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STATE OF MISSOURI

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PUBLIC SERVICE COMMISSION

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TRANSCRIPT OF PROCEEDINGS

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Oral Argument

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June 7, 2006

Jefferson City, Missouri

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Volume 6

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Petition of Socket Telecom, LLC)

for Compulsory Arbitration of)

13

Interconnection Agreements with)

CenturyTel of Missouri, LLC and)

14

Spectra Communications, LLC)

Case No. TO-2006-0299

pursuant to Section 252(b)(1))

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of the Telecommunications Act)

of 1996)

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KENNARD JONES, Presiding,

REGULATORY LAW JUDGE

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STEVE GAW,

COMMISSIONER.

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REPORTED BY:

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00579

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1 Jones. Good morning, Commissioner Gaw.

2 COMMISSIONER GAW: Good morning.

3 MR. MAGNESS: I'm Bill Magness. I'm
4 here for Socket Telecom, and we agreed with the judge
5 we'd give you a fairly brief overview of the key
6 issues for both sides in this case.

7 A lot has been written already and I
8 think it's reflected in -- in the comments, but I
9 want to highlight some issues. And I'll just start
10 where I think what matters most, what's important to
11 Socket in this case, what's important and why did we
12 appeal.

13 The most important thing to Socket are
14 the provisions in an Interconnection Agreement that
15 facilitates Socket's ability to continue moving into
16 the market to serve voice and data customers,
17 particularly small business customers all over
18 Missouri. Socket is doing that currently, and Socket
19 intends to expand that service to small business
20 primarily in CenturyTel service territory.

21 And as the evidence showed, CenturyTel's
22 service territory is becoming an increasingly
23 attractive service territory generally in that there
24 are large growth areas like Branson, like St. Charles
25 County, where CLECs, including Socket, are wanting to

00582

1 move in and provide services.

2 So what -- the provisions that matter
3 most to Socket are those that have to do with our
4 ability to get in and serve that voice/data market
5 for small business. And that includes, number one,
6 reasonable rates for DS-1 loops, and that's the
7 recurring rates as well as the nonrecurring charges.

8 Second, it includes -- and I say that
9 noting that Socket is a facilities-based carrier,
10 it's got its own switch, uses a lot of its own
11 equipment, but it needs those loops as UNEs to be
12 able to get services out for the end users.

13 Second is the allocation of
14 interconnection costs between the companies that meet
15 with legal standards, that meet with standards that
16 have been established in the industry that we may
17 fight and scrap about, but there are legal precedents
18 that mandate what they are.

19 And third, a reasonably efficient
20 interface with CenturyTel as our wholesale provider
21 of services. I mentioned the DS-1 loops. In order
22 to serve small business customers with a voice and
23 broadband data package, Socket requires those loops.

24 The Telecom Act makes it very clear that
25 we are eligible to receive those DS-1 loops, the

00583

1 last-mile facility, and we need to get them from
2 CenturyTel, and our interface with CenturyTel needs
3 to be on a reasonably efficient basis. We need some
4 assurance that we can order and provision efficiently
5 and that services are gonna be delivered as required
6 under our agreement.

7 Now, all of these are very basic issues,
8 fundamental things that under the Telecom Act and
9 the FCC's regulations are kind of the basic building
10 blocks of getting into a competitive market.

11 And, in fact, a lot of these issues, the
12 issues around, for example, when I mentioned
13 allocation of interconnection costs, issues of points
14 of interconnection, whether we do intercarrier
15 compensation on a bill and keep basis, those sorts of
16 things, those may sound familiar because the
17 Commission has already decided them.

18 Just about a year ago, I believe the
19 last time I was here before the Commission, we were
20 here in the rather large and comprehensive M2A
21 arbitration where SBC, now AT&T's Interconnection
22 Agreements were rearbitrated, and a lot of the issues
23 that are in front of the Commission in this case were
24 fully litigated there.

25 For example, in the judge's report, the

1 arbitration report notes that the transit traffic
2 issue was addressed and should be -- that the
3 Commission should make the same decision it made a
4 year ago when the same issue was raised by SBC.

5 Similarly, on the definition of FX, or
6 foreign exchange traffic, also on indirect
7 interconnection, on maintaining bill and keep as the
8 predominant method of intercarrier compensation,
9 those are all issues where the arbitrator's report
10 refers to the M2A arbitration and says the Commission
11 already did this; the Commission already decided.

12 Socket, on the whole on most of these
13 type issues, proposed language right out -- contract
14 language right out of the M2A, language that had been
15 approved by this Commission. And CenturyTel opted,
16 as is its right, to rearbitrate these issues. And we
17 ask you to reconsider areas of the arbitrator's
18 report that appear to be inconsistent with or
19 contradict those Commission precedents.

20 The examples I'll give you are on points
21 of interconnection, an issue on Article 5, an issue
22 on IP-PSTN traffic, intercarrier compensation for
23 that traffic.

24 And then there are other issues where
25 the Commission's rule, the Enhanced Record Exchange

1 Rules, have been adopted in 2005 where it is Socket's
2 view that the report referenced to those rules as
3 taking care of a particular issue, and these are
4 primarily issues where Socket was proposing language
5 that appears in the M2A.

6 And the arbitrator's report said, well,
7 the Records Exchange Rule deals with that and we
8 don't need that in the Interconnection Agreement, and
9 we respectfully differ, and we detail it all in our
10 comments that there are certain areas that the
11 Records Exchange Rule just doesn't cover that we
12 believe it would be appropriate to have in
13 CenturyTel's Interconnection Agreement as in the SBC
14 or AT&T Interconnection Agreement.

15 Now, in this case, one of the primary
16 justifications CenturyTel presented for not going
17 with the decisions the Commission made a year ago was
18 that CenturyTel is a different company from SBC, or
19 AT&T now. I have a hard time calling SBC AT&T. But
20 the new AT&T.

21 And I think the arbitrator's report
22 correctly doesn't give credence to that in many of
23 the areas CenturyTel has asked the Commission to.
24 CenturyTel is, after all, the second largest
25 incumbent local exchange carrier in Missouri with

00586

1 over 400,000 customers here in the state. Larger
2 than Sprint in Missouri, just behind AT&T. It's a
3 company that is doing well financially, is on the S&P
4 500. It's announced a plan to give a billion dollars
5 back to its shareholders in stock buy-backs because
6 it's doing so financially well these days.

7 So this is a company that certainly is
8 substantial. Provides service in 21 states.
9 Missouri is its second biggest state as far as
10 customers.

11 And the distinctions that there are
12 between CenturyTel and a company like AT&T for the
13 most part don't make a difference to the legal
14 obligations CenturyTel has.

15 For example, on the issue of points of
16 interconnection which the Commission arbitrated in
17 full last year, there's nothing in the Act that
18 excuses one company or another from the obligations
19 of the FCC rules.

20 The Telecom Act has special provisions
21 for rural companies, but those provisions don't apply
22 here, and CenturyTel hasn't invoked them, to their
23 credit. But I think the arbitrator correctly
24 recognized that those distinctions are not
25 distinctions that really make a difference here.

1 So on the specific issues where we --
2 where we do take issue with the report -- and I'll
3 say we challenged, I think, a total of 13 issues.
4 There were over, I think, 36, 37 issues decided.
5 Several of the ones that were not favorable to us we
6 haven't challenged, but have challenged the ones that
7 were our key priorities. Let me just identify a
8 couple.

9 First, on the points of interconnection
10 issue, the issue here has to do with allocation of
11 costs between carriers when they are delivering one
12 another's traffic. When one carrier originates a
13 call and the other one has to deliver it because that
14 terminating customer belongs to the other company,
15 how do you allocate those costs?

16 The FCC has said since 1996 that a
17 competitive local exchange carrier can have one point
18 of interconnection; that is, the place where it
19 interconnects with the incumbent in each LATA.

20 The FCC reemphasized that point in its
21 Virginia arbitration in 2002. The issues that are
22 raised by CenturyTel here were raised by SBC a year
23 ago, and the Commission found that consistent with
24 the FCC rules, a competitive local exchange carrier
25 is entitled to have one POI per LATA unless the

00588

1 incumbent can show that that arrangement is
2 technically infeasible.

3 Now, what CenturyTel has proposed is
4 that Socket needs to incur the expense, make the
5 investments to buy new equipment and set up an
6 additional point of interconnection whenever traffic
7 in and out of an exchange reaches a DS-1 level, that
8 is, the equivalent of 24 phone lines.

9 The arbitrator we believe correctly
10 found that was unreasonably low. If Socket gets one
11 business customer that buys a T-1 service, that might
12 get him to 24 business -- you know, 24 lines and
13 invoke this requirement that they build this new
14 point of interconnection.

15 The FCC rules have never said anything
16 like that. And, in fact, if Socket fills up those 24
17 lines and then loses the customer to CenturyTel,
18 Socket has now made the investment and is stranded
19 without even a customer to support that investment.
20 So there are very good practical reasons why that low
21 a level has never been what the law has required.

22 Socket proposed that if CenturyTel
23 wanted a threshold when it knew that Socket would
24 have to build one of these new points of
25 interconnection, that we would agree to a threshold

1 of an OC-3 level of traffic. That is a much higher
2 level than a DS-1, but it's also a much lower level
3 than the OC-12 level of traffic that the Commission
4 approved in the M2A arbitration in a disputed issue
5 between SBC and Charter.

6 Socket, in its comments, has offered a
7 lower threshold, to try to resolve the issue, of a
8 DS-3 which is higher than a DS-1 but a whole lot
9 lower than an OC-3 or an OC-12 level. We made that
10 offer and that offer has been rejected.

11 The arbitrator's report makes what, you
12 know, as we said in our comments, that we were very
13 sympathetic to the desire to try to come up with a
14 middle ground but are very concerned about the way
15 it's executed in the report.

16 There is a threshold of a 10 percent
17 increase in traffic as being the threshold for when
18 Socket would have to build a new POI. Our concern
19 here is that in a lot of exchanges, that may end up
20 being a DS-1 level or less.

21 We outlined in the brief, and I won't go
22 through the half dozen of them here, but we outlined
23 a number of technical problems with trying to
24 implement the report's recommendation.

25 But I guess the primary one is Socket

00590

1 has no way to know whether 10 percent -- the 10
2 percent level is reasonable because CenturyTel has
3 all the information. Socket has no way to verify the
4 information and to know exactly what minutes
5 CenturyTel is counting.

6 So we are extremely concerned that that
7 level is going to, number one, be administratively
8 very difficult; number two, not provide Socket and
9 the Commission the visibility it needs to validate
10 the numbers that CenturyTel produces; and third, end
11 up with a level that is so low that it's going to end
12 up being the equivalent of the DS-1 level in a number
13 of places, a DS-1 level that I think the evidence
14 showed wasn't reasonable.

15 So we are willing to live with a DS-3
16 threshold, and obviously we're willing to live with
17 what the Commission did in the M2A one year ago on
18 the same issue, the same contract language.

19 But that's an issue that is about real
20 money. CenturyTel's worried about it because it
21 costs them money, we're worried about it because it
22 costs us money. There's nothing sacred about the
23 issue. It's an issue of allocation of costs, but
24 it's one the FCC decided ten years ago and you
25 decided one year ago, and we'd just ask you to go the

00591

1 same direction.

2 Now, one other major issue of concern
3 has to do with operational support systems, or OSS.
4 Socket has requested that CenturyTel be required to
5 implement an operational support system or OSS system
6 that is more like what most carriers have today, more
7 mechanized, more automated, more efficient.

8 The arbitrator's -- arbitrator's report
9 doesn't grant that request but recognizes some of the
10 inefficiencies and requires some changes. We have
11 two concerns with the way the report's written.

12 Number one, it is not specific as to
13 what exactly it is that the parties are supposed to
14 do or what they're supposed to come up with. We are
15 very concerned that given the contentiousness of this
16 issue all the way up to today, that an order that
17 says nothing much more than we are ordered to
18 cooperate with one another in coming up with a
19 solution is gonna get us anywhere. And it's Socket
20 that needs the increased capabilities. And so it's
21 gonna leave us nowhere.

22 But second -- we've outlined this in our
23 comments in detail. We've requested the Commission
24 reconsider. And while we're not asking that the full
25 functionality that we asked for be put in place, one

00592

1 issue that's of critical importance is being able to
2 access customer service records, called CSRs, on a
3 more automated basis.

4 The customer service record is that
5 record that CenturyTel has on its customer that says,
6 okay, X business has this many lines. Here's the
7 phone numbers, here's the services they have. It
8 gives a full profile of that customer.

9 And we -- when we win a customer, we
10 can't even order the services we need to order for
11 them unless we fill in all the ordering information
12 accurately and unless we know exactly what services
13 they're getting and exactly what their phone numbers
14 are, for example.

15 And oftentimes, that's more of a problem
16 than you might think. When a business ordered a fax
17 line six years ago and you asked them how many lines
18 they have and they said, oh, I've got five, but they
19 don't think about the fax line because it's not a
20 number that they use and that sort of thing. It's an
21 important thing to be able to see.

22 The access to those customer service
23 records is very important in that we are often at
24 Socket in a position of competing, putting in, you
25 know, a bid against CenturyTel for who's gonna win

1 the customer's business. And we need to get access
2 to those quickly for that purpose. When it comes
3 time to order service, we need to have access to them
4 quickly so we're not waiting days and days to get
5 services ordered and in place.

6 The best we can do under the current
7 system is if we ask for a CSR, we can get it in six
8 hours, which is essentially a business day. The
9 problem is -- and this is all described in the
10 testimony -- is that as a practical problem, there
11 are often errors in what we receive from CenturyTel.

12 For example, all of the locations a
13 business has might not be included. There's nothing
14 malicious about these errors, it's just it may not
15 be -- it may be incomplete. It may not have
16 everything. You go back and check with the customer,
17 there may be something wrong.

18 If we want a correction, we have to wait
19 another six hours, which means essentially another
20 business day, and another business day if there's
21 another error, another need for correction.

22 With most other phone companies -- and
23 the testimony all outlined this -- Socket has the
24 ability and CLECs have the ability to get electronic
25 access to those in a -- in a read-only basis, not so

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1 they can change them or mess with them. They're on a
2 read-only basis so that you can see that in front of
3 you and you've got the same information that
4 CenturyTel salespeople have, or CenturyTel's ordering
5 people. That's parity: We have the access, we're
6 looking at the same things.

7 That particular part of OSS is critical
8 for Socket to be able to win and then service
9 customers on a timely basis. And so even if the
10 other aspects of OSS are subject to continued
11 negotiation or continued development, that is one
12 that we feel very strongly about.

13 I must note, in CenturyTel's comments on
14 this, CenturyTel suggested that there's a capability
15 out there that Socket can use that will serve that
16 purpose, and that is CenturyTel's electronic system
17 has something called My Accounts. If you've got an
18 account with CenturyTel, you can sign up for
19 electronic access and see your bill basically. And
20 CenturyTel suggested that, you know, maybe that's
21 good enough.

22 And we have to tell you, it is not for
23 the following reasons: First, what shows up in My
24 Accounts is a bill. The bill in many instances isn't
25 going to reveal all the services. If you have, for

00595

1 example, a DID block, that is a block of direct
2 inward dial numbers in an office, it's not gonna show
3 you all the numbers. Therefore, it's not gonna show
4 you all the services that are being used for that DID
5 block. So there is information that simply isn't
6 there using that -- that form.

7 I think more fundamentally is a
8 practical problem. If you're trying to win a
9 customer and you tell the customer first thing out of
10 the box, "You know, I need you to give me your
11 password-protected access to your phone records,"
12 that's probably not gonna go over real well.

13 When you see a CSR, you see the services
14 the customer has. When you see their bill, you see
15 are there billing -- do they have billing problems,
16 are they behind on their bill, how much is their
17 bill. When you're in a competitive bid situation,
18 the customer may not want you to know that. It is
19 highly likely we will never get access to a
20 customer's My Accounts system. So it simply doesn't
21 serve as a replacement for being able to see these
22 CSRs in the same way that CenturyTel's folks get to
23 see them.

24 So that's where we are on the
25 operational support systems, and we request the

1 Commission reconsider that issue, and if nothing
2 else, include some language that's more specific
3 about ordering the parties to work together in future
4 proceedings.

5 Now, the last issue I want to address in
6 some detail here is the rates issue. Where we are
7 with rates is that the arbitrator's report does not
8 address the issue of nonrecurring rates or
9 nonrecurring charges, NRCs.

10 CenturyTel and Socket both put in a lot
11 of evidence about nonrecurring charges and asked for
12 decisions. And it may have just been inadvertently
13 omitted, but there isn't a decision that we're
14 appealing because there's no decision.

15 On nonrecurring charges, I need to just
16 step back and kind of give you a brief summary of
17 where the current rates are. CenturyTel adopted the
18 old GTE Interconnection Agreements when they bought
19 those properties. GTE and AT&T arbitrated rates back
20 in 1997, and they came up with a set of recurring
21 rates.

22 GTE proposed nonrecurring rates as well,
23 and the Commission ultimately, in its TELRIC
24 proceeding on the rates, rejected them. So that GTE
25 agreement that CenturyTel's been operating under and

00597

1 that Socket's been operating under with CenturyTel
2 had no nonrecurring charges. All of the charges, for
3 example, a DS-1 loop, were recurring charges. There
4 wasn't any one-time fixed charge.

5 And while, you know, Socket would prefer
6 no nonrecurring charges in the future, we put in
7 evidence about what the nonrecurring charges ought to
8 be going forward because it makes sense.

9 CenturyTel has proposed nonrecurring
10 charges that are included in some of its
11 Interconnection Agreements, but they have never been
12 arbitrated. They're essentially based on the old
13 nonrecurring charges that this Commission rejected
14 back in 1997 with GTE.

15 While some companies may have agreed to
16 pay those or agreed to have them in their agreements,
17 the Commission has never arbitrated them, never found
18 them TELRIC-compliant, and as you might expect,
19 they're very, very high.

20 What we have proposed to do on
21 nonrecurring charges -- we put in a lot of testimony
22 concerning the justifications for this -- is to use
23 the nonrecurring charges that the Commission approved
24 for the same tasks in the SBC arbitration.

25 And as our witness Mr. Turner detailed,

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1 when you look at nonrecurring charges, you're talking
2 about, you know, how long does it take a technician
3 to do a certain task. And if the CenturyTel
4 technician and the SBC technician are both operating
5 under CWA contracts, the labor rates are gonna be
6 fairly similar, the number of times the task may need
7 to be repeated, that there's just no reason to
8 believe that there is a tremendous difference between
9 the nonrecurring charge that was justified in the SBC
10 case from what CenturyTel would experience.

11 There may be big differences on
12 recurring charges. Maybe so. But on nonrecurring
13 charges, I think the evidence showed they're
14 relatively similar tasks, and the cost justification
15 is about the same for them. So that is what we are
16 proposing on the nonrecurring charge.

17 On the recurring charges, for the most
18 part, the parties agree to continue using the rates
19 that are in the current GTE agreement that the
20 Commission -- the TELRIC-compliant rates the
21 Commission arbitrated quite some time ago.

22 Included in the rates that the parties
23 agreed to continue using based on that agreement are
24 two-wire and four-wire loop rates. That is the, you
25 know, the smaller pipe loops like DS-0 loops.

1 The big controversy is about the higher
2 capacity loops, DS-1, DS-3. As you recall when I
3 first stood up, the most important thing to Socket
4 was DS-1 loops at an affordable price so we can do
5 UNE combinations so we can serve business customers.

6 And CenturyTel submitted cost studies
7 and fairly late in the game, but they got it in the
8 record, and our witness filed a tremendous amount of
9 testimony and it's all detailed in Mr. Turner's
10 testimony in our briefs, that these studies are
11 deeply flawed, that they do not constitute
12 TELRIC-compliant studies, and they are -- it is even
13 difficult to review some of the data that's in them
14 because they can't be taken apart in a way like a
15 normal cost study could be.

16 And the arbitrator recognized that there
17 was a problem with the DS-1 and DS-3 cost studies and
18 the rates they produced, and ordered that CenturyTel
19 rerun those cost studies and provide that information
20 to the Commission.

21 So on the -- on the recurring rate, kind
22 of like a nonrecurring rate, we are appealing to some
23 extent, but there's also something of an open issue
24 concerning exactly what the DS-1 and the DS-3 loop
25 rate are that we're talking about here.

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1 We have proposed rates. Certainly
2 CenturyTel has proposed rates. When CenturyTel
3 submitted its rerun cost studies, we had our cost
4 expert do the same work. We have the cost study
5 files, and we had Mr. Turner run the studies as if he
6 had been ordered to do what the arbitrator ordered be
7 done, and CenturyTel did theirs.

8 We believe that what Mr. Turner
9 submitted and what's detailed in our comments
10 accurately reflects what the arbitrator told
11 CenturyTel to do, which is essentially rerun your
12 DS-1 and your DS-3 cost studies, but for the loop
13 part, for the part that's two-wire/four-wire analog
14 loop, use that rate that was found TELRIC-compliant
15 back in the GTE case and that you've agreed to use
16 for those loops. Put that in as a factor instead of
17 the factor you used.

18 That's how we reran the cost studies,
19 and what we submitted with our comments is the result
20 of that.

21 There are details about the errors we
22 believe CenturyTel made in their rerun of the cost
23 studies that are outlined in the comment -- not
24 outlined, detailed in some -- using a lot of words --
25 some detail in the comments, and I don't want to go

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1 over them here, but if you have questions about them,
2 certainly we can answer them. Mr. Turner, our cost
3 expert, is here and can answer any detailed questions
4 about the cost models that you have.

5 But suffice it to say, we have a very
6 strong disagreement about how those rates come out.
7 We are satisfied with how the arbitrator tried to cut
8 the issue, use the CenturyTel cost models, which as I
9 said, we think there is overwhelming evidence that
10 those cost models are deeply flawed and wouldn't
11 survive a real thorough going TELRIC review, but use
12 those models that incorporate this agreed rate that
13 the Commission had found TELRIC-compliant back in the
14 GTE case.

15 And I want to provide something just to
16 give you a sense of this that's in -- this is in our
17 comments, but we've just reproduced it here just to
18 give you a sense of what's at stake here. These are
19 two pages. One is entitled -- or rather, it's
20 "Comparison of CenturyTel and Socket Proposed DS-1
21 Loop Rates." And the second page is "Comparison of
22 CenturyTel and Socket Proposed DS-3 Loop Rates."

23 And Commissioners, this is not a
24 situation where we're standing here wasting your time
25 over a ten-cent difference in a loop rate. If you

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1 look at the DS-1 rates, the CenturyTel -- when we
2 call them compliance rates, what we mean is if you
3 did what the arbitrator said to do in revising those
4 DS-1 loop studies, here's what CenturyTel came up
5 with as its compliance rate and here's what Socket
6 came up with as its compliance rate over on the far
7 right column.

8 And we've included, for your reference
9 and for some comparison, the rates that the
10 Commission has approved for SBC and for Sprint for a
11 DS-1 loop. And as you can see, the differences are
12 astronomical.

13 In the most urban area, the zone 4, AT&T
14 has a \$91 DS-1 loop rate. CenturyTel wants \$418 for
15 the same loop. Monthly recurring charge for a loop.
16 It's gonna be awfully hard to create a service that a
17 customer will buy and make any money off of if you're
18 paying \$418 for the loop.

19 Similarly on the next page on the DS-3
20 loops, the differences are enormous. And the
21 differences between what the Commission has approved
22 for AT&T and CenturyTel are similarly enormous.

23 The Commission -- our view is that
24 comparisons like this, while they do not end --
25 certainly don't end the discussion, provides you a

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1 pretty good sense that what Socket is saying about
2 the problems with these cost studies and the inflated
3 nature of things like the fiber cost, the mistakes
4 with fill factors and mistakes with many of the
5 elements with the cost studies are real. The
6 evidence supports them, and we think when you look at
7 how the Socket rates are much more in line with what
8 you've approved for the other ILECs in Missouri than
9 the CenturyTel rates are, you get a pretty good sense
10 of that.

11 And, you know, recall too that the
12 network whose costs are being recovered in a TELRIC
13 study, the network that CenturyTel has is the old GTE
14 network. They bought it. It's not like they've gone
15 out and built a new network. This is the GTE network
16 that you approved TELRIC rates for. And most of
17 those TELRIC rates that were approved back in '97,
18 '98, CenturyTel is willing to continue to live with.

19 But when it comes down to the DS-1 rate
20 and the DS-3 rate, the rates that Socket needs to
21 have in order to provide a combined voice and data
22 service to customers that it's targeting all over the
23 state, that's the rate that cranks up to, you know,
24 several times higher than what anybody is charging
25 anywhere in the state.

1 So there is something wrong with those
2 cost studies. We believe that what Mr. Turner has
3 submitted on Socket's behalf complies with what the
4 arbitrator ordered the parties to do and produces
5 results that are in the ball park. Some of them are
6 higher, some of them are lower than what you've
7 approved for other companies, but they certainly give
8 us a pretty good sense of a reasonable rate that we
9 can -- that we can operate under going forward.

10 Now, as I mentioned on the rates,
11 because there -- there have been these recent filings
12 and there are some open issues, if you have more
13 detailed questions or any concerns, I'm happy to
14 answer any later in the proceeding, or our witness
15 who actually knows how to run the models could answer
16 those questions as well. Thank you.

17 JUDGE JONES: Thank you. How about
18 opening statements from CenturyTel.

19 MR. BROWN: Good morning.

20 JUDGE JONES: Good morning.

21 MR. BROWN: My name is David Brown. I'm
22 with Hughes & Luce. I represent Spectra
23 Communications and CenturyTel of Missouri.

24 I think that when we'd originally
25 probably considered doing this, we had thought about

1 doing a comprehensive argument. But what I'm gonna
2 do instead today to help with the time and
3 compactness is to truncate it into just the most
4 significant issues again, just as Mr. Magness did,
5 and to focus, or refocus the attention on the things
6 that we think are significant.

7 So first of all, just jumping right in,
8 we'd like to say that this is a large case with a lot
9 of work in it. Judge Jones and the staff did an
10 excellent job of working through an extensive record
11 and then coming up with what we think are, for the
12 most part, fair results. We do have a few concerns,
13 and I'll quickly get to those now.

14 First of all, I think it is significant,
15 although Mr. Magness suggests that it is not, that
16 this case is not about AT&T. This case is about
17 CenturyTel, both the Spectra and Socket -- and --
18 Spectra companies, and it is significant because much
19 of what this case is about, whether it's about single
20 POI or whether it's about the cost of loops, is about
21 costs and who will bear them in the future.

22 There is testimony, a great deal of it,
23 comparing Socket to -- or CenturyTel to AT&T, shows
24 that CenturyTel is a far smaller company covering
25 more states than AT&T before merger with the long

00606

1 distance company, has fewer lines, longer loops, far
2 lower customer densities and far higher costs per
3 customer than are recognized by a much more urban
4 AT&T.

5 CenturyTel has -- this is not the same
6 network in a lot of respects that was built by GTE
7 long ago. As the Commission knows, CenturyTel has
8 invested large sums in the state of Missouri in
9 deploying new network, more capabilities and advanced
10 services to rural customers in Missouri. CenturyTel
11 has no part of its network located in a city that's
12 comparable to what AT&T has -- is covering.

13 Now, Socket suggests that because
14 CenturyTel has two or three suburban or growing areas
15 that it wants to get into, that you should disregard
16 those changes or those differences. We would suggest
17 that economics are what they are and that the
18 economics affecting this case are different than the
19 economics that affected the AT&T case.

20 What that means is that the use of AT&T
21 outcomes, whether they be rates, whether they be
22 decisions on policy, simply because they were AT&T
23 decisions before, is a mistake. And what we'd ask
24 you to do is to look at these principles in deciding
25 this case.

1 It can't be reasonably disputed that
2 these companies are similar even though they both may
3 be publicly traded and so on. The territories are
4 vastly different, the loops are vastly different, the
5 overall costs and the customers are vastly different.
6 AT&T is employing an IPTV solution that is not
7 practical in rural areas, in their urban areas. So
8 they have economies of scope that CenturyTel does not
9 recognize. So the facts are different indisputably.

10 We'd agree with Socket that the law
11 that's applicable to the case is the same; that is,
12 the law that governed your decisions in the SBC/AT&T
13 case a year ago is essentially the same law that
14 governs your decisions here. But just like any case,
15 whether it's in front of you or in front of a court
16 or -- and a jury, the same law applied to different
17 facts can give different outcomes, and that's what
18 we'd like you to focus on.

19 Socket would often in its proposals have
20 you just simply adopt things that you did a year ago
21 whole-cloth, whether they be language or rates or
22 whatever it might be, or even using those rates as a
23 comparison just because you decided those cases -- or
24 that case a year ago and the way you decided it, as
25 if precedent somehow transformed the facts. But of

1 course, it doesn't.

2 We're gonna ask you here to apply the
3 law to the CenturyTel facts and provide decisions
4 that are tailored to this case. We don't ask that
5 you contradict what you did before. We don't ask
6 that you contradict what the FCC reports have done.
7 We do ask that you discern it and that you not simply
8 throw the record out because you may have made a
9 decision on a different set of facts in the AT&T
10 case.

11 Now, let me jump into the OSS. And I'm
12 gonna cover many of the same issues that Mr. Magness
13 did. I'll ask you to bear with me because we're --
14 I'm trying to make this compact, and I'd invite you
15 that if you have questions, please ask as we go along
16 and I'm happy to try and help with that.

17 The report recognizes that the
18 characteristics of CenturyTel, Socket and the
19 competitive market in Missouri in rural territories
20 doesn't justify the imposition of tens of millions of
21 dollars in costs in access to OSS upgrades upon
22 CenturyTel and upon the CLEC market that will have to
23 bear those costs as a matter of law.

24 The report, therefore provides -- at
25 least this is the way we read it, and I'm glad Judge

1 Jones is available to help us work through this
2 issue -- but it -- there are many provisions relating
3 to OSS that were agreed in other articles other than
4 this Article 13 which deals strictly with OSS and
5 access to OSS. Judge Jones has ordered in the report
6 that we import those provisions into the OSS section.
7 That's certainly clear and we're ready to do that.

8 Judge Jones also placed in his report a
9 requirement that the parties develop language and a
10 process that allows for electronic information to be
11 incorporated into the ordering systems, CenturyTel's
12 ordering systems, without manual intervention.

13 Judge Jones clarified that provision and
14 the other provisions with this not requiring a
15 real-time interface and that it should not be an
16 extensive system overhaul that's required. And then
17 ultimately what -- the way we think that works out is
18 that we're here to work with Socket to -- in the
19 implementation of the Interconnection Agreement that
20 will arise out of this -- out of this proceeding to
21 identify any new or existing systems that may be out
22 there that could be used to help automate the order
23 input process. But they're supposed to be low cost,
24 and that's the goal and that's the process.

25 I will say that as we testified in the

00610

1 main proceeding, we're not aware of a simple fix for
2 the kinds of things that Socket wants. But if Socket
3 has ideas -- and, of course, we're working on this
4 back home now as it is as well -- we're happy to try
5 and come up with an outcome.

6 The thing I would say is that the kinds
7 of functions that Socket wants, CSR access, ordering
8 input, those kinds of things are the things that we
9 demonstrated in our evidence in our testimony are the
10 kinds of things that drive the major portion of the
11 cost that we demonstrated.

12 Socket did not in any substantial way
13 contest the costs. And the costs that we
14 demonstrated in our case are not unreasonable in
15 light of what has happened in other states.

16 For instance, in the Virginia cost
17 arbitration, Verizon Virginia was entitled, or was
18 given authority to recover its costs of developing
19 OSS access through charges to its CLEC customers.
20 OSS is, after all, an unbundled network element.
21 Access to it is what's required under Section 251.
22 But corresponding to that is the obligation that
23 whoever provides the UNE gets paid for it on a cost
24 plus reasonable profit basis, just like any other
25 unbundled network element.

1 But the difference here is that with
2 OSS, unbundling the first unit imposes all the cost
3 of -- or much of the cost of every unit that follows.
4 There's annual costs, of course, and running the
5 system continues. But you can't provision the first
6 one using electronic access. You can't provision
7 anything through the OSS without first building the
8 access to OSS.

9 And so we think that Judge Jones's -- if
10 we interpret it right, Judge Jones's solution works.
11 And so we would ask that it be clarified, perhaps,
12 but that -- that it not be modified.

13 Single POI. We would ask -- just put
14 this up for you. We would ask that you clarify the
15 decision on POI in one of the following ways: Either
16 adopt the changes that are suggested in our comments
17 to implement the arbitrator's decision, and we have
18 actually provided language which we think answers
19 most of Socket's concerns about how would this work,
20 how would the increases work?

21 We think that measuring traffic without
22 Socket at the inception of the POI and then measuring
23 the traffic contributed by Socket at relevant times
24 and comparing those to -- and when they hit the
25 thresholds that Judge Jones has devised, that's when

00612

1 a second POI is required. We think that is workable,
2 and we're ready to try to implement the language that
3 we've proposed. The other possibility would be to go
4 back and decide to implement -- to require the
5 implementation of setting POI when the DS-1 level is
6 reached.

7 Now, Mr. Magness has suggested that
8 that's not a reasonable number, and Socket has
9 proposed a DS-3. The problem with a DS-3 level is
10 that while OC-12 may have been appropriate in an SBC
11 state or an SBC territory, it doesn't work here.

12 There are few, if any, exchanges in
13 CenturyTel's territory that trade a DS-3's worth of
14 traffic today in total. That's not just one
15 provider, that's in total. So what, in effect,
16 Socket is offering is really no solution at all. It
17 is -- it is a single POI in perpetuity unless they
18 know something about these very rural markets that no
19 one else has discovered.

20 Significantly, the proposals that we
21 have laid out in our case and which Judge Jones has
22 suggested now, which is essentially to establish
23 thresholds for single POI going to multiple POI, are
24 lawful. While Socket has testified that it can have
25 a single POI forever just under the FCC's rules,

00613

1 that's not the way it's been implemented here or much
2 of anywhere.

3 Keep in mind that even in the AT&T
4 case a year ago, you didn't say that every provider
5 could have a single POI forever regardless of what
6 traffic they put over the facilities. You said that
7 when it reaches a certain threshold, then the second
8 POI should be put into place.

9 We're asking you to be consistent with
10 that legal decision which is consistent with a number
11 of states and -- but apply that law to the different
12 facts that we have here. Here, as you know, we have
13 the rural market and lower traffic thresholds -- or
14 lower traffic between exchanges and much longer
15 transportation -- transformer outs that need to be
16 accommodated through the -- through the requirement
17 to go from a single POI to multiple POIs.

18 The idea behind the multiple POI is to,
19 as a policy matter, is to ensure that costs are
20 properly allocated and that the FTA's policies of
21 facilities-based competition is promoted. An outcome
22 that does not promote those policies that, in effect,
23 gives Socket the ability to keep a single POI at a
24 LATA in perpetuity doesn't promote that policy.

25 Let me jump now to VNXX. There are --

00614

1 well, just to discuss real quickly, our proposal was
2 that if multiple POIs at a DS-1 level were granted,
3 then bill and keep would be appropriate for VNXX
4 traffic. That's a compromised position, a final-offer
5 position.

6 The alternative to that, which is if
7 there's a decision not to go with the thresholds that
8 we've suggested on the POI issue, is that you should
9 just follow the recent First Circuit decision and
10 apply the access regime whether or not the traffic is
11 ISP-bound.

12 It's important to recognize that the
13 VNXX issue involves two functionally equivalent
14 services. And we have put these drawings in the
15 comments, and I can -- I've brought them today and
16 I'm happy to work through them.

17 The technologies, I think, are very
18 clear, very different. They provide for similar
19 functionalities; that is, that in an FX situation and
20 a VNXX situation, someone in one local calling area
21 can call a number that looks local and reach someone
22 in a distant area. But, in fact, the technologies
23 are very different, the costs of the customer are
24 very different and the costs to the providers are
25 very different.

00615

1 In the FX situation, the customer is
2 responsible not only for its local service, but also
3 for the interexchange line that reaches the distant
4 destination. In a VNX situation, it's simply a
5 matter of switching and the burden is placed upon the
6 providers of the transport. That's why we think that
7 VNXX should be subject to access charges. It is
8 anything but a local call when it's trained -- when it
9 changes local calling areas.

10 And again, on this VNXX issue, we're
11 not asking that you reverse the M2A successor
12 arbitration decision. While it's been suggested that
13 what's being proposed here is different, in fact, in
14 that case, the VNXX traffic was agreed bill and keep.
15 Here it's agreed bill and keep if the cost issue is
16 dealt with in the POI question.

17 One thing we'd like to shift to is the
18 performance measures as well. Mr. Magness didn't
19 discuss them, but we're concerned that, in essence,
20 what happened in this case is that Socket presented
21 little evidence in support of its proposed slate of
22 performance measures. They put on evidence even in
23 rebuttal about a question that's really not in
24 dispute anymore, which is, can there be PMs in this
25 ICA, and if there are performance measures, can there

00616

1 be penalties or remedies.

2 CenturyTel filed extensive testimony
3 dealing with Socket's PMs. We didn't just say,
4 though, that it was a bad idea to have those
5 performance measures. We, in fact, took the kinds of
6 performance measures that Socket was seeking and we
7 answered our own criticisms of their graph with our
8 graph which we think solved most of those problems.
9 We put on evidence as to why theirs wouldn't work.
10 We put on evidence as to why ours would work.

11 In rebuttal the only thing that Socket
12 really said in response was that many of our concerns
13 had merit and that the proceeding should be put off
14 to a collaborative later. They did not put on
15 evidence that rebutted our better set of performance
16 measures and remedies.

17 So the bottom line here is that under
18 the standards that you're here to address the case
19 with, that is, on the best evidence available, the
20 evidence that you have that's available to support
21 the set of performance measures and remedies is the
22 evidence that we presented. There is little or no
23 evidence to the contrary.

24 One side issue, or small issue at least
25 in terms of numbers related to the performance

00617

1 measures in volume, is the question of whether or not
2 performance measures may apply to Socket's
3 performance under the ICA. Ultimately, the -- Judge
4 Jones decided that they should not. We think there
5 are good reasons why they should. We only ask for
6 two, and I'll explain now why they were important.

7 We ask that their -- that Socket's
8 orders be accurate and that that be subjected to a
9 measurement. We'd ask that their forecasts of
10 service requirements be accurate and timely. One
11 thing that's important to know is Socket agreed in
12 other parts of the contract to forecasts. They've
13 agreed to provide certain kinds of forecasts
14 including the kind -- every kind that's covered in
15 that performance measure is covered somewhere in the
16 ICA under an agreed provision.

17 So that one, the accurate forecast, it
18 seems implicit that they would be warranting their
19 forecast and that there ought to be a consequence if
20 their forecasts are inaccurate. That's what that
21 performance measure and remedy is about.

22 The other one is about order
23 submissions, and that's because Century -- or
24 Socket's order submissions need to be accurate, and
25 the reason for that is pretty obvious. If the orders

00618

1 are not accurate, then CenturyTel has to deal with
2 them. It's the same sort of complaint about, it's
3 not malicious, we're not suggesting, as Socket may
4 have inferred here or there, that they're gonna
5 submit orders inaccurately intentionally. But if
6 they're -- if they're -- if they do submit a
7 significant number of inaccurate orders, then we need
8 to be able to have some relief from that. And so
9 we've provided options on that.

10 Nonrecurring charges. One thing that's
11 very important there is that while we put on
12 testimony, there's very little evidence in the record
13 on the other side to suggest that contrary to their
14 rhetoric, that the studies are inappropriate or
15 inaccurate. Ultimately, what we have suggested or we
16 have requested on NRCs is that you accept the
17 GTE/AT&T interconnection-agreement-based nonrecurring
18 charges, and our testimony supports those.

19 The only place wherein the sort of
20 extreme numbers that you see in comments and
21 elsewhere in the record from Socket where they
22 protest the numbers on nonrecurring charges are
23 nonrecurring charges that result from the combination
24 of base nonrecurring charge plus an additive that's
25 attributable to the recovery of the OSS costs that

00619

1 we've talked about. And if you have any questions
2 about the OSS costs, I've got charts and graphs and I
3 can help you work through the details of why it is it
4 costs so much.

5 But the -- the main problem is that --
6 on the OSS additive, is that there are just so few
7 orders and other transactions that either Socket or
8 other CLECs bring into the system. They've demanded
9 the -- the very expensive system, but even Socket
10 admits that no one in the term of this contract is
11 likely to submit more than 150 orders in a month.

12 Right now Socket's order volume is a
13 very small fraction of that number, and few, if any,
14 providers have more or -- so what you see is a large
15 cost which is spread out over very few units, unlike
16 a situation in Verizon or AT&T or elsewhere where the
17 cost was very large but it was spread out over
18 millions and millions and millions of units. We
19 don't have that opportunity here. And yet the law
20 requires that CLECs pay for the access to OSS.

21 DS-1 and DS-3 rates. We presented a
22 case where we had three witnesses basically who put
23 on the evidence of what should be an appropriate rate
24 for a DS-1 or a DS-3. Mr. Bucken (phonetic spelling)
25 did TELRIC analysis. Dr. Abra (phonetic spelling)

00620

1 did TELRIC analysis, cost capital and the like, the
2 economics applicable to the CenturyTel network and so
3 on. And then Mr. Davis did fills and network design
4 issues.

5 Socket did none of this. They took
6 potshots at the study and at the -- at the
7 spreadsheet. They called it a black box. They
8 called it -- they said it wasn't transparent. They
9 said that they couldn't figure it out and couldn't
10 use it, which is a little ironic, because now in
11 their comments they've managed to make that same
12 machine they couldn't see before operate to come up
13 with rates that we can't cross-examine.

14 It's very interesting that the numbers
15 they came out with are so remarkably different when
16 it should just be math ultimately that comes up with
17 the outputs of the cost model.

18 Now, we would -- we certainly agree that
19 there are some problems with the procedures that were
20 outlined for us to do. For instance, using an agreed
21 rate, which we agreed with Socket on for purposes of
22 the two-wire and four-wire loops as an input to
23 the -- to the model does not mean that that rate was
24 or is TELRIC-compliant or that it should form the
25 basis of a DS-1, a copper facility loop.

1 We do appreciate that Judge Jones
2 permitted the fill factor to be corrected, and we
3 think that our runs of the cost models do that.

4 Finally, on the DS-3 rates, the only
5 change on the DS-3 was the use of a different fiber
6 number. Socket contends in its comments that it had
7 never seen that number before. But, in fact, that
8 number was part of the Missouri profile that was
9 provided months ago.

10 And the only reason it didn't get put
11 into the DS-3 rates in the end was that it didn't get
12 flowed through the TELRIC models. It was always
13 there, it was always there to be reviewed and it was
14 not part of any black box that was in operation.

15 The bottom line on the DS-1 and DS-3 is
16 that Socket put on no evidence, just argument. And
17 they didn't put on direct or rebuttal that addressed
18 a cost model of their own. They were left to
19 attacking the only cost model in evidence, and of
20 course their comments are not evidence themselves.

21 And we'd ask you to consider that while
22 these comments, which put numbers in that have never
23 been a part of this case before, that make arguments
24 or assert facts that have never been a part of this
25 case before, are improper.

1 Avoiding cost discount. Judge Jones
2 selected one which was Socket's proposal. The only
3 evidence in the record other than just a number that
4 was picked from another case is that which we put on,
5 and we'd ask that you provide a CenturyTel of
6 Missouri rate for what it costs, a discount of 14.2
7 percent and for Spectra, 17.5. Those are reflective
8 of the difference -- differences in the way those
9 operate.

10 Number portability. And this will be
11 the last issue. CenturyTel asks that the porting of
12 numbers that have been subject to a remote
13 call-forwarding arrangement be limited to the local
14 calling area in which -- limited to the
15 limited calling area -- the local calling area in
16 which the service is provided.

17 Socket proposed that any remote
18 call-forwarded number could be ported. The report
19 permits porting but requires Socket to pay otherwise
20 applicable charges, and those could be interstate or
21 intrastate depending on where the remote
22 call-forwarded number is sent.

23 This too is a lot easier seen in
24 pictures than it is in words, and I'd ask you to look
25 at the briefs in particular and some of the

00623

1 illustrations of how this technology works. It is
2 very clear that what Socket is doing here is
3 obtaining, or attempting to obtain, the VNXX
4 arrangement through a back door.

5 And we'd ask that you follow industry
6 standards and the law and provide for no location
7 portability, but rather adopt our position including
8 the part of our language that includes the no
9 location portability. And with that I'll end.

10 JUDGE JONES: Thank you. Commissioner
11 Gaw, did you want --

12 COMMISSIONER GAW: Are we done?

13 JUDGE JONES: CenturyTel -- I'm sorry.
14 Socket, you provided us with this graph, right?

15 MR. MAGNESS: Yes, sir.

16 JUDGE JONES: The first column under
17 "CenturyTel Compliance", which CenturyTel cost study
18 was used as a starting point with or without the OSS
19 additive?

20 MR. MAGNESS: Your Honor, the OSS
21 additive only applies to the nonrecurring charges.

22 JUDGE JONES: And these are recurring
23 charges?

24 MR. MAGNESS: That's correct. The rates
25 you see there don't include the additional

1 nonrecurring charge that would apply if nonrecurring
2 charges were approved.

3 JUDGE JONES: Also between the two of
4 you, are there issues that both of you think were
5 wrong?

6 MR. MAGNESS: I think there are issues
7 and I think we both addressed some of them where we
8 have, I guess, different problems with exactly how
9 the report was worded or how you went about it.

10 JUDGE JONES: So there are issues you
11 think were wrong but you don't agree on how they
12 should be right?

13 MR. MAGNESS: Yes. We have different
14 views about what we think the problems are. I think,
15 for example, the POI issue, we both discussed -- I
16 think both parties want some sort of change or
17 clarification or revision to what's in the report but
18 not for the same reasons.

19 And I think certainly on the rate issues
20 there are a lot of issues, you know, that are open,
21 but we have different views on them.

22 JUDGE JONES: Other than whose judgment
23 is right or wrong, are there portions in the report
24 that are blatantly incorrect that both of you agree
25 are incorrect? Not one or the other of you, but both

00625

1 of you?

2 MR. BROWN: Bear with me just a minute.

3 JUDGE JONES: Take your time.

4 MR. BROWN: Because I think most of the
5 instances -- I apologize. I think most of the
6 instances you'll see are where each of us have
7 identified an ambiguity about the outcome, and
8 depending on how it is clarified or not clarified,
9 one or both of us may agree with the outcome or
10 disagree with it.

11 And so it's like the OSS discussion,
12 that may need some clarification just so that each of
13 us is certain about what it is we're supposed to
14 write in the contract and what it is we're supposed
15 to do with it thereafter.

16 JUDGE JONES: So at this point you would
17 have problems with implementing the order in that
18 regard, both of you would?

19 MR. BROWN: Well, I guess I would say no
20 if -- if what we've discussed in our comments is a
21 correct interpretation. Because if it is, then we
22 know what our marching orders are, so to speak, and
23 we can go and do it.

24 JUDGE JONES: Well, you're saying yes
25 but Mr. Magness is saying no. You're saying you

1 wouldn't know what to do with regard to the OSS issue
2 as the arbitration report stands?

3 MR. MAGNESS: Well, I'll put it this
4 way: One could incorporate language into the
5 Interconnection Agreement that says what CenturyTel
6 wants it to say, which is just we'll keep talking,
7 we'll try to come up with something. We don't think
8 that's really what you ordered, and -- but we're not
9 sure exactly, precisely what the parties have been
10 ordered to do in certain respects, and so we request
11 a clarification there.

12 So -- yet, you know, certainly we could
13 write something that's vague and ambiguous and is
14 gonna cause a dispute in two months, but we don't
15 think that's the way to go.

16 And then obviously on the OSS, there's
17 an additional element of the OSS issue that we would
18 ask you to reconsider about the customer service
19 records, the CSRs.

20 JUDGE JONES: I think -- that was the
21 requirement where CSR -- is that where CenturyTel
22 would have to spend a lot of money in order to
23 comply?

24 MR. BROWN: Yes, your Honor, that's one
25 of the places.

1 MR. MAGNESS: That's what they say, yes.

2 And I think -- I mean, I have to respond on the OSS
3 costs. CenturyTel claimed it would cost them
4 \$16 million to do the OSS that we asked for in the
5 beginning. Those costs -- the judge found those
6 costs were not -- didn't issue an opinion about
7 whether they were good or bad.

8 Mr. Brown claimed that Socket put on no
9 evidence rebutting those costs. I'd direct you to
10 Mr. Bruemmer's rebuttal testimony at page 16 and 17.
11 We did. We tried to -- we tried to verify those
12 costs, and we found that you could find like, you
13 know, doing an internet search could find the same
14 equipment for much, much cheaper, or that some of
15 that equipment CenturyTel said it needed was
16 obsolete, wasn't even equipment that, you know, you
17 would use in creating a modern OSS.

18 So, I mean, I can't leave it unrebutted
19 that there was no evidence that these costs -- and if
20 Mr. Brown is gonna show you how the costs are
21 divided, I mean, it's a disputed issue about how much
22 of that cost really goes to customer service records.
23 So I -- that was certainly a contested issue on the
24 evidence.

25 JUDGE JONES: Are you aware of the

1 testimony that he's talking about?

2 MR. BROWN: Well, I am. And I'm also
3 aware that what he's talking about specifically was
4 Mr. Bruemmer's investigation on eBay or something
5 about servers. We dealt with that in our testimony,
6 which was, they didn't -- you can buy a box, a
7 server, but unless you include all the things that go
8 along with it, you haven't calculated the correct
9 price for that box, and that's where we think they
10 fell down. So no evidence, minimal evidence.

11 JUDGE JONES: So when you say they
12 didn't present any evidence, that was incorrect?

13 MR. BROWN: I would suggest that what
14 they presented was no evidence of the issue because
15 what they presented was an incomplete picture of what
16 they said they were attacking. In fact, what -- it's
17 like saying that the cost of a house is the cost of a
18 payment. That's -- that's ridiculous. That's not
19 what it is.

20 JUDGE JONES: That's evidence.

21 MR. BROWN: It's not -- it's not --

22 JUDGE JONES: Is he characterizing the
23 evidence correctly?

24 MR. MAGNESS: No, he's not
25 characterizing the evidence correctly. There are

1 equipment costs.

2 JUDGE JONES: You guys are gonna have to
3 figure out how to play fair.

4 MR. MAGNESS: Well, I mean, there are
5 equipment costs, and Mr. Bruemmer says, "Have you had
6 a chance to review CenturyTel's cost estimate for
7 developing electronic automated OSS systems?

8 "Because of the time constraints, the
9 cost information was presented only recently" --
10 which it was just briefly before the testimony was
11 due -- "I've been able to conduct a cursory review."

12 And we're talking about specific pieces
13 of equipment, not an equipment -- you know, equipment
14 plus. I mean, you may have a car in the garage. You
15 don't price, you know, the whole house. If you're
16 trying to get the price of the car, that's, you know,
17 part of what you have in the house. You're pricing
18 the car. We priced the equipment to try to verify
19 what they -- what they were claiming was true.

20 And I can't tell you what the numbers
21 are in open court, but they're in Mr. Bruemmer's
22 confidential testimony, and they're just dramatically
23 lower than what CenturyTel was claiming. So I -- you
24 know, we -- we tried to verify it, and that's the
25 kind of information we were getting back.

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1 JUDGE JONES: So Mr. Brown, you're
2 saying beyond verification, they didn't present any
3 evidence of their own that was of their independent
4 study?

5 MR. BROWN: What I'm suggesting is that
6 the evidence they presented is not apples to apples
7 with what the issue was before you, which is, what
8 does it cost to implement one of these systems and
9 what are the components of the cost that go into
10 that.

11 When we said a server, when we included
12 a server, it was in those estimates. It included
13 more than simply the box. And -- because there are a
14 million details associated -- how far are you gonna
15 break it down? Are you gonna break it down to
16 include the cables between one part of the system and
17 another inside, or are you gonna -- are you going to
18 include the installed cost of that server? That's
19 what we included in our materials.

20 MR. MAGNESS: Your Honor, I mean, I can
21 read the testimony to you, and it --

22 JUDGE JONES: No, I don't need you to.
23 It's obvious that you-all just disagree.

24 MR. MAGNESS: I mean, we -- we looked
25 for servers with, as Mr. Bruemmer testified, the

00631

1 specifications identified in CenturyTel's testimony.
2 Tried to find them. Tried to find if -- can we
3 duplicate that cost, because it sounded awfully high.
4 And as he testifies, we were able to find things, the
5 same specifications, same equipment, half the price.

6 JUDGE JONES: Well, Mr. Brown, you agree
7 that -- that the evidence you-all presented on this
8 issue was rebutted?

9 MR. BROWN: I would agree that -- that a
10 minimal portion of it was rebutted, but not in an
11 apples-to-apples way. That evidence is not probative
12 of the question that we put on evidence of. Well,
13 it's probative. It's not -- it doesn't directly
14 rebut, it doesn't refute the evidence that we put on.
15 We just disagree over what's included in those cost
16 estimates at what level.

17 JUDGE JONES: What components you mean?

18 MR. BROWN: Yes, your Honor.

19 JUDGE JONES: Wouldn't everything be
20 included?

21 MR. BROWN: In ours, yes. In theirs, we
22 would contend it does not appear to be the case. We
23 have no incentive to inflate the cost because we have
24 to write the check in the first instance, and then it
25 gets turned into something that the CLECs pay as a

1 part of their obtaining access to that UNE.

2 And as far as the cost being high,
3 there's nothing surprising. If you go back and look
4 at the Virginia cost order which has been cited by
5 both sides in this case repeatedly, in Virginia the
6 recovery was on a regional basis way north of \$200
7 million for that region, and the Virginia allocated
8 part was, of course, a smaller part.

9 And then there was another couple of
10 either 15 or 20, I think, million dollars a year of
11 annual maintenance costs associated with that system.

12 What we have laid out is a \$14 million
13 initial cost and a \$2 million dollar a year annual
14 maintenance expense associated with it across the
15 nation for CenturyTel. The allocated portion for
16 Missouri is far smaller. But the problem is, even
17 when the allocated portion for Missouri is only
18 \$500,000, when it's spread out over 100 units or 500
19 units, the cost in the nonrecurring charge remains
20 very high. There's no way to avoid it.

21 And so certainly Socket did not address
22 every element of the cost information we put out.

23 JUDGE JONES: Well, let me ask you this:
24 It's technically feasible for you-all to do this,
25 right?

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1 MR. BROWN: It is technically feasible
2 for it to be done.

3 JUDGE JONES: Isn't that the only thing
4 that we can consider?

5 MR. BROWN: No, your Honor. At other
6 courts, other -- other -- as we explained in our
7 briefing in particular, other courts, other
8 commissions have decided differently.

9 JUDGE JONES: Okay. And Mr. Magness,
10 you were talking about the threshold in mentioning
11 the 10 percent threshold --

12 MR. MAGNESS: Yes, sir.

13 JUDGE JONES: -- and you said that in a
14 number of places, that threshold would be easily
15 exceeded. Are there places where it would never be
16 reached?

17 MR. MAGNESS: We -- Socket doesn't know.
18 I think that's part of the problem is, we don't know
19 how many minutes traverse CenturyTel's network.

20 JUDGE JONES: Well, this is a rural
21 area. Granted, it is growing; there's still not a
22 lot of people down there.

23 MR. MAGNESS: But we -- a 10 percent
24 increase in traffic might mean that we get a small
25 business customer who buys a DS-1-based service and

00634

1 actually uses all of it. Uses a lot of channels for
2 data. Has, you know, 25 people who need to use the
3 phone. And then you're -- you're sending out a DS-1
4 level of traffic, so --

5 JUDGE JONES: But then in another area
6 you may have very little land use. In fact, the land
7 use may decrease as people move to wireless. So that
8 10 percent may never be reached in some areas.

9 MR. MAGNESS: But I guess --

10 JUDGE JONES: Can you agree to that, is
11 what I'm asking?

12 MR. MAGNESS: I just have to say I don't
13 know. I mean, maybe yes, maybe no.

14 JUDGE JONES: Well, you seem certain
15 that it would exceed 10 percent in some areas.

16 MR. MAGNESS: Yeah. I think --

17 JUDGE JONES: But you aren't certain
18 that it may not even reach 10 percent in others.

19 MR. MAGNESS: Yes, because in the larger
20 areas, I don't have any -- I know that in a very
21 small area where there's very few customers and you
22 do it on a percentage basis, it doesn't take much to
23 get you up to 10 percent.

24 JUDGE JONES: Right.

25 MR. MAGNESS: So I have very little

00635

1 doubt that you bring one DS-1 customer in there,
2 percentage basis, yeah, the math says probably so.
3 You get a bigger exchange, suburbs of St. Louis,
4 that's growing; Branson, that's growing, the minutes
5 are increasing. Maybe we hit it, maybe we don't.

6 I guess the main concern that Socket has
7 is we don't have any idea. And there was never any
8 suggestion on the record that this kind of percentage
9 threshold was one that fits the facts. Nobody
10 presented evidence on a percentage threshold.

11 We haven't seen any data from the
12 CenturyTel network that would demonstrate whether
13 it's reasonable or not. I mean, I assume that
14 they've looked at the data, and they must think it
15 works pretty well for them or they wouldn't be saying
16 it's okay, but I can't do that. I can't check that
17 proposal to see if it's reasonable or not because
18 it's all based on their minutes.

19 JUDGE JONES: And you're proposing that
20 a DS-3 should be the threshold?

21 MR. MAGNESS: Yes, sir. We're --

22 JUDGE JONES: What's the number of lines
23 on a DS-3? I forget.

24 MR. MAGNESS: DS-3 is the equivalent --
25 just like a DS-1 is the equivalent of 24, it's the

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1 equivalent of 672. It's basically three DS-1s.

2 JUDGE JONES: You said -- now I'm
3 confused with the math.

4 MR. MAGNESS: I'm sorry. 28 DS-1s. I'm
5 thinking of a higher level. 28 DS-1s. That's why I
6 have someone who's not innumerate sitting behind me.

7 JUDGE JONES: So why don't they call it
8 a DS-28?

9 MR. MAGNESS: I don't know the answer to
10 that. But, yes, we -- Socket has -- well, and just
11 while we're here, I have to say it is a flat-out
12 misrepresentation to say that Socket has asked for
13 single POI in perpetuity, which is on page 2 of their
14 comments, on page 5 of their comments. It goes on
15 and on.

16 JUDGE JONES: Do you -- Mr. Brown, is
17 that what you-all say, that they want just one POI in
18 perpetuity?

19 MR. BROWN: An OC-3 will never be
20 reached in these territories.

21 JUDGE JONES: What about a DS-3?

22 MR. BROWN: A DS-3 is more traffic than
23 most -- virtually all exchanges, CenturyTel exchanges
24 trade. What they have asked for in effect is a
25 single POI in perpetuity.

1 JUDGE JONES: Oh, you're saying if the
2 OS -- what was it, OC-12 or OC-3, you're saying that
3 will never be reached so it will be a single POI?

4 MR. BROWN: Right.

5 JUDGE JONES: What about a DS-3, will
6 that ever be reached?

7 MR. BROWN: We don't know but we don't
8 think so.

9 MR. MAGNESS: And there's -- by the way,
10 there's no testimony to that.

11 JUDGE JONES: I understand that.

12 MR. MAGNESS: And Mr. Brown's speculating,
13 we're speculating a little bit. But the DS-3 -- when
14 you look at what the Commission approved in the SBC
15 territory -- and we don't disagree. You know, OC-12
16 is a large chunk of traffic, much bigger than OC-3
17 even, and a whole lot bigger than a DS-3. And so we
18 never proposed OC-12. We said, well, the Commission
19 approved that in the Bell case, but let's try OC-3
20 which is substantially lower.

21 And Commissioners, the thing is, the FCC
22 has never said any such threshold is required. The
23 FCC in the Fifth Circuit Court of Appeals which have
24 heard this very issue have said the CLEC can have a
25 single point of interconnections in a LATA as long as

00638

1 the ILEC doesn't show it's technically infeasible.

2 That's the standard.

3 And if you look at your M2A agreements

4 that the Commission approved, that's what it says.

5 If SBC can come in and show it's technically

6 infeasible, you know, no. Now, and...

7 JUDGE JONES: Well, they can keep adding

8 lines to that one POI, can't they? Isn't that what

9 you're arguing they should do?

10 MR. MAGNESS: Well, I don't know that

11 it's adding lines to one POI. It's traffic -- there

12 may be more or less traffic running out of various

13 exchanges during different times. What the FCC rules

14 on interconnections say is, there's got to be

15 someplace where the incumbent -- if the incumbent's

16 customers are gonna originate calls and call a CLEC

17 customer and vice versa, there's got to be a place

18 where they trade the traffic. That's the POI.

19 JUDGE JONES: Well, as the traffic

20 increases --

21 MR. MAGNESS: Uh-huh.

22 JUDGE JONES: -- are you saying they

23 should -- you'd rather have just that one POI and

24 modify that POI to accommodate the increased traffic

25 if that's necessary? And what CenturyTel wants to do

00639

1 is have another POI rather than expand the one; is
2 that -- am I --

3 MR. BROWN: That's basically correct,
4 your Honor. Remember what happens with a single POI
5 is that all the traffic from throughout the LATA at
6 the expense of the ILEC, us, gets transported. So
7 everything from the most distant exchange in that
8 LATA gets transported to -- the example that was
9 often used was Branson.

10 From the furthest reaches it goes to
11 Branson, and then it goes to wherever Socket wants it
12 to go because that's where they established a POI.

13 If somewhere along the line there's an
14 extended exchange where Socket has developed a
15 customer base and there's a lot of traffic that goes
16 from that exchange -- Alma was used -- to Branson and
17 then back up to St. Louis, then at some point the --
18 it is rational for the cost to be shifted to Socket
19 because they've developed enough of a network that --
20 and have developed enough of a customer base that
21 they should bear the cost that's associated with the
22 revenue they get from those customers.

23 What we're suggesting is, is a threshold
24 and what they're suggesting is a threshold. And
25 we've gone from -- we're at DS-1, they've gone to

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1 DS-3 as they've come down. The fact of the matter is
2 that it's true that the FCC rule says you can get a
3 POI at any technically feasible point. It does not
4 say that you can't require that a second POI be
5 established at some point.

6 And, in fact, this Commission in the
7 M2A2 proceeding decided just that. Now, the number
8 is way north of anything we can even conceive of, but
9 you've already made the decision that a second POI is
10 appropriate in certain circumstances when traffic
11 reaches a level that is appropriate for the
12 underlying incumbent.

13 We're just saying that because of the
14 characteristics of this network, that's a much, much,
15 much, much lower number. Now, before I -- and I'll
16 stop here.

17 JUDGE JONES: Is there anything lower
18 than DS-1?

19 MR. BROWN: Sure. There's DS-0.

20 MR. MAGNESS: We can do it and we'd have
21 one phone line.

22 JUDGE JONES: Well, what's DS-1 again?
23 Is that 24?

24 MR. BROWN: Yes, sir.

25 JUDGE JONES: So 24 lines basically. So

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1 is it 12 people or 48 people talking? How does that
2 work?

3 MR. BROWN: Well, it depends on -- it's
4 all measured by the busiest part of the day because
5 no one uses all 24. For instance, if you had 24
6 customers, you wouldn't need a DS-1 necessarily
7 because not all of them are on the phone all the
8 time.

9 JUDGE JONES: All right.

10 MR. BROWN: You'd need somewhat lower
11 numbers. And the numbers get greater as you -- as
12 you increase the capacity.

13 JUDGE JONES: So this -- that sounds
14 really low to me now, a DS-1.

15 MR. BROWN: A DS-1?

16 JUDGE JONES: Yeah. I mean, for the
17 whole LATA, how does that work?

18 MR. MAGNESS: Your Honor, it could be
19 one stockbroker. It could be one customer that uses
20 a fair amount of data. Or it could be, you know, ten
21 barber shops. You know, it's a very small level of
22 traffic.

23 And Mr. Brown -- I mean, I have to say,
24 when we say that the Commission has approved a
25 threshold before so that's okay, the Commission

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1 approved a threshold that was at OC-12, and I think,
2 you know, a lot of companies adopted that.

3 JUDGE JONES: Well, that was over a big
4 area, though, wasn't it?

5 MR. MAGNESS: It's the same area. It's
6 the same -- it's exchange to exchange is what this
7 POI is about. If you're trafficking in and out of a
8 particular exchange at that level, then that's when
9 it -- the new threshold comes into place.

10 I mean, your Honor, I've just got to
11 say, you listen to what they're saying, it's like
12 there's never gonna be a DS-3 of traffic out of these
13 exchanges. That's never gonna happen because they're
14 so little.

15 Well, then, why do we have to go build
16 POIs to all these exchanges when we're hardly
17 burdening the network at all, and when we burden the
18 network, we, you know, we're paying for a lot of
19 transport, but -- so it really comes down to trying
20 to force Socket to increase its cost dramatically
21 just about any time it gets a customer in some of
22 these areas by building, you know, building or
23 leasing the new equipment we need to do that when
24 there's no sense in which this could be burdening
25 their network that much because they're sitting here

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1 saying you'll never even reach a DS-3 out of these
2 exchanges.

3 JUDGE JONES: So Socket's -- Socket's
4 expenses increase; when there has to be a second POI,
5 you have to have some additional equipment?

6 MR. MAGNESS: Yes. We have to buy more
7 equipment, we have to buy more transport. We have
8 to -- you know, we have to buy -- we have to spend a
9 lot in order to establish that second POI. And I'll
10 say, somebody's paying for the transport. Fair
11 enough. I mean, somebody's paying for the transport
12 to get the traffic from one company to the other.

13 And the FCC looked at how those costs
14 ought to be apportioned in 1996, and they decided the
15 fair way to do it was the CLEC can establish a single
16 POI in a LATA. You can't have one -- I mean, there
17 were some companies who were saying, we want one
18 statewide. Well, the FCC said no, no, no, you get
19 one per LATA. If it's technically infeasible because
20 the traffic levels are too high or there's some
21 reason why it's, you know, hurting the ILEC,
22 technically feasible reason, not financial reasons,
23 then you do it differently.

24 JUDGE JONES: How do you-all measure
25 traffic? Can you -- I mean, can you tell when it

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1 approaches a certain level?

2 MR. BROWN: Yes, your Honor.

3 JUDGE JONES: Can you respond to it
4 rationally in some way by -- I mean, at what point --
5 CenturyTel's saying a DS-1 -- let me get this
6 right -- at a DS-1 level, that's the threshold to
7 establish a second POI? That's not what you're
8 saying.

9 MR. BROWN: Yes, your Honor. Between an
10 exchange, between an exchange and a POI, okay? So
11 when the level reaches a DS-1 -- now, keep in mind,
12 this network is an existing network, it's been built
13 to serve the customers that are there in anticipated
14 growth.

15 Now we're looking at a situation where
16 the reason why that capacity is not being used as it
17 was planned is because of the business of a different
18 company, the company that is deriving the revenue
19 from those calls.

20 And so the outcome is one which makes a
21 lot of sense. That is, remember the policy of FTA is
22 to drive facilities-based competition. And the issue
23 here simply is at what level should Socket be
24 required to assume the cost of the traffic it's
25 causing. That's the issue.

1 And here, there's not a question but
2 that many, many commissions have decided that a
3 threshold for a second POI is appropriate. Here the
4 question is what is the appropriate threshold. And
5 we think it's a DS-1 and they think it's a DS-3 at
6 this point. And our point about the DS-3 is that in
7 most exchanges, there's not that much traffic that
8 goes between the two exchanges even today in total.

9 MR. MAGNESS: Your Honor, just one thing
10 because I think it's important. Under the Act,
11 Congress recognized that, you know, a call that used
12 to be originated and completed by CenturyTel because
13 it was the monopoly could potentially be originated
14 and completed by different companies.

15 I'm still a CenturyTel customer. I want
16 to call Mr. Brown. He's a Socket customer. You
17 gotta have a way to interconnect the networks, and
18 you've got to figure out who compensates whom for
19 what.

20 When he talks about Socket, you know,
21 getting the revenue from the customer, when Socket
22 terminates a call for CenturyTel, completes that call
23 for a CenturyTel customer on the other end who
24 started the call, the Act says that the terminating
25 carrier gets compensation for that because their

00646

1 network is being used to complete a call that's
2 originated by somebody else's end user. That's the
3 basic framework.

4 This idea that Socket derives all this
5 revenue because it terminates traffic, it just sort
6 of flips the Act on its head. And there have been a
7 lot of controversies about reciprocal compensation
8 and is Socket out there just collecting resip comps
9 by terminating a lot of traffic.

10 And, your Honor, as the evidence is
11 clear and the proposals are clear, we proposed bill
12 and keep for this and we think that's the correct
13 outcome, where we're not collecting money for
14 terminating for their customers, they don't collect
15 money for terminating for our customers. We trade
16 the traffic and we don't have to worry about it.

17 So it's -- this idea that Socket gets
18 all the benefit of being called by CenturyTel
19 customers is just -- it's not right and it's not how
20 the Act works.

21 MR. BROWN: Okay. Your Honor --

22 JUDGE JONES: Does CenturyTel even have
23 any competition in their area?

24 MR. BROWN: Yes, your Honor. But
25 there's -- there are -- in the record there's

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1 evidence about the number of transactions by Socket
2 and other providers. And I don't -- this has
3 probably gone on longer than you have patience for,
4 but let me just say that we don't disagree that the
5 bill and keep reciprocal compensation issue and the
6 POI issue are related. That's -- you may recall that
7 we made -- we connected them in some of our language
8 dealing with compensation for VNXX traffic in
9 particular because it's a trade-off.

10 But it is incorrect to suggest that
11 there's compensation for this function, the POI
12 function, because of reciprocal compensation. They
13 are different costs. One is transport, one is the
14 transport and termination of the calls which is
15 getting it to the end user customer.

16 And so they go different directions,
17 they're different -- or one goes both ways, one goes
18 one way, and they are -- they compensate for
19 different things, and they're both provided for under
20 the Act.

21 The last thing I'll say on this, or one
22 real brief thing, you have before you your 10 percent
23 and 12 percent option. That's what is -- has been
24 addressed in the comments. We think that there's --
25 that it is a workable solution, not based upon any

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1 traffic studies. We haven't been able to do that
2 because there hasn't been time to do that.

3 But what we do think is that it is
4 likely to result in an outcome that's acceptable to
5 both parties. That is, it is likely -- and I know,
6 Mr. Magness is shaking his head and I can understand
7 that he disagrees. We have our views and we're here
8 to advocate them. But we think that your solution
9 can work. Alternatively, we suggest that we know
10 that the DS-1 threshold that we've proposed will
11 work.

12 Now, the one thing I have to say, I was
13 criticized earlier about overstating my case. My --
14 my brief does not say that they would establish a POI
15 in perpetuity or that this would establish a single
16 POI in perpetuity. It says virtually in perpetuity.

17 JUDGE JONES: I understand what
18 you're --

19 MR. BROWN: And I'm not trying to parse
20 words here. I'm just trying to say that we're not
21 suggesting it can never be reached. We're just
22 suggesting it's unlikely to be reached.

23 JUDGE JONES: Commissioner Gaw, do you
24 have any questions?

25 COMMISSIONER GAW: Maybe Commissioner

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1 Appling.

2 COMMISSIONER APPLING: I don't think I
3 have any questions. It's just kind of clear as mud,
4 you know.

5 COMMISSIONER GAW: Is this document that
6 we were handed earlier from Socket, is it identified
7 with some number?

8 JUDGE JONES: No, it's not an exhibit
9 and I don't think it will be. I think that was just
10 for purposes of illustration.

11 COMMISSIONER GAW: Well, I want to ask
12 some questions about it, and so if it's not
13 identified, then I'll just have to refer to it as the
14 document or something like that.

15 JUDGE JONES: Okay. The CenturyTel and
16 Socket's proposed DS-1 loop rates.

17 COMMISSIONER GAW: Yes. I want to ask
18 some questions about this. And let me -- let me ask
19 Socket, first of all, how these numbers were derived.

20 MR. MAGNESS: Well, the -- and I think
21 this is contrary to something I heard a little
22 earlier from Mr. Brown. If you compare the DS-1
23 rates that Socket's got here in compliance, they are
24 very similar to what was in Mr. Turner's rebuttal as
25 Socket's proposal.

00650

1 COMMISSIONER GAW: Yes.

2 MR. MAGNESS: The basic -- well, I'll
3 tell you the derivation of the AT&T and the Sprint
4 rates because that's simple. We just looked at their
5 Interconnection Agreements and what the Commission's
6 approved. That's where those numbers come from.

7 COMMISSIONER GAW: Okay.

8 MR. MAGNESS: The compliance numbers
9 were developed and it -- hit me if I say this wrong
10 because Mr. Turner who actually did the work is here
11 and can describe it in more detail. But Judge Jones
12 in the arbitrator's report ordered that CenturyTel
13 rerun its DS-1 and DS-3 cost studies.

14 One of the critical components, probably
15 the critical component in those cost studies is the
16 rate for a two-wire or four-wire loop. A DS-1 and a
17 DS-3 also includes electronics, it includes other
18 factors. But that loop's real important.

19 The arbitrator's report says you need to
20 take out -- CenturyTel, you need to take out what you
21 wanted to use as the loop rate and use the agreed
22 rate that we're actually using for two-wire and
23 four-wire loops and plug that in. That's the old
24 TELRIC rate that was approved back in the GTE
25 arbitration, put that in instead.

00651

1 And that's essentially, I think, what --
2 what we did was take those and put them in, and
3 that's where we got our compliance rate.

4 COMMISSIONER GAW: All right.

5 MR. MAGNESS: And CenturyTel made a
6 filing last week on its rates, and that's where we
7 got these numbers.

8 COMMISSIONER GAW: Okay. Now -- and
9 when you say they made a filing, did their filing
10 have these numbers in it?

11 MR. MAGNESS: No. They filed cost
12 studies. We used the number that's on page 22 of
13 their brief --

14 COMMISSIONER GAW: All right.

15 MR. MAGNESS: -- as the numbers of their
16 proposed rates. So that's where those come from.
17 And these are similar to -- well, they're the same as
18 the rates we've got that they listed in their papers,
19 but they're similar in scope to what CenturyTel's
20 been proposing earlier in the case.

21 COMMISSIONER GAW: Okay. And the order
22 that we have in front of us currently, the report,
23 rather, it then would utilize or cause to be
24 utilized, the numbers under CenturyTel's column, or
25 not?

1 MR. MAGNESS: No, we don't believe so.

2 We believe that the -- that Socket compliance

3 numbers --

4 COMMISSIONER GAW: Yes.

5 MR. MAGNESS: -- accurately implement

6 what the arbitrator's report asked be done in

7 rerunning the studies.

8 COMMISSIONER GAW: Okay. All right.

9 And is there disagreement about that from CenturyTel?

10 MR. BROWN: Evidently, your Honor. We

11 submitted a filing on Monday pursuant to Judge Jones'

12 requirement that explains exactly how those rates

13 were derived and --

14 COMMISSIONER GAW: Do you agree with the

15 numbers -- are you telling me that the numbers that

16 you believe are appropriate to the report are the

17 numbers under the Socket document that was provided

18 to us under the column "CenturyTel Compliance"?

19 MR. BROWN: We think that the rates that

20 are laid out in our -- in our cost studies that were

21 submitted pursuant to Judge Jones's requirement and

22 to our explanation, that those are the correct rates.

23 COMMISSIONER GAW: Are those numbers the

24 same as on this document that I was handed under the

25 "CenturyTel Compliance" column?

1 MR. BROWN: Your Honor, this is the
2 first time I've seen this document.

3 COMMISSIONER GAW: Sure.

4 MR. BROWN: I know it's in there. I
5 just don't know.

6 COMMISSIONER GAW: How long would it
7 take you to figure that out?

8 MR. BROWN: Not very long.

9 COMMISSIONER GAW: Would you do that for
10 me? And I don't know if it needs to be done
11 immediately, but I'd like to know what we're dealing
12 with. What do you think, five minutes, two minutes,
13 30 minutes?

14 MR. BROWN: I can do it while we're
15 having the conversation.

16 COMMISSIONER GAW: Oh, that would be
17 great. Okay. I'll try to leave you alone for a few
18 minutes.

19 MR. MAGNESS: And Commissioner, I think
20 we took -- I think I said "brief" earlier. We
21 actually took them out of the comments, CenturyTel's
22 comments at page 22 is where we derived these.
23 That's important because the briefs were written
24 before the arbitrator's report ordered the rerun of
25 the studies.

1 I think the comments would reflect what
2 CenturyTel's proposal is post-arbitration report.
3 That was our understanding. So that's why we
4 included the numbers we did.

5 COMMISSIONER GAW: What is Socket's
6 position with regard to why we've got this -- or
7 belief about why we've got this great divergence in
8 between the numbers here if we assume that the
9 CenturyTel numbers are correct from CenturyTel's
10 standpoint? I have no idea whether Mr. Turner can
11 testify.

12 MR. DORITY: We would strongly object to
13 Mr. Turner testifying here today to what has been
14 portrayed as an oral argument, your Honor.

15 COMMISSIONER GAW: That's what I assumed
16 that some of them would suggest, but I don't know
17 what the judge would say.

18 JUDGE JONES: No, I don't want to hear
19 testimony.

20 MR. MAGNESS: We don't have to swear
21 him. All right. I mean, Commissioners, I'm sorry.
22 I think that the -- it would be helpful if we could,
23 because this -- there are some factual issues here I
24 think that the commissioners are interested in.

25 COMMISSIONER GAW: The problem would be

00655

1 with, I suspect, the notice issue, but the judge --

2 MR. DORITY: Absolutely.

3 COMMISSIONER GAW: -- the judge is aware
4 of the fact that the Commission, if it desires to
5 hear more testimony in regard to this, could do so,
6 but I think that that may not have been noticed for
7 today.

8 MR. MAGNESS: Well, your Honor, we can
9 address it legally.

10 JUDGE JONES: Well, let me ask this:
11 Who would have been notified, just the parties that
12 are here, right?

13 COMMISSIONER GAW: Well, they would have
14 been notified --

15 JUDGE JONES: But you wouldn't be
16 prepared to do any cross?

17 MR. DORITY: That's absolutely correct.

18 JUDGE JONES: Well, they weren't
19 prepared to do any direct. I mean, they weren't
20 prepared to actually testify on this issue. You
21 don't follow me, Mr. Dority?

22 MR. DORITY: No, I'm not.

23 JUDGE JONES: They didn't know they
24 would have to testify on this issue. And you didn't
25 know that they would have -- no one knew, so now it

00656

1 could be like a pop exam or something.

2 MR. MAGNESS: Well, your Honor, put it
3 this way: I mean, these issues are discussed in the
4 briefs and the comments. And I think if you look at
5 pages 101 through 105 of our brief, it describes --

6 COMMISSIONER GAW: You did say 100,
7 didn't you?

8 MR. MAGNESS: Yes, sir, I did. It's a
9 three-digit number, bigger than a DS-1, that brief
10 is. If you look at that description, you will --
11 you'll see in excruciating detail the problems with
12 the cost studies and the input CenturyTel used that
13 Mr. Turner identified in testimony and at hearing as
14 to why it is that these numbers got -- that they are
15 so high.

16 We think they were inappropriate inputs,
17 inappropriate fill factors, any number of things that
18 cause these rates to get so high. I think as we
19 describe in the briefs and have described in the
20 testimony, you know, we didn't get these cost studies
21 until March 15th and the hearing was in April.

22 Typically, when you're trying to vet a
23 brand new cost study, there's discovery, there's a
24 lot of back and forth on an evidentiary basis before
25 you file testimony. That isn't how this worked

00657

1 because we didn't see these cost studies until the
2 15th of March.

3 So based on the review that we could do,
4 you know, there were a lot of requests for
5 information, discovery requests we might have wanted
6 to ask, but even based on the review we were able to
7 do in the amount of time we had, there were some very
8 substantial problems with these rates.

9 And I think one of the things that's
10 most telling that Mr. Turner points out in testimony
11 and that we identified in the brief, is CenturyTel is
12 willing to live with an analog loop rate, a
13 two-wire/four-wire loop rate that's the old TELRIC
14 rate that's agreed to for those loops.

15 But then when they -- when they run
16 their DS-1 study and they come up with a new
17 two-wire/four-wire input, it's, I mean, multiples of
18 times higher.

19 And so, I mean, it just makes one wonder
20 as a matter of common sense if they really think the
21 cost of a two-wire or four-wire loop is, you know,
22 eight or nine times higher than the rate that's gonna
23 end up in the Interconnection Agreement, why would
24 they agree to that rate in the Interconnection
25 Agreement? I mean, it just doesn't add up.

00658

1 It just appears that this two-wire/
2 four-wire loop input was created specifically for the
3 purpose of plugging into a DS-1 and DS-3 loop study,
4 and that it just blew up the rate higher than
5 anything we've seen, anything -- I mean, Mr. Turner
6 testified he's been doing these cases in 30 states
7 over the years, and some of these factors were like
8 nothing he had ever observed.

9 COMMISSIONER GAW: So how -- I'm back to
10 my -- just my very basic question here. In regard to
11 the differences between these numbers, CenturyTel's
12 compliance numbers and Socket's compliance numbers,
13 they have to do with the inputs into the -- into the
14 model and not just a mathematical calculation
15 difference?

16 MR. MAGNESS: No. The essential
17 difference -- and the judge captured this in the
18 report -- is that when they did their DS-1 and DS-3
19 loop studies, they didn't use the agreed two-wire/
20 four-wire rate for loops. That's a building block of
21 the DS-1 loop.

22 The DS-1 loop is essentially, you know,
23 that loop plant plus electronics, to put it simply.
24 When they plugged in the loop, they didn't use the
25 rate that is the old TELRIC rate that they're

00659

1 agreeing to for two-wire/four-wire going forward.

2 They used something else. And it's that something

3 else that's -- and I mean, we've got data on --

4 COMMISSIONER GAW: That has -- that has
5 caused the greatest portion of the difference between
6 your numbers in the two columns, just that one --

7 MR. MAGNESS: That is the difference.

8 COMMISSIONER GAW: That's the entire
9 difference --

10 MR. MAGNESS: That's it.

11 COMMISSIONER GAW: -- between looking at
12 a 455.49 and 140.63?

13 MR. MAGNESS: That's it. And that's why
14 I think when the judge said go back and rerun it and
15 use that agreed two-wire/four-wire rate, that's why
16 the rates that we put in the record and Mr. Turner's
17 testimony as our proposed rates look a lot like our
18 compliance rates, because once that error is
19 corrected, they come out, you know, in the range of
20 reasonableness.

21 COMMISSIONER GAW: And I'm assuming that
22 you-all would not object to the numbers if they came
23 out to the "Socket Compliance" column numbers?

24 MR. MAGNESS: No, we wouldn't. We would
25 go forward.

00660

1 COMMISSIONER GAW: Okay.

2 MR. MAGNESS: And again, now, let me
3 say, just for having it on the record, since you want
4 the lawyers to talk, I'll say a lawyerly thing, which
5 is that we strongly contend that these cost studies
6 are flawed, and that's what my page 101 through 105
7 are all about, is there are some serious problems
8 with these cost studies.

9 But as a matter of practicality and
10 moving forward and getting a reasonable -- just and
11 reasonable rate, yes, that would make sense.

12 COMMISSIONER GAW: Okay. I think I'm
13 following your position. Have I given you enough
14 time or have I given him too much time?

15 MR. BROWN: Sort of a combination of
16 both.

17 COMMISSIONER GAW: That's what I
18 figured.

19 MR. BROWN: Yes, these are numbers that
20 are reflected in the comments. What I was looking
21 for was our filing from Monday to try and work
22 through the question of how the mechanics actually
23 worked here through the cost study explanation. We
24 have that on the record. It's available.

25 JUDGE JONES: Natelle, the document you

00661

1 just showed me, is that their filing from Monday?

2 MS. DIETRICH: Yes.

3 JUDGE JONES: Why don't you bring that
4 up.

5 COMMISSIONER GAW: Does CenturyTel agree
6 with the characterization by Socket in regard to the
7 factor that's driving the difference between the
8 numbers on the document that Socket gave us earlier,
9 or can you assess that?

10 MR. BROWN: Well, I think what you can
11 say is that we were directed to do several different
12 things to the cost study, one of which was to take
13 the agreed two and four-wire analog loops that I
14 don't think Socket bought any of.

15 There are many, many, many, many prices
16 in an agreement, and there are reasons -- I
17 apologize. There are reasons why you would agree to
18 a rate or not fight about a rate even though you
19 don't agree with a rate.

20 And that's where we are on those
21 two-wire and four-wire analog loops. We presented a
22 full-blown cost study. And so what we've presented
23 is, is two different things. We've done what the
24 judge asked us to do. We did that.

25 COMMISSIONER GAW: Okay.

1 MR. BROWN: We also did an examination
2 of just changing the fill factor to the corrected
3 one, just changing the fiber cost to the corrected
4 one and rerunning the studies along those lines. And
5 that's what we presented in the files last week and
6 which we explained in this one.

7 COMMISSIONER GAW: Okay. Now, in regard
8 to the report, the final report -- I'm sorry I'm
9 having to catch up here -- but you-all are trying --
10 are you-all suggesting, then, that that final report
11 is still open on this decision regarding which number
12 is the appropriate number?

13 And I say "you-all," I mean both
14 parties. Is that -- is that an open question for the
15 commissioners to decide or has it been decided
16 already in the report?

17 MR. BROWN: I would suggest that it's
18 been decided, and the judge told us to do certain
19 things and we've provided that information. And then
20 it's up to the judge and the commissioners to take
21 that information and turn it into a final outcome.

22 COMMISSIONER GAW: Socket, did you
23 understand my question?

24 MR. MAGNESS: Yes, sir. I think the
25 answer is somewhat the same. I mean, the judge in

00663

1 the arbitrator's report reached a conclusion about
2 what the appropriate way to come up with rates would
3 be.

4 COMMISSIONER GAW: Yes.

5 MR. MAGNESS: That required some changes
6 to the cost studies. Now --

7 COMMISSIONER GAW: Okay.

8 MR. MAGNESS: -- the comments identified
9 some other issues concerning how you import fiber
10 costs, and we can talk about that in a bit. But the
11 key thing is, if the judge's instructions are
12 followed accurately, we believe that that generates
13 these numbers on the "Socket Compliance" column.

14 COMMISSIONER GAW: Yes.

15 MR. MAGNESS: And so --

16 COMMISSIONER GAW: So you think it's
17 decided in that the Socket compliance numbers that
18 you've given us are the correct numbers? CenturyTel,
19 you think it's decided, but you think your numbers
20 are correct?

21 MR. BROWN: Yes, your Honor.

22 COMMISSIONER GAW: So this is a
23 decision, at least initially, that has to be -- well,
24 could be determined, I suppose, by the judge to -- in
25 regard to the final report before -- before the

00664

1 Commission approves or disapproves of it, or I
2 suppose it could be determined as a part of the
3 Commission's decision. I'm not sure procedurally how
4 that works.

5 But the calculation here, then, is it
6 really is fairly simple once you make the
7 determination about the two- or four-wire issue.

8 MR. MAGNESS: Well, yeah. And let me
9 add to that, your Honor, Commissioner, just to be
10 clear. The filing that CenturyTel made as its
11 compliance filing last week included two different
12 versions.

13 COMMISSIONER GAW: I see.

14 MR. MAGNESS: Okay? One version in our
15 view followed the arbitrator's report pretty closely,
16 and that's described in subsection (b) of the filing
17 that CenturyTel made Monday. That's page 4. We
18 pointed out in comments -- Monday -- I meant last --
19 whenever they filed it. I'm sorry about the dates.

20 COMMISSIONER GAW: It doesn't matter.

21 COMMISSIONER APPLING: Friday.

22 MR. MAGNESS: Friday. In our comments
23 we noted that there was a small error we thought
24 CenturyTel made in the run that's described here, and
25 that is, if you see on this page 4, it's got the

00665

1 four-wire analog zone 1, et cetera, these various
2 rates, we believe that the error was that they used
3 the rate instead of the cost, okay? That makes a
4 difference because you've got a cost, but then, you
5 know, you add other factors to that cost to get to
6 the actual rate.

7 Mr. Turner described that error in --
8 well, we described -- I shouldn't say Mr. Turner. It
9 wasn't his testimony. We described it in comments.
10 But all that said, I think the main point is that if
11 you look at the rates that are generated by
12 CenturyTel's run, those rates are only approximately
13 7 percent on the whole higher than the Socket
14 compliance column.

15 So we think if you really do implement
16 what the judge said to implement, you're gonna come
17 up with something pretty close to the "Socket
18 Compliance" column. And I think if you corrected
19 their use of rates instead of costs, you'd probably
20 get to the same number because that's how we did the
21 calculation.

22 The other filing CenturyTel made was one
23 where it said essentially, you know, we disagree with
24 having to do it that way --

25 COMMISSIONER GAW: Okay.

00666

1 MR. MAGNESS: -- so here's what we think
2 it ought to look like. And CenturyTel's made very
3 clear that the rates that they're proposing are
4 these, not the ones that are 7 percent higher than
5 Socket's rates. But we think that the Socket
6 compliance and the one that's close on CenturyTel is
7 an accurate numerical implementation of the rule.

8 COMMISSIONER GAW: Okay.

9 MR. BROWN: And if I could just
10 interject --

11 COMMISSIONER GAW: Yes, you go ahead.
12 That's fine.

13 MR. BROWN: -- just something real brief
14 here. Remember that the agreed rates are agreed
15 rates, and there's nothing in the record that
16 suggests that they are TELRIC-compliant. Now, on
17 cross-examination during the hearing, Socket was
18 asked, did you do any studies of this to determine
19 whether or not it's TELRIC-compliant? And they
20 admitted they had not.

21 So that's -- that's where we are on the
22 record as far as what the two-wire and four-wire rate
23 is that went into Judge Jones's decision. But -- and
24 yes, we did full-blown cost studies on the DS-1 and
25 DS-3 UNEs. And part of that input is what's called

1 the Missouri Profile Excel spreadsheet here, and in
2 that includes the fill factors and those kinds of
3 things.

4 Keep in mind that if you choose a rate
5 for the two-wire and four-wire to plug into --
6 regardless of what you do with it -- into the cost
7 study for the DS-1, you're eliminating the ability to
8 change the fill factor. Because the bottom line,
9 while Socket is now saying that, oh, you can use this
10 two-wire and four-wire as a proxy, as they have
11 before, the problem is, no one knows what the costs
12 are.

13 No one knows whether those rates which
14 were negotiated are much higher or much lower or
15 somewhere in between than were actually agreed to.
16 And the reason is the parties, for their own reasons,
17 decided not to litigate that question.

18 Instead, CenturyTel put on a full cost
19 case on DS-1 and DS-3. And certainly Mr. Turner was
20 critical of certain aspects of it. That's what he
21 was hired to do. But that doesn't mean that the
22 output of the CenturyTel cost studies and the way we
23 portrayed it in these filings isn't correct.

24 MR. MAGNESS: Commissioner, I have to
25 make one point in response, and I just want to make

00668

1 it real briefly and be real clear. And I hope I've
2 said this already. The two-wire and four-wire loop
3 rates were the TELRIC rates approved by this
4 Commission in the GTE case. Those are the only rates
5 that have ever found to be -- been found to be
6 TELRIC-compliant that we're talking about here. And
7 the parties agreed to continue using them just like
8 they agreed to continue using dark fiber rates and a
9 whole host of other recurring rates.

10 But to say that because they're agreed
11 means that there's no evidence that they're TELRIC is
12 just not right. I mean, those rates were litigated,
13 they were arbitrated.

14 COMMISSIONER GAW: Okay. I want to
15 see -- now, I realize each of you have done a pretty
16 good job of trying to condense everything down on
17 your most important issues in discussing that when
18 you were giving us your statements earlier.

19 I would like for you to bear with me
20 just a moment and not argue your points, but just
21 list off those points that you just gave us in
22 those -- in those openings, and tell me what they are
23 so it's clear to me what your main points are that
24 you want us to examine. And again, without drifting
25 into argument on them if you could. And I don't care

00669

1 who goes first.

2 JUDGE JONES: CenturyTel has its
3 document ready, so go right ahead.

4 MR. BROWN: Sure. And we'll go issue by
5 issue what it is we'd like to see you do. And it
6 will take me a moment, but I'll try to get through
7 it.

8 COMMISSIONER GAW: And when you're doing
9 this, I'm assuming that -- that you are addressing
10 just those things you want changed. Would that be
11 accurate?

12 MR. BROWN: Okay. We'll leave out the
13 things that if we want them affirmed, we'll just
14 leave it out.

15 COMMISSIONER GAW: If it's very
16 important to you, I'm assuming that Socket would pick
17 it up saying they wanted it changed. If that's a bad
18 assumption, then go ahead and give it to me. But I'm
19 assuming that I'll pick it up from their comment that
20 that's an important issue.

21 MR. BROWN: Fair enough.

22 COMMISSIONER GAW: But if you want to do
23 that, I'll be patient.

24 MR. BROWN: No. I don't want to burden
25 the record any more than we need to.

00670

1 COMMISSIONER GAW: Okay. And I'll give
2 you each a chance to respond if you think he didn't
3 bring one of those things up that you feel is
4 important that you want to affirm. How's that?

5 MR. BROWN: Okay. That's fair. That's
6 fair. In Article 2, Issues 14 to 16, which are a
7 series of definitions, and I'm gonna -- we would like
8 to have clarified definitions to ensure, and as we've
9 briefed it, that ultimately -- VNXX dial up, ISP
10 traffic or other traffic that terminates to an ISP in
11 a different local calling area is subject to -- or
12 not subject to bill and keep, but rather that those
13 things are subject to access unless the single POI
14 threshold that we've suggested in a different issue
15 is adopted. We think that those things are tied
16 together in very important ways.

17 COMMISSIONER GAW: Okay.

18 MR. BROWN: Right. And we'd point out
19 that that was, in part, addressed by the First
20 Circuit in Global NAPs recently where they affirmed
21 the right of the State to --

22 COMMISSIONER GAW: Try not to get back
23 into the argument because I think I can refer to what
24 you've said earlier on it.

25 MR. DORITY: That's my fault.

1 COMMISSIONER GAW: I know it's hard to
2 resist. Go ahead.

3 MR. BROWN: Okay. That's fair. I'll
4 even take my glasses off. That will make it much
5 more clear.

6 On Article 5, Issue 7, pertaining to the
7 single POI, we think that you should affirm Judge
8 Jones's mechanism together with approving, we think,
9 the language we've proposed which sets forth the
10 mechanism that would implement it in we think a fair
11 way.

12 And I don't know whether -- whether
13 Mr. Magness thinks that it implements the language as
14 the judge intended it. But assuming it does, then we
15 think that's appropriate.

16 On Article 5, Issue 10, we'd like you to
17 clarify that and partially reverse it consistent with
18 the federal law; that is, the ISP remand order and
19 the basic policies expressed in the arbitrator's
20 report.

21 You should adopt our proposed language
22 in Issue 10 in its entirety as well as the definition
23 of local interconnection traffic that we've set forth
24 in our comments.

25 And this is sounding pretty cryptic, I

1 know, but one of the inconsistencies -- or one of the
2 problems in the reciprocal comp and intercarrier
3 comp, and I'm not gonna argue this, but the
4 intercarrier comp section of the report, I think both
5 parties would agree that there are problems with and
6 that they need to be sort of reworked.

7 What we would suggest is that we've
8 proposed a holistic sort of Section 9, that if it's
9 adopted, would solve this issue and other issues.

10 Issue 5 -- Article 5, Issue 10,
11 Section 9.2.3, we'd request that you clarify that the
12 bill and keep mechanism is adopted if and only if the
13 single POI/multiple POI threshold that we've proposed
14 is adopted.

15 On the avoided cost discount, we'd
16 suggest that you should adopt the rates that we have
17 proposed for CenturyTel of Missouri and Spectra of
18 14.2 and 17.5 percent, respectively.

19 I didn't talk about this because we
20 were trying to keep it compact, but we think that
21 Article 7, Issue 13B which has to do with the
22 application of an electronic service order charge to
23 a manual function should be reversed and that our
24 rates should be adopted.

25 On cost sharing, this is Article 7,

1 Issue 22, and there's another issue related to that.
2 We think that if -- one deals with UNEs, one deals
3 with interconnection arrangements. For
4 interconnection, the decision says that Socket shall
5 pay for the cost of implementing additional
6 facilities. In the UNE section there's a 50/50
7 split.

8 The law, as we've pointed out in our
9 briefing, is very clear that if they want something
10 built, then they need to pay for it. It's their cost
11 responsibility, that they have the ability to get
12 what we have -- what we have in place, but they don't
13 have the right to require that it be built.

14 And these are not -- this is distinct
15 from reasonable modifications to the network. We're
16 not suggesting we don't have to do those by any
17 stretch.

18 Nonrecurring charges, that's omitted
19 from the report. We think that you should decide
20 the question of nonrecurring charges, that if
21 there is -- if we're correct in our interpretation
22 of the OSS question, then the nonrecurring charges
23 should be the GTE-based UNE NRCs that are in existing
24 Commission-approved ICAs with other CLECs at this
25 point.

1 If there is a significant OSS component
2 to the costs, if the OSS -- if we misread what Judge
3 Jones has done and there is improvement required to
4 the OSS, not just improvement but the kinds of
5 systems that we put on testimony about, then we need
6 to recover that through nonrecurring charges, and
7 we've proposed rates for that. But they're only
8 applicable if there's a significant upgrade to the
9 OSS, not just doing the kinds of things that --
10 trying to develop things that are cooperative.

11 UNE pricing. We've just spent a lot of
12 time on DS-1 and DS-3. I won't go through that
13 again. We have proposed rates for both DS-1 and DS-3
14 for both CenturyTel of Missouri and for Spectra, and
15 we'd urge that you adopt our rates.

16 On OSS, one issue there, we would ask
17 that you clarify the order as we have requested; that
18 is, that there are no real-time systems required,
19 that there are no extensive overhauls to the OSS
20 required because that's where the cost was, but that
21 we're required to capture the miscellaneous
22 notifications and other things, OSS improvements that
23 are in other articles within Article 13. That's a
24 negotiated process. And that we're required to
25 develop language for the future cooperation and the

00675

1 development of the ordering system without manual
2 reinput. We're trying to find a feasible manner of
3 doing that.

4 But we'd also request that it be
5 clarified to the extent that there is such a system
6 implemented, that cost recovery be provided.

7 Let me make sure I've covered -- have I
8 covered the VNXX? Yeah, I think I did.

9 Performance measures. Again, Socket
10 neither defended adequately its own performance
11 measures nor undermined ours, and we think that you
12 should adopt our Article 15 in its entirety as
13 providing a reasonable solution for performance
14 measures.

15 This is in the comments. Neither party
16 talked about it really. Dedicated transport. We
17 think that that should be affirmed. I think that's a
18 significant issue in Mr. Magness's comments.

19 Oh, yeah. The construction cost issue,
20 UNEs. That's Article 5, Section 2.4, and Article 7,
21 Section 2.37. You should clarify that CenturyTel is
22 not required to build it, Socket's demand, except as
23 the parties have some agreed language that if they're
24 willing to pay the cost of that.

25 We've covered nonrecurring charges in

1 DS-1, avoided cost.

2 Number portability. And this is a
3 really hard one to figure out without seeing the
4 pictures. But what we would ask is that you reinsert
5 in the number portability, Article 12 provision, the
6 language we had proposed, that these remote call-
7 forwarded numbers could be ported only if they are
8 ported within the local calling area of the original
9 location, that location portability that is moving
10 from the switch to some distant location not be
11 permitted.

12 Oh, and one last thing that neither party
13 talked about but we think probably needs clarification
14 is on the maintenance article, Article 9. There were
15 two issues. Only one is referenced in the report.
16 It found that CenturyTel provides sufficient
17 information under the proposals that it's made.

18 Issue No. 2 has to do with accessing an
19 800 number for technicians. CenturyTel -- or Socket
20 suggests that that's not a sufficient option, but we
21 would suggest that you should adopt CenturyTel's
22 language because it provides for Socket to get out of
23 the queue and to get the information it needs on a
24 timely basis. And I think that's it, your Honor.

25 COMMISSIONER GAW: Thank you very much.

1 JUDGE JONES: Mr. Magness?

2 MR. MAGNESS: Thank you. If I could
3 start with one argumentative thing. In the
4 performance --

5 JUDGE JONES: Why?

6 MR. MAGNESS: Because on the performance
7 measures issue, Mr. Brown addressed it in his first
8 comments. I just want to say we are seeking that be
9 affirmed. I just want to say for the record Socket
10 presented testimony by Mr. Turner and Mr. Kohly.
11 Mr. Kohly presented rebuttal testimony.

12 Socket did point out concerns about
13 small sample sizes. The judge actually recognized
14 those in the report and made some changes.

15 And in addition, there is a long legal
16 argument that CenturyTel makes for the first time in
17 its comments that we haven't had a chance to respond
18 to.

19 All I want to tell you is, the
20 Commission has the authority to introduce and enforce
21 performance measurements and remedies under its
22 jurisdiction under Section 252 of the Act, and that
23 very question has been litigated, and that was the
24 conclusion of a case called MCI versus Bell South
25 which was decided by the Eleventh Circuit in 2002 and

1 that you can find at 298 F.3rd 1269.

2 I just want to note that because it was
3 in comments and we hadn't had a chance to respond.

4 COMMISSIONER GAW: Okay.

5 MR. MAGNESS: Now, as to what we're
6 appealing.

7 COMMISSIONER GAW: Okay.

8 MR. MAGNESS: I'll go through, as
9 Mr. Brown did, basically going through the
10 Interconnection Agreement. In Article 2, Issue 34,
11 there is this issue about dedicated transport. It is
12 essentially a legal question of the interpretation of
13 the FCC's dedicated transport definition where we
14 disagree with where the judge came out on it.

15 The practical import affects Socket's
16 ability to reach some Spectra exchanges without going
17 to special access and being able to use UNEs. So
18 that one -- I mean, you know, obviously it's all
19 discussed in the comments.

20 Article 5, Issue 5A, on facility
21 augmentments, I think this was somewhat of a similar
22 issue as Mr. Brown raised. Socket believes that the
23 language that's actually approved in the arbitrator's
24 report improperly assigns all the costs of certain
25 augmentments to Socket where the Commission has before in

1 its precedent found a 50/50 split is appropriate, and
2 that since Socket and CenturyTel are both
3 benefitting, that that 50/50 split is still
4 appropriate. