2007 for 417-469-9090 and 417-469-4900 in coordination with Socket Telecom, LLC.

3. CenturyTel of Missouri, LLC and Spectra Communications Group, LLC d/b/a CenturyTel shall provide number portability to Socket Telecom, LLC under the circumstances described in this Report and Order, both as to the specific requests listed in Socket Telecom, LLC's complaint and in general.

4. CenturyTel of Missouri, LLC and Spectra Communications Group, LLC d/b/a CenturyTel shall not reject a porting request from Socket Telecom, LLC based on network capacity concerns.

5. All other requests for relief not specifically granted are denied.

6. This order shall become effective on April 5, 2008.

7. This case shall be closed on April 6, 2008.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Clayton, and Appling,
CC., concur;
Murray and Jarrett, CC., concur, with
separate concurring opinion attached;
and certify compliance with the
provisions of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 26th day of March, 2008.