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*Issues: Local Number Portability
Administration Working Group; Number
Portability*
Witness: Michael Penn
*Sponsoring Parties: CenturyTel of
Missouri, LLC & Spectra Communications
Group, LLC d/b/a CenturyTel*
Type of Exhibit: Surrebuttal Testimony
Case No.: TC-2007-0341
Date Testimony Prepared: June 25, 2007

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

SURREBUTTAL TESTIMONY

OF

MICHAEL PENN

CASE NO. TC-2007-0341

CenturyTel Exhibit No. 9
Case No(s) TC-2007-0341
Date 7-11-07 Rptr MC



BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

STATE OF LOUISIANA
OUACHITA PARISH

AFFIDAVIT OF MICHAEL PENN

I, Michael Penn of lawful age and being duly sworn, state as follows:

1. My name is Michael Penn. I am presently an Engineer and Local Number Portability Administrator for CenturyTel Service Group, LLC.
2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony in the above referenced case.
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge, information and belief.



Michael Penn

Subscribed and sworn to before me this 25th day of June, 2007.



Notary Public

My Commission expires: At death
(Seal)

Gary Maxwell Cox
Louisiana Bar Roll No. 27419
Notary Public, Ouachita Parish, Louisiana
My Commission is for Life



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**SURREBUTTAL TESTIMONY OF
MICHAEL PENN
CASE NO. TC-2007-0341**

IDENTIFICATION OF WITNESS

- Q. Please state your name.**
- A. Michael Penn.
- Q. Are you the same Michael Penn who filed rebuttal testimony in this case?**
- A. Yes.

INTRODUCTION AND PURPOSE

- Q. What is the purpose of your surrebuttal testimony?**
- A. My Surrebuttal Testimony addresses the Rebuttal Testimony of Staff Witness, William Voight, and attempts to point the Missouri Commission to relevant facts and authorities regarding LNP industry dispute treatment and resolution procedures. I cover six main points:
 - 1. My personal experience pertaining to the LNPA-WG's handling of Socket's PIM-60.
 - 2. The six (6) caveats and concerns raised by the LNPA-WG for PIM 60.
 - 3. The impact of a future LNPA-WG recommendation for PIM-60.
 - 4. A comparison of the differences between a "consensus recommendation" from the LNPA-WG and an "industry agreed upon practice or obligation."
 - 5. The unfairness of finding Missouri industry practice for Socket's two (2) port requests when (1) CenturyTel cannot know what other Missouri ILECs do or do not do; (2) Missouri Independent Telephone Group seems

1 to disagree; and (3) The referenced ILECs have communicated concerns
2 about PIM 60 to the LNPA-WG.

3 6. How can the FCC Intermodal Order – for wireline-to-wireless ports - be
4 instructive or support an “evolution” of legal obligations for wireline-to-
5 wireline ports where the FCC has issued express Orders on this point?

6 **Q. Does Staff Witness Voight address the LNPA-WG and its handling of PIM-
7 60?**

8 A. Yes, titled “Staff response to the LNPA-WG issue,” Mr. Voight addresses the
9 issue at pages 23-26 of his Rebuttal Testimony.

10 **THE LNPA-WG’S HANDLING OF SOCKET’S PIM-60**

11 **Q. Prior to PIM-60’s submission to the LNPA-WG and in your six years of
12 participation in the LNPA-WG, had the industry reached an agreed-upon
13 consensus that the port requests at issue were a legitimate obligation?**

14 A. No. Eventually, the industry may or may not reach an agreed-upon practice on
15 this point. However, that has not yet happened.

16 **Q. Has the industry ever discussed and considered this type of port request
17 before?**

18 A. To my knowledge, no. This type of porting request for wireline-to-wireline
19 carriers was not discussed until Socket filed PIM 60 with the LNPA WG in March
20 of 2007. Previous to that, the industry did discuss wireline-to-wireless porting
21 situations that are similar but distinguishable from Socket’s port requests.
22 Moreover, the outcome of those industry discussions resulted in the FCC issuing
23 the Intermodal Order – which applies for wireless ports.

