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Issue(s): Article VI (Resale); Demographics
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Witness: Arthur P. Martinez

Type of Exhibit: Rebuttal Testimony

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

Case No.: TO-2006-0299

Date Testimony Prepared: April 6, 2006

REBUTTAL TESTIMONY

OF

ARTHUR P. MARTINEZ

ON BEHALF OF

**CENTURYTEL OF MISSOURI, LLC AND SPECTRA
COMMUNICATIONS GROUP, LLC d/b/a CENTURYTEL**

CASE NO. TO-2006-0299

Exhibit No. V
Case No(s) TO 2006-0299
Date 4-12-06 Rptr kt

NP

OF THE STATE OF MISSOURI

PETITION OF SOCKET TELECOM, LLC)
FOR COMPULSORY ARBITRATION OF)
INTERCONNECTION AGREEMENTS)
WITH CENTURYTEL OF MISSOURI, LLC)
AND SPECTRA COMMUNICATIONS, LLC)
PURSUANT TO SECTION 252(b)(1) OF)
THE TELECOMMUNICATIONS ACT OF)
1996)

CASE NO. TO-2006-0299

STATE OF MISSOURI

COUNTY OF COLE

AFFIDAVIT OF ARTHUR P. MARTINEZ

I, Arthur P. Martinez, of lawful age and being duly sworn, state:

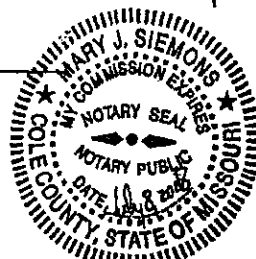
1. My name is Arthur P. Martinez. I am presently Director of Government Relations in Missouri for CenturyTel Service Group, LLC.
2. Attached hereto and made a part hereof for all purposes is my Rebuttal Testimony.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.


Arthur P. Martinez

Subscribed and sworn to before this 5th day of April, 2006.


Notary Public

My Commission expires: July 8, 2008



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1 **REBUTTAL TESTIMONY OF**
2 **ARTHUR P. MARTINEZ**

3 **ON BEHALF OF CENTURYTEL OF MISSOURI, LLC AND SPECTRA**
4 **COMMUNICATIONS GROUP, LLC d/b/a CENTURYTEL**

5 **Q. PLEASE STATE YOUR NAME.**

6 **A. My name is Arthur P. Martinez.**

7 **Q. ARE YOU THE SAME ARTHUR P. MARTINEZ WHO FILED DIRECT**
8 **TESTIMONY IN THIS PROCEEDING?**

9 **A. Yes.**

10 **Q. WHAT ISSUES DO YOU ADDRESS IN YOUR TESTIMONY?**

11 **A. My direct testimony supported CenturyTel's position with respect to resale issues,**
12 **specifically Issues 7 and 14 in Article VI: Resale. In Section I of my rebuttal testimony, I**
13 **will address Socket's direct testimony on those same issues. In an effort to help the**
14 **Commission correlate my rebuttal testimony with my direct testimony, I have addressed the**
15 **issues in the order I addressed them in my direct testimony. In addition, in Section II of my**
16 **rebuttal testimony, I will address certain discussions and allegations by Mr. Kohly in his**
17 **direct testimony regarding the effects of the Telecommunications Act, and of legislation both**
18 **passed by and pending before the Missouri General Assembly, which has no relevance in the**
19 **context of this arbitration and does not address any specific issues in dispute.**

I.
ARTICLE VI (RESALE) DISPUTED ISSUES

ISSUE 7: Should the avoided cost discount apply to nonrecurring charges (NRCs)?

Q. WOULD YOU PLEASE RESTATE CENTURYTEL'S POSITION ON THIS ISSUE?

A. Certainly. CenturyTel does not believe that it is obligated by the Act to apply an avoided cost discount to non-recurring charges. Section 251(c)(4) requires incumbent LECs "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers[.]" 47 U.S.C. § 251(c)(4); *see also* 47 C.F.R. § 51.609(b) (specifying that wholesale rates apply to telecommunications services). Thus, CenturyTel is only obligated to apply the avoided cost discount to the price of "telecommunications services" as defined by the Act.

Q. IS THE APPLICATION OF AN AVOIDED COST DISCOUNT TO TELECOMMUNICATIONS SERVICES SUPPORTED BY MR. KOHLY?

A. Yes. On page 89, lines 26-27, Mr. Kohly states that the avoided cost discount should be applied to "telecommunications services." The critical distinction is in the definition of what a "telecommunications service" is and isn't.

1 Q. WHAT IS A "TELECOMMUNICATIONS SERVICE"?

2 A. The Act defines a "telecommunications service" as "the offering of *telecommunications* for
3 a fee directly to the public, or to such classes of users as to be effectively available directly to
4 the public regardless of the facilities used" (emphasis added).¹

5 Q. HOW DOES THE ACT DEFINE "TELECOMMUNICATIONS"?

6 A. The Act describes "telecommunications" as "the *transmission* between or among points
7 specified by the end user, of information of the user's choosing, without change in the form
8 or content of the information as sent and received" (emphasis added).² In other words,
9 "telecommunications" is the unaltered transmission of information between two points as
10 chosen by the user.

11 Q. DOES A NONRECURRING CHARGE APPLY TO A SERVICE THAT
12 "TRANSMITS" INFORMATION?

13 A. No. As stated in my direct testimony, a nonrecurring charge is a charge imposed for the
14 recovery of time and material associated in the setup and implementation of a
15 telecommunications service, but it is not, itself, a telecommunications service.

16 Q. IF A NONRECURRING CHARGE DOES NOT APPLY TO A
17 TELECOMMUNICATIONS SERVICE, TO WHAT DOES IT APPLY?

18 A. As I indicated above, a nonrecurring charge is a one-time charge to recover time and material
19 for the implementation and setup of a telecommunications service. It applies to a service that
20 is separate and apart from the actual telecommunications service provided to customers.

¹ 47 U.S.C. § 153(46)

² *Id.* at § 153(43).

1 Q. DOES SOCKET DISPUTE YOUR DESCRIPTION OF A NONRECURRING
2 CHARGE?

3 A. No. The Direct Testimony of Mr. Steven E. Turner actually supports my description. On
4 page 56, lines 14-18, of Mr. Turner's testimony he describes non-recurring charges as being
5 fundamentally made up of four components, all of which pertain to the time and material
6 involved with completing a set-up or implementation task. None of the four components
7 identified by Mr. Turner pertains to the costs associated with the service provisioned for the
8 actual transmission of information by the customer. Such actual telecommunications
9 services, which are priced at monthly recurring rates, are the services to which the avoided
10 cost discount applies.

11 ISSUE 14: Should CenturyTel be required to provide Socket with forty-five
12 (45) days advanced notice of any changes in the terms and conditions under
13 which CenturyTel offers telecommunications services to its customers?

14 Q. HAS THIS ISSUE BEEN RESOLVED BY THE PARTIES?

15 A. Yes. The parties have resolved this issue since their filing of direct testimony. The parties
16 have agreed to incorporate the following language into Article VI of the Agreement:

17 6.0 CHANGES IN RETAIL SERVICE.

18
19 6.1 CenturyTel will notify Socket, at the time a tariff is filed with the
20 Missouri Commission, of any changes in the prices, terms and conditions
21 under which CenturyTel offers telecommunications services at retail to
22 subscribers who are not telecommunications service carriers. Such changes
23 shall include, but not be limited to, the introduction of any new features,
24 functions, services, promotions, or the discontinuance or grandfathering of
25 current features and services. CenturyTel shall provide notice to Socket of
26 such tariff changes by posting the same to CenturyTel's website, with email
27 notification of such postings.

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II.

OTHER ISSUES RAISED BY MR. KOHLY AND/OR SOCKET

Q. AT THE BOTTOM OF PAGE 15 AND CONTINUED ON PAGE 16 OF HIS DIRECT TESTIMONY, MR. KOHLY DISCUSSES CENTURYTEL'S SIZE AND THE FACT THAT IT PROVIDES A SUITE OF ADVANCED SERVICES TO ITS CUSTOMERS. DOES THIS HAVE A BEARING ON THIS CASE?

A. Yes, but not for the reasons Mr. Kohly would have the Commission consider. CenturyTel does not dispute that it is a carrier with a wide geographic scope offering advanced communications services. See Schedule APM-1 (Map of CenturyTel's national territory). CenturyTel, like all telecommunications companies, must offer the services its customers' demand in order to stay viable. What is an issue for the Commission to consider is the relative size of CenturyTel's operations as compared to that of a Regional Bell Operating Company (RBOC), like AT&T (f/k/a SBC) or Verizon. This is particularly relevant given Socket's continued comparisons of CenturyTel's ICA offerings to contract terms contained in AT&T's ICA, and Socket's continued insistence that the same or similar terms approved by the Commission for AT&T should be approved for CenturyTel. The truth is there are significant differences in the CenturyTel and AT&T's networks, operations and customer bases. For example, in Missouri, AT&T serves the most densely populated areas of the state, including the cities of Kansas City and St. Louis. AT&T serves approximately 2.1 million lines in 160 exchanges resulting in an average exchange size of roughly 13,000 lines. (See *Missouri Telecommunications Industry Association 2006 Member Directory* at 43.) CenturyTel, by contrast, serves mostly rural, sparsely populated areas in Missouri. See Schedule APM-2 (MTIA map of ILEC exchanges in Missouri). CenturyTel serves

1 approximately 460 thousand customers in 203 exchanges resulting in an average exchange
2 size of roughly 2,300 lines. (See *Missouri Telecommunications Industry Association 2006*
3 *Member Directory* at 33.) Nationally, CenturyTel's largest exchange is Columbia, Missouri,
4 on the order of * _____ * lines. This clearly demonstrates that, although CenturyTel is a large
5 company in terms of geographic footprint, it has distinctly different operations and
6 demographics than AT&T, or even Sprint (a/k/a Embarq). Specifically, CenturyTel serves
7 large geographic areas but with much lower customer density.

8 **Q. YOU MENTION THAT CENTURYTEL HAS DIFFERENT DEMOGRAPHICS**
9 **THAN AT&T. WILL YOU PLEASE ELABORATE?**

10 A. Certainly. Please see Schedule APM-3 attached to my rebuttal testimony. Schedule APM-3
11 shows the exchanges of CenturyTel, AT&T, and Sprint in Missouri and identifies the
12 population or household ("HH") density served by their respective coverage territories. As
13 indicated on Schedule APM-3, CenturyTel's service territory is geographically larger than
14 that of AT&T and Sprint. Yet, CenturyTel clearly serves areas that are less densely
15 populated (in terms of the number of households) than either AT&T or Sprint.

16 **Q. WILL YOU PLEASE ADDRESS MR. KOHLY'S TESTIMONY WITH RESPECT**
17 **TO CERTAIN COMMITMENTS MADE BY CENTURYTEL IN THE**
18 **CENTURYTEL OF MISSOURI ACQUISITION?**

19 A. Yes. At several places in his direct testimony, Mr. Kohly references a commitment made on
20 the part of CenturyTel of Missouri, LLC, when it acquired its exchanges from Verizon (f/k/a
21 GTE Midwest) (the "CenturyTel of Missouri Acquisition"). Mr. Kohly seems to imply that
22 CenturyTel of Missouri eternally committed not to raise or change wholesale rates in its

1 interconnection agreements as a condition of the acquisition. This is simply not true, and it
2 was not a condition of the sale. (See, e.g., Kohly Direct, Page 90, Lines 1-3).

3 **Q. WHAT DID CENTURYTEL COMMIT TO DO WITH REGARD TO RATES AS**
4 **A CONDITION OF THE SALE?**

5 A. CenturyTel committed to adopt the rates of Verizon (f/k/a GTE Midwest) at the time of the
6 sale, but there was no requirement or commitment that those rates would be fixed forever at
7 the rates set forth in the prior Verizon interconnection agreements.³

8 **Q. DID CENTURYTEL MAKE COMMITMENTS WITH REGARD TO**
9 **INTERCONNECTION AGREEMENTS?**

10 A. Yes. CenturyTel agreed to "enter into agreements which have the same rates terms and
11 conditions as those agreements previously negotiated with Verizon," to the extent technically
12 feasible, for a period of one year, after which, CenturyTel was free to negotiate successor
13 agreements.⁴ Any such existing agreements at the time of sale that were not "replaced
14 through negotiation or arbitration with in one year,...[were to] continue in force on a month-
15 to-month basis until so replaced."⁵ That CenturyTel committed to maintaining, for a period
16 of one year, the existing rates in these acquired interconnection agreements cannot plausibly
17 be interpreted as a commitment to forever maintain those rates. Moreover, the Commission
18 clearly contemplated that, after one year, CenturyTel was free to negotiate new terms,

³ TM-2002-232, *In the Matter of the Joint Application of GTE Midwest, Inc. d/b/a Verizon Midwest and CenturyTel of Missouri, LLC for 1) Authority to Transfer and Acquire Part of Verizon Midwest's Franchise, Facilities, and System Located in the State of Missouri, 2) For Issuance of Certificate of Authority to CenturyTel of Missouri, LLC 3) To Designate CenturyTel of Missouri, LLC as Subject to Regulation as a Price Cap Company; and 4) To Designate CenturyTel of Missouri, LLC as a Telecommunications Carrier Eligible to Receive Federal Universal Service Support*, Report and Order (found at <http://www.psc.mo.gov/orders/2002/05212232.htm>).

⁴ *Id.*, Non-unanimous Stipulation and Agreement at 4.

1 conditions and rates for successor interconnection agreements. That is what CenturyTel and
2 Socket are doing now. If Socket's illogical position is to be credited, it would mean that
3 CenturyTel could never negotiate new rates, terms and conditions with any CLEC that
4 previously had an interconnection agreement with Verizon. Clearly, that was neither the
5 Commission's nor CenturyTel's intent.

6 **Q. HAS CENTURYTEL MET THE CONDITIONS IT AGREED TO WITH**
7 **REGARD TO INTERCONNECTION AGREEMENTS?**

8 **A.** Yes. It has been three years and six months since the transfer of assets. This is the first
9 arbitration that has reached contested proceeding before this Commission regarding terms
10 and conditions for a successor agreement to replace an interconnection agreement that was in
11 effect at the time of the CenturyTel of Missouri Acquisition. This is more than two years
12 beyond the period agreed to by CenturyTel.

13 **Q. MR. KOHLY ALSO STATES ON SEVERAL PAGES OF HIS DIRECT**
14 **TESTIMONY THAT CENTURYTEL HAS BENEFITED FROM THE PASSAGE**
15 **OF THE TELECOMMUNICATIONS ACT OF 1996 (THE ACT). COULD YOU**
16 **PLEASE COMMENT ON MR. KOHLY'S ASSERTION?**

17 **A.** Yes. Socket and other Competitive Local Exchanges Carriers (CLEC) were the direct
18 beneficiaries of the Act. CenturyTel, as the incumbent local exchange carrier (ILEC) and
19 prior to the passage of the Act, was granted a franchise area as part of the regulatory regime
20 at the time. After the passage of the Act, CenturyTel and other ILECs were required by law
21 to open their markets to competitive local providers (CLECs) and give these CLECs access
22 to the their networks for the provision of local services. It is true that, subsequent to the

⁵ *Id.*, Non-unanimous Stipulation and Agreement at 5.

1 passage of the Act, certain CenturyTel affiliates have benefited from provisions of the Act,
2 but so too has Socket. Indeed, the Act itself was intended to benefit primarily CLECs. Mr.
3 Kohly is blatantly trying to confuse the subject at issue in this case by implying that the
4 benefits conferred by the Act on CLECs somehow accrue to the benefit of ILECs, like
5 CenturyTel. That proposition is contrary to logic and the express purpose of the Act itself.

6 Indeed, competition created by the Act, along with a variety of other factors including
7 new technologies, intra-modal competition (*e.g.*, cable telephony) and evolving customer
8 demands, have all contributed to CenturyTel line loss. Within the past three years,
9 CenturyTel has lost more than 8% of its customer base, largely due to facilities-based
10 competition from CLECs, intra-modal service providers (*e.g.*, cable telephony), and wireless
11 substitution. CenturyTel expects the competitive pressures in its markets to continue.
12 Virtually all markets now have some form of alternative voice provider.

13 **Q. ON PAGE 16, LINES 13-16, OF HIS DIRECT TESTIMONY, MR. KOHLY**
14 **DISCUSSES CENTURYTEL'S SUPPORT FOR LEGISLATION BEFORE THE**
15 **MISSOURI GENERAL ASSEMBLY (SENATE BILL 816). DOES THIS HAVE**
16 **ANY RELEVANCE IN THIS PROCEEDING?**

17 **A.** No, for two reasons. First, the legislation in question is currently being debated by
18 Missouri's General Assembly and is far from becoming law. During this process, Socket has
19 the same opportunities as CenturyTel to engage legislators in advocacy. Second, to the
20 extent a statewide video franchise bill were to become law, it would benefit the entire
21 industry, including Socket to the extent that Socket were to offer video services. Senate Bill
22 816 essentially is concerned with putting telecommunications companies on more equitable

1 footing with cable companies for the provision of video services. It has little to nothing to do
2 with the rights of CLECs vis-à-vis ILECs. It is disingenuous for Mr. Kohly to only identify
3 CenturyTel as a potential beneficiary of this pending legislation when Senate Bill 816 is far
4 from being enacted and, if enacted, would benefit Socket just as well as CenturyTel and all
5 similarly situated telecommunications companies.

6 **Q. AT THE TOP OF PAGE 18, LINES 6-9, OF HIS DIRECT TESTIMONY, MR.**
7 **KOHLI AGAIN DISCUSSES CENTURYTEL'S SUPPORT FOR LEGISLATION**
8 **BEFORE THE MISSOURI GENERAL ASSEMBLY AND SEEMS TO IMPLY**
9 **THAT CENTURYTEL IS SEEKING DIRECT "CONCESSIONS" FROM THIS**
10 **BODY. IS THIS VALID?**

11 **A.** No. Mr. Kohly again seems to imply that CenturyTel is the sole beneficiary of any
12 legislation. This is extremely misleading and has no relevance in this case. Moreover, the
13 legislation in question was supported by the Missouri Telecommunications Industry
14 Association, the AARP, and the Office of Public Council. These entities represent different
15 constituency with divergent interests and agendas that clearly dispel any suppositions made
16 by Mr. Kohly that CenturyTel is the only beneficiary of such legislation.

17 **III.**
18 **CONCLUSION**

19 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

20 **A.** Yes, it does.