

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 12th day
of September, 2006.

Petition of Socket Telecom, LLC for Compulsory)	
Arbitration of Interconnection Agreements with)	
CenturyTel of Missouri, LLC and Spectra)	<u>Case No. TO-2006-0299</u>
Communications, LLC pursuant to Section 252(b)(1))	
of the Telecommunications Act of 1996.)	

**ORDER REGARDING DISPUTED LANGUAGE
IN INTERCONNECTION AGREEMENT AND
ORDER DENYING MOTION TO STRIKE**

Issue Date: September 12, 2006

Effective Date: September 12, 2006

The Commission issued its Final Commission Decision in this matter on June 27, 2006. By Commission rule, Socket Telecom, LLC and CenturyTel of Missouri, LLC (the parties) were required to file an interconnection agreement by July 7. The parties on three occasions, however, jointly requested that the Commission extend the deadline, which is now September 15. The last request was due to their inability to agree on the conforming language in seven Articles of the interconnection agreement. This order resolves those disputes and again directs the parties to file their interconnection agreement no later than September 15.

Article III – Section 24.1

Socket's position – Socket argues that the parties agreed on the following language:

CenturyTel shall make no change in any policy, process, method or procedure used or required to perform its obligations under this Agreement,

that, in whole or in part, has the effect of diminishing the value of any right of Socket granted herein or term or condition included herein, or that could cause an inefficiency or expense for Socket hereunder that did not exist at the Effective Date of this Agreement, without the prior review and written approval of Socket, which consent may be withheld by Socket in its sole discretion. In addition, CenturyTel shall not be permitted to circumvent this obligation by posting on its CLEC web-site.

CenturyTel's position – CenturyTel argues that the parties agreed to omit this language. CenturyTel supports its position by stating that the language is inconsistent with two other sections of the agreement; namely, sections 24.0 and 54.5, which state as follows:

24.0 – Standard Practices – The Parties acknowledge that CenturyTel shall be adopting some industry standard practices and/or establishing its own standard practices to various requirements hereunder applicable to the CLEC industry which may be added in the CenturyTel Service Guide. Socket agrees that CenturyTel may implement such practices to satisfy any CenturyTel obligations under this Agreement; provided, however, that notices of changes to standard practices will be provided as set forth in Section 54. Where a dispute arises between the Parties with respect to a conflict between the CenturyTel Service Guide and this Agreement, the terms of this agreement shall prevail.

54.5 – Except as otherwise specified elsewhere in this Agreement, all changes to standard practices will be posted on the CenturyTel website prior to implementation, with e-mail notification of such postings. The email notification directing Socket to CenturyTel's website will contain, at a minimum, the subject of the change posted to the website and a website link to the posting. In addition, the website itself will contain a "change log." Posting will include CenturyTel personnel who may be contacted by Socket to provide clarification of the scope of the change and timeline for implementation. Socket reserves its right to request changes to be delayed or otherwise modified where there is an adverse business impact on Socket, with escalation through the dispute resolution process.

Commission Decision

First, the parties indicated this section as "agreed upon."¹ Also, the parties did not include this language in the Final Decision Point List, which further indicates that it was

¹ *Article III, General Provisions*, Attached to the Petition for Arbitration (Filed on January 13, 2006). The language of Section 24.1 is not bold or underlined, which indicates it is agreed upon.

agreed upon. Second, where sections were intentionally omitted from the agreement, the parties indicate in the interconnection agreement that the language was “intentionally omitted.” Finally, the language of section 24.1 is not inconsistent with either of the sections pointed out by CenturyTel. Section 24.1 refers to Section 54. Section 54.5 begins with the clause; “Except as otherwise specified elsewhere in this Agreement” CenturyTel’s argument therefore fails.

The Commission will therefore require the parties to include the language of Article III –Section 24.1 in the interconnection as apparently agreed upon.

Article V – Section 17

Socket’s position – Socket contends that the Commission should direct the parties to include in this interconnection agreement language governing compensation for IP-PSTN traffic. Socket argues that the Commission has approved this language in Case No. TO-2005-0366. Socket goes on to interpret the Final Commission Decision to direct the parties to include the language of that case, in this interconnection agreement.

CenturyTel’s position – CenturyTel argues that the language Socket seeks to include in the interconnection agreement was never before the Commission for consideration. Although the Commission’s Final decision allows the parties to include language from Case No. TO-2005-0366, the Commission does not require the parties to do so.

Commission Decision

Although the Commission decided this issue in Case No. TO-2005-0366, the language Socket now proposes to include in the interconnection agreement was not before the Commission during this arbitration. The Commission therefore gave the parties the opportunity to insert the previously approved language, from the prior case, in this

interconnection agreement. The Commission decided that if the parties could not agree to include language that conforms to the Final Commission Decision, then no language shall be included.² Socket's additional language shall not be included.

Article VI (Resale)

Socket's position – The charge for a resale customer record search should be \$0. Socket argues that the Commission directed the parties to conform to the non-recurring charges in Case No. TO-2005-0336. There is no Resale Customers Record Search charge in the M2A.

CenturyTel's position – The “no-rate” concept only applies to AT&T's fully-electronic OSS. CenturyTel must necessarily search and retrieve records using less-mechanized systems. CenturyTel contacted AT&T and confirmed AT&T would charge a “Record Simple/Record Complex” rate of \$6.28 that was submitted not using a fully automated system.

Commission Decision

By ruling in favor of Socket on this issue, the Commission ordered the parties to incorporate the rates from TO-2005-0336.³ The Commission affirmed the Arbitrator's resolution of this issue.

As noted in the Commission's order, CenturyTel is not sure what non-recurring rates apply to what situations.⁴ Further, CenturyTel's witnesses were not able to clarify when a function would become mechanized enough to qualify as an electronic function. The Commission ordered CenturyTel to find ways to make the ordering functions more

² *Final Commission Decision*, Case No. TO-2006-0299, Page 43, Issue 31 (Issued June 27, 2006).

³ *Arbitrator's Final Report*, Page 44, Article VI (issued on May 18, 2006).

⁴ Tr. 352-355.

mechanized; thus moving away from manual intervention. Given this directive and without evidence to support the \$6.28 rate, the Commission finds no rate should be included in the conformed agreement for customer record searches, which defaults to \$0.

VIIA – UNE Pricing

Socket's position – Socket states that the language in the interconnection agreement should reflect what the Commission ordered in its Final Decision. Socket points out that much of the dispute stems from CenturyTel's effort to "characterize the web-based ordering system as purely manual, and thus always subject to manual as opposed to electronic service ordering charges."

CenturyTel's position – CenturyTel restates the arguments it made during the arbitration. Generally, CenturyTel argues that it is not as automated as AT&T and should not be subject to the same pricing scheme as implemented in Case No. TO-2005-0366. CenturyTel proposes that the agreement include only the "Service Order Charges – Unbundled Elements" from the M2A agreement that apply to "simple" and "complex" orders processed by AT&T through means other than its fully-automated OSS system. CenturyTel posits that those service order charges will more closely reflect CenturyTel's less-automated system.

Commission Decision

The Commission ordered the parties to incorporate the rates from Case No. TO-2005-0366. As noted in the Commission's order, CenturyTel is not sure what non-recurring rates apply to what situations⁵ and CenturyTel's witnesses were not able to clarify when a function would become mechanized enough to qualify as an electronic function.

⁵ Tr. 351-355

The Commission ordered CenturyTel to find ways to make the ordering functions more mechanized, thus moving away from manual intervention.

The Commission acknowledged that CenturyTel is entitled to recover its costs associated with any OSS, or more mechanized, system. The Commission also acknowledged that CenturyTel has the opportunity to determine and submit costs associated with OSS implementation in a subsequent proceeding. Similarly, CenturyTel can submit costs associated with its “less-mechanized” process for Commission review if the “Electronic – UNE Service Order Type Charges” do not recover the costs of the more automated, but non-extensive system overhauls.

Absent such review, the Commission continues to order the incorporation of the arbitrated rate from TO-2005-0336 as the appropriate rates. For purposes of drafting language for this interconnection agreement, the parties need only refer to the rates in that case.

Article IX – Section 5.1.1 and 7.0

The disputed language is as follows. CenturyTel’s proposed language is underlined. Socket’s is in bold:

5.1.1

CenturyTel will establish a single point of contact (SPOC) to provide Socket with information relating to the status of restoration efforts and problem resolution during any restoration process. This SPOC shall be a special option contained on CenturyTel’s 800 number(s) used by retail customers. **CenturyTel shall provide Socket with a means of contacting CenturyTel for service-related questions without sitting in a queue with retail customers, including an option to by-pass the retail options.** Calls placed to this SPOC shall be answered twenty-four hours per day, seven days per week. CenturyTel will have a knowledgeable person available to respond to Socket’s question.

7.1

CenturyTel will provide a single point of contact (SPOC) for all of Socket's maintenance requirements under this Article (via an 800 number) that will be answered twenty-four hours per day, seven day per week. This SPOC shall be a special option contained on CenturyTel's 800 number(s) used by retail customers. **CenturyTel shall provide Socket with a means of contacting CenturyTel for service-related questions without sitting in a queue with retail customers, including an option to by-pass the retail options.** Competent personnel with knowledge of CenturyTel's repair and maintenance process and procedures shall answer the number provided to Socket. These personnel shall have access to the system or information to enable them to receive trouble tickets and provide updates on repair status.

Commission Decision

The Commission found the record established that CenturyTel already provided Socket with a means of contacting CenturyTel without sitting in a queue.⁶ The Commission approved CenturyTel's language at Sections 5.1.1 and 7.1, but also stated that since this solution was not optimal, CenturyTel was to include language acknowledging the Commission's directive that CenturyTel have a knowledgeable person available to respond to Socket's questions. No additional language is needed. The parties are directed to incorporate the language proposed by CenturyTel.

Article XIII (Access to Operations Support Systems ("OSS"))

Both parties submitted an entire competing Article for Commission review. Several provisions of the proposals are similar or identical and designed to implement the Commission's order. However, each party's proposal appears to go beyond the Commission's directive. Socket includes language that could be interpreted as anticipating a system more robust than ordered by the Commission.

⁶ *Final Commission Decision*, Case No. TO-2006-0299, Page 55, Issue 2 (Issued June 27, 2006).

For instance, in several sections Socket references “functionality and information” to which CLECs are entitled under the Act or FCC rules. Socket also mentions “flow through”, at Section 5.6, which could imply a real-time system. While the CLECs are entitled to certain functionalities and information, the Arbitrator explained that the FCC, in its Triennial Review Order, stated at paragraph 566; “[h]owever, we recognize the wide variety of systems and databases that comprise OSS of incumbent LECs and the important role that state commissions have played facilitating access to incumbent LECs’ OSS through the Section 271 proceedings and other state proceedings . . .” To that end, the Commission determined that the appropriate access to CenturyTel’s OSS shall be based on current processes, systems and the record, with implementation of a more mechanized process that avoided manual intervention.

Similarly, CenturyTel includes language that appears too restrictive and suggests a prohibition on cooperation and collaboration between the parties. Since the parties requested the Commission resolve the issue in true baseball-style fashion, the Commission finds Socket’s language more closely conforms to the Commission’s order. However, the Commission reaffirms that its decision requires nothing more than what is stated in the Arbitrator’s Report and affirmed in the Commission’s order.

Article XV (Performance Measures and Provisioning Intervals)

Generally, the parties disagree on how to statistically measure CenturyTel’s performance level. In the interconnection agreement, CenturyTel is required to perform, with regard to various performance objectives, at a certain level of proficiency. When CenturyTel fails to “pass the test” it must compensate Socket for such failure.

Neither party's language is reasonable to accomplish the objective of allowing for a statistically significant sample to be determined over a period of months, as directed in the Final Commission Decision. Socket's language appears to allow aggregation of data from one month to an indefinite number of months. CenturyTel's language appears to allow for numerous errors before corrective action is instituted.

Because the parties are not able to resolve this issue, they shall institute the following language: Activity will accumulate for no more than 3 rolling months at a time. At any given time during this 3-month rolling activity, an aggregate of 30 events must occur before CenturyTel's performance on a measure is compared to the benchmark standard. "Events" shall be defined as each individual Socket order or request

CENTURYTEL'S MOTION TO STRIKE

Attached to Socket's brief on the above issues are exhibits. CenturyTel filed a motion requesting that the Commission strike those exhibits, all references to the exhibits and all argument based on the exhibits.

The attachment is, as is most of both parties' briefs, simply a restatement of the arguments posited during the arbitration. The purpose of the briefs was to allow each party an opportunity to present argument of how its language, on the various sections, conformed to the Commission's Final Decision. Anything, argument or exhibit, outside of this regard was not considered in resolving the parties' disputes. The Commission therefore assures CenturyTel that the exhibits were ignored because they, like much of the rhetoric contained in both briefs, were irrelevant. The Commission also notes that the record in this matter is closed. No additional evidence can be submitted or considered.

To grant CenturyTel's motion would mean the Commission's Data Center would have to remove from the record the exhibits and the arguments and references thereto. As Socket points out in its response to CenturyTel's motion, much of CenturyTel brief contains information that could be considered evidence and that if the motion is granted, that information should also be stricken. The Commission will not allow bickering between the parties to hinder a conclusion of this matter and will deny CenturyTel's request.

IT IS ORDERED THAT:

1. Socket Telecom, LLC and CenturyTel of Missouri, LLC shall file no later than September 15, 2006, an interconnection agreement conforming to the Commission's resolutions in the body of this order.
2. CenturyTel of Missouri, LLC's motion to strike is denied.
3. This order shall become effective on September 12, 2006.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw,
and Clayton, CC., concur.
Appling, C., not participating.

Jones, Senior Regulatory Law Judge