1 **Q. Can you describe how the LNPA-WG has treated PIM 60?**

2 A. Since it was raised in March, the LNPA WG has given PIM 60 fair time in its
3 deliberations during the last four (4) monthly meetings. Frankly, it has been met
4 with some concerns but, also, there has been a willingness to handle this question.

5 **Q. What do you mean when you say that PIM-60 has been met with some
6 concerns?**

7 A. As previously mentioned, although the LNPA-WG has not issued its final
8 recommendation; this group has identified six caveats for these types of port
9 requests before they can be considered legitimate.

10 **SIX CAVEATS RAISED BY LNPA-WG FOR PIM-60**

11 **Q. Can you describe the six (6) caveats to the legitimacy of Socket's two (2) port
12 requests that have been identified by the LNPA-WG?**

13 A. Sure. First, Socket's customer wants to receive calls to his / her current phone
14 numbers at a location that is physically outside the Willow Springs rate center.
15 Second, the customer understands that these numbers must continue to be rated as
16 Willow Springs numbers and do not take on a new rate center location. Third,
17 Socket must serve the Willow Springs rate center out of the same switch to which
18 they want to port the Willow Springs numbers. Fourth, the Socket switch that
19 serves Willow Springs' rate center must have an existing POI at the ILEC's
20 tandem over which calls to Willow Springs rate center are routed. Further, if this
21 customer's Willow Springs' number is ported into the Socket switch, calls to the
22 numbers would be routed over same POI and then Socket would deliver the calls
23 to the customer's premise that is located outside the Willow Springs rate center.

1 Fifth, Socket has a tariffed FX service that would cover this situation. Further,
2 calls to and from customers located within the Willow Springs exchange and the
3 customer served by Socket will be routed exactly the same whether Socket
4 assigns the customer a phone number from its 1K block of Willow Springs
5 numbers or whether Socket ports the numbers. Sixth, the LSR submitted by
6 Socket reflects the customer's original service location as recorded by the old
7 service provider.

8 **Q. How have these caveats been treated?**

9 A. The parties have discussed each of these six items and sometimes, as in the case
10 of FX, more discussion is needed. As the group considers this list, each item is
11 reviewed and discussed. Sometimes, an item may call for continuing discussions
12 where other concerns may develop prior the LNPA WG issuing its final
13 recommendation. At this point, it seems that the intention is to close the issue in
14 the July meeting. However, this has been the intention at multiple meetings and,
15 to date, Members continue to express concerns with Socket's requested ports.

16 **Q. Can you describe in more detail the concerns raised at the May meeting of
17 the LNPA WG in regards to FX?**

18 A. Yes. There were at least three ILEC Members, including CenturyTel, questioning
19 the type of FX that Socket would use to fulfill this requirement.

20 **Q. What does that mean?**

21 A. In the May meeting, two different kinds of FX were discussed. One type of FX
22 was described as a typical and common form of FX that is based upon a physical

1 interexchange circuit. Another, less common version of FX called "soft FX" was
2 also discussed.

3 **Q. What is "soft FX"?**

4 A. This is a fairly new term to me, however it was described to me that if Socket uses
5 "soft FX," it would have no physical connection to the rate center. Obviously,
6 unlike FX, this sort of arrangement puts all costs of interexchange transport on the
7 ILEC or tandem provider. I think this point caused several parties to have some
8 concern. Consequently, this "soft FX" issue in relation to PIM-60 will be
9 discussed at the next LNPA WG meeting.

10 **Q. How do you know that "soft FX" will be discussed at the next LNPA WG**
11 **meeting?**

12 A. An Embarq representative took the action item for leading discussion on this point
13 during the next meeting. Additionally, both co-chairs agreed that further
14 discussion on this point was warranted.

15 **THE IMPACT OF A FUTURE RECOMMENDATION FROM THE LNPA-**
16 **WG**

17 **Q. Do you agree with Staff's opinion on page 24 of Bill Voight's Rebuttal**
18 **Testimony which states, "...the outcome of PIM-60 may be significant...?"**

19 A. Somewhat. But, I must add some clarification regarding the proper weight to be
20 afforded to such an outcome (which is addressed below). Additionally, even the
21 staff concedes that there is some question whether a recommendation from the
22 LNPA-WG would be binding.

1 Q. Where does the Staff question the binding nature of a LNPA-WG
2 recommendation?

3 A. Mr. Voight's Rebuttal Testimony at page 24, lines 20 – 23, states:

4
5 "...even though its resolutions and advisory opinions *are not binding* on
6 its members, the LNPA-WG, as a part of the NANC, represents the closest
7 thing to a definitive standards body..." (Emphasis added).

8 Q. Can you explain why a recommendation from the LNPA-WG may not
9 automatically be binding?

10 A. Yes. There are several reasons why such a recommendation may not be
11 automatically binding on industry participants. First, a recommendation from the
12 LNPA-WG is subject to appeal to the full body of NANC, and even the FCC.
13 Besides the existence of appeal options, the delegated goal of the LNPA-WG, on
14 behalf of NANC, is to reach "consensus" – preferably unanimous consent.

15 COMPARE THE DIFFERENCE BETWEEN LNPA-WG'S CONSENSUS
16 RECOMMENDATION AND INDUSTRY AGREEMENT

17 Q. In your view, is a "consensus" recommendation from the LNPA-WG
18 different from industry-wide agreement regarding legal obligations?

19 A. Yes. A consensus recommendation from the LNPA-WG does not necessarily
20 mean that the industry or all Members agree upon the issue.

21 Q. Please explain in detail why a consensus recommendation from the LNPA-
22 WG on PIM-60 would not mean that the industry has agreed upon this issue
23 or agreed that there is a legal requirement to complete these types of port
24 requests?

1 A. First, it is worth noting that Socket's PIM-60 does not ask for a declaration
2 regarding industry agreed-upon practices. Rather, Socket only asks for a
3 "recommendation." PIM-60 states:

4 "Socket is not seeking to have this particular dispute *resolved* by the
5 LNPA working group. Instead, Socket would like a *recommendation* from
6 the LNPA working group..."

7 Second, see Mr. Kohly's Direct Testimony, Schedule MK-19, page 9 - 10, which
8 describes the meaning of "consensus" as something that is necessarily different
9 from industry-wide agreement. Chapter 12 of the NANC Operating Manual is
10 entitled "Consensus" and states in pertinent part:

11 "But, what is "consensus" and how is it determined?"
12 "Because determining consensus is inherently a subjective judgment by
13 the Chair, due process requires a Members [sic] who are disappointed by
14 the Chair's decision have an appeal [sic]. In NANC, any Member who
15 disputes the finding of a "consensus" may bring their point of view to the
16 next higher authority as a minority opinion. (The higher authority is the
17 full NANC in the case of a subsidiary group's decisions and the FCC in
18 the case of the full NANC's decisions)..."

19 **Q. Is there more than the above quote on the topic of consensus? If so, how is**
20 **"consensus" described in the NANC Operating Manual?**

21 A. Yes, there is more in Chapter 12. The NANC Operating Manual states that,
22 ideally, every decision taken by NANC and its subsidiary groups should be made
23 by unanimous consent. Next, the reasonable attempts necessary for achieving
24 unanimous consent are described. After that, the process for achieving consensus
25 where unanimity does not exist is described. At this point, the process for
26 discerning consensus is expressly noted to be "...*inherently a subjective judgment*
27 *by the Chair...*" Moreover, it is also noted that "...*due process requires a*

1 *Members [sic] who are disappointed by a Chair's decision have [sic] an appeal."*

2 (Emphasis added).

3 **Q. Does the NANC Operating Manual give Members a right to appeal and**
4 **dispute consensus decisions of NANC and its subsidiary groups?**

5 A. Yes. Any Member who disputes the finding of a "consensus" may initiate an
6 appeal by bringing their point of view to the next higher authority as a "minority"
7 opinion.

8 **Q. What does this mean in regard to the facts at hand?**

9 A. This means that CenturyTel or any Member may question a consensus
10 recommendation of the LNPA-WG (or even eventually NANC) through the
11 appeal process. In regard to the facts at hand, there is an available process – even
12 after the LNPA-WG issues a consensus recommendation - that would involve
13 disputing the finding of "consensus" to the next higher authority – the full body of
14 NANC.

15 **Q. Is this action welcomed by NANC?**

16 A. I cannot address that question in regard to this specific issue. But, Page 10 of
17 MK-19 states, "It is better for the higher authority to receive a "consensus"
18 decision and one or more "minority" opinions than to have no recommendations
19 at all. Indeed, having both "consensus" and "minority" views can be *very*
20 *valuable* to the higher authority." (Emphasis added).

21 **Q. When you consider the appeal process, does "consensus" at the LNPA-WG**
22 **mean final unquestioned industry-wide agreement?**

1 A. No. A consensus recommendation from the LNPA-WG is not necessarily the
2 final determination. In support of this, see the aforementioned NANC appeal
3 process in the NANC Operations Manual Chapter 12. Also, see 47 CFR
4 52.26(b)(3).

5 Q. **You have discussed the NANC appeal process detailed in the aforementioned
6 Chapter 12, but what does 47 CFR 52.26(b)(3) do?**

7 A. The relevant section is quoted later in testimony at page 13. In short, 47 CFR
8 52.26(b)(3) provides that a party may object to a NANC-proposed resolution.
9 When an objection happens, NANC must issue a written report summarizing the
10 positions of the parties and submit it to the Chief of the Wireline Competition
11 Bureau for Commission review.

12 Q. **Is there anything else that supports your opinion that a consensus
13 recommendation from the LNPA-WG is not necessarily the final
14 determination?**

15 A. The last sentence in Chapter 12 of NANC's Operating Manual is noteworthy:
16 "Consensus keeps things moving and the "appeal" process ensures fairness."
17 This sentence connotes that the LNPA-WG's role is not one of a final decision-
18 maker. In my own words, its role is to seek unanimity on disputes within the
19 industry. Failing unanimity, expedient consensus is encouraged. At the same
20 time, expedient consensus is balanced by an appeal process that moves from (1) a
21 subsidiary group of NANC to (2) the full body of NANC to (3) the FCC.

22 Q. **Can the LNPA-WG reach "consensus" on issues where there is not industry-
23 wide agreement?**

- 1 A. Absolutely. The NANC Operating Manual clearly describes the impact afforded
2 a LNPA-WG recommendation. While the recommendation is afforded weight,
3 the NANC process also provides dissenting voices another step for purposes of
4 ensuring due process fairness.
- 5 **Q. For the issue at hand, has "consensus" been reached by the LNPA-WG?**
- 6 A. Not yet.
- 7 **Q. If consensus at the LNPA-WG has not yet been reached, is it fair to move to**
8 **the next step and find that the industry has already agreed upon the**
9 **obligation and legitimacy of Socket's port requests.**
- 10 A. No. At the time of this writing, the LNPA-WG has not yet reached a consensus
11 recommendation on PIM-60. Moreover, it seems unfair to find that CenturyTel
12 was in the wrong at the time it received Socket's two (2) port requests because
13 consensus certainly did not exist at the time Socket's two ports were submitted to
14 CenturyTel. In fact, the port requests at issue predated PIM-60.
- 15 **Q. Do you agree with Staff's suggestion, at page 7, that CenturyTel may be in**
16 **violation of the Interconnection Agreement in light of industry practices?**
- 17 A. No. I disagree for several reasons. First, I am unaware of any legal or industry
18 practice that requires this type of port. Second, as Dr. Furchtgott-Roth testifies,
19 Staff's suggestion of what constitutes industry practice seems nebulous.
- 20 **Q. What exactly does Staff say about CenturyTel's obligation to port Socket's 2**
21 **requests?**
- 22 A. At page 7 & 8 of Staff's Rebuttal Testimony, Staff argues that the parties'
23 agreement regarding number portability is to be provided as required by FCC

1 Orders or industry agreed-upon practices. Also, Staff suggests that *industry*
2 *guidelines shall be followed regarding all aspects of porting numbers...*
3 (Emphasis added by Staff). Finally, Staff relies on assertions from Socket as to
4 what constitutes industry practice in Missouri (apparently without consulting
5 those industry participants) and declares that CenturyTel is out of conformity with
6 industry practices.

7 **Q. Do you agree with these findings?**

8 A. With all due respect, no. Respectfully, I believe Staff is mistaken in finding that
9 Socket's two (2) ports are required. Also, I question how the cited examples
10 constitute "agreed-upon industry practice." This is the first suggestion I have
11 heard like this, and it is in conflict with my experience. Admittedly, the FCC may
12 eventually issue a ruling supportive of this conclusion. But, that has not yet
13 happened. Additionally, I question how number portability industry practices
14 have "dramatically leapfrogged the FCC's rules in this matter." This conclusion
15 seemingly fosters confusion and Dr. Furchtgott-Roth addresses this point at more
16 length.

17 **Q. Earlier, you implied that a consensus recommendation from the LNPA-WG is**
18 **only a "first step" towards an established and agreed-upon industry practice.**

19 A. Yes.

20 **Q. What happens if the LNPA-WG issues a consensus recommendation at the**
21 **next meeting?**

1 A. In the future, if the LNPA-WG issues a consensus recommendation stating that
2 Socket's port requests are legitimate, parties such as CenturyTel will certainly be
3 afforded "appeal" rights to the NANC – and eventually to the FCC.

4 **Q. Due to these appeal options, is it premature to find industry agreement on
5 this issue?**

6 A. Yes, it is premature to find industry agreement on this issue until those available
7 processes are raised, considered, discussed and ruled upon.

8 **Q. Do you see any problems with finding industry agreement even before a
9 "consensus" is found at the LNPA-WG or before NANC appeal rights are
10 raised, discussed and decided?**

11 A. Yes. Finding industry agreement at this point is premature because all facts have
12 not been completely compiled, discussed and decided within the industry forums.
13 To my knowledge, this issue emerged for the first time for industry consideration
14 – some four months ago - in March of this year. It appears that some industry
15 participants are just now learning how this type of port impacts them. In my
16 view, a more robust discussion is needed before a finding of industry-wide
17 agreement is made. Moreover, it is likely that more participants will be more
18 involved in these discussions in the future. To make a determination before that
19 happens could be confusing and arguably uninformed.

20 **Q. Why do you think more participants will get involved in this issue?**

21 A. Specifically, Embarq voluntarily took the action item for leading discussions on
22 the impact of "soft FX" for PIM-60 at the next meeting of the LNPA-WG in July.
23 Additionally, I note that the Missouri Independent Telephone Group has filed an

1 amicus filing into this proceeding. Certainly, these facts provide reasonable
2 evidence that consensus is premature and industry-wide agreement is even more
3 distant.

4 **Q. Do you think the LNPA-WG is the appropriate forum for Socket's porting**
5 **question? If so, is it the final forum for this LNP issue?**

6 A. Yes, the LNPA-WG is the appropriate forum for raising and discussing porting
7 questions – particularly technical questions. However, I have addressed
8 elsewhere the proper weight to be given to LNP recommendations – particularly
9 when there are appeals and “minority” opinions that dissent from consensus
10 recommendations. Additionally, after “consensus” or “minority” views are
11 compiled by NANC, and even the FCC, there is a process for codifying these
12 recommendations into law. 47 CFR Section 52.26(b)(3) states:

13 “Parties shall attempt to resolve issues regarding number portability
14 deployment among themselves and, if necessary, under the auspices of the
15 NANC. If any party objects to the NANC's proposed resolution, the
16 NANC shall issue a written report summarizing the positions of the parties
17 and the basis for the recommendation adopted by the NANC. The NANC
18 Chair shall submit its proposed resolution of the disputed issue to the
19 Chief of the Wireline Competition Bureau as a recommendation for
20 Commission review. The Chief of the Wireline Competition Bureau will
21 place the NANC's proposed resolution on public notice.
22 Recommendations adopted by the NANC and forwarded to the Bureau
23 may be implemented by the parties pending review of the
24 recommendation. Within 90 days of the conclusion of the comment cycle,
25 the Chief of the Wireline Competition Bureau may issue an order,
26 adopting, modifying, or rejecting the recommendation. If the Chief does
27 not act within 90 days of the conclusion of the comment cycle, the
28 recommendation will be deemed to have been adopted by the Bureau.”

29 **Q. Do you have any concerns about the composition of the LNPA-WG?**

30 A. I am somewhat concerned that ILEC representatives do not make up a larger
31 percentage of the participating body of the LNPA WG as this issue directly

1 impacts ILECs and some of the non-ILECs may have very different incentives
2 and objectives in regards to issues such as this. However, I am relieved that
3 certain ILECs began to understand some of the nuances of FX during the May
4 LNPA-WG meeting.

5 **MISSOURI INDUSTRY PRACTICE**
6

7 **Q. Can you address Bill Voight's statement that CenturyTel did not deny that
8 AT&T and others completed these types of ports (Voight page 18 & 19)?**

9 A. First, information regarding how AT&T and others handle ports is not public
10 knowledge and I am not sure how CenturyTel would know one way or another.
11 Second, I note that the Missouri Independent Telephone Group did not agree that
12 these types of ports are legitimate in their filing into this proceeding. Third,
13 during the May and June meetings of the LNPA WG, AT&T, Embarq, Qwest and
14 others expressed concerns with the legitimacy of the ports described in PIM 60.
15 In particular, in regards to the details of Socket's FX service, Embarq took this as
16 an Action Item to further explore after the June meeting.

17 **Q. Does it matter if CenturyTel has processed port requests like the two (2) at
18 issue?**

19 A. No. If this was done it was an inadvertent error. The parties' Interconnection
20 Agreements speak to this issue at Article III, Section 45 which states:

21 "NO WAIVER. The failure of either Party to insist upon the performance
22 of any provision of this Agreement or to exercise any right or privilege
23 granted to it under this Agreement shall not be construed as a waiver of
24 such provision or any provision of this Agreement, and shall continue in
25 full force and effect.

26 **Q. How would you address Staff's assertion that CenturyTel allowed ports
27 where customer's moved within the rate center?**

1 A. I previously addressed some concerns for ports that involve moving a customer's
2 location across rate center boundaries in my rebuttal testimony. I will not repeat
3 those here. As Dr. Furchtgott-Roth and Susan Smith testify, allowing a customer
4 to keep his number while moving within the rate center is consistent with the
5 FCC's First Order.

6 **HOW CAN THE INTERMODAL ORDER BE INSTRUCTIVE OR**
7 **SUPPORT SOCKET'S ARGUMENT THAT LEGAL OBLIGATIONS**
8 **HAVE EVOLVED?**

9 Q. What is your opinion about the Staff's finding in regard to the relevance of
10 the FCC's wireless porting decisions?

11 A. The FCC's Intermodal Order addressed wireline-to-wireless ports and is
12 distinguished from the wireline-to-wireline ports at issue. I question how the
13 Intermodal Order could support an argument that the legal obligations for wireline
14 ports have "evolved" particularly when the obligations of wireline-to-wireline
15 ports were expressly addressed in the FCC's First and Second Reports and Orders
16 on LNP. For this same reason, I agree with Staff's finding on page 26 of Mr.
17 Voight's Rebuttal Testimony that the FCC's conclusions in regard to wireless
18 ports are "*not on point*" for wireline ports. However, I stop at that point and
19 question how the Intermodal Order is even "instructive" on this point.

20 Q. Does this conclude your surrebuttal testimony?

21 A. Yes it does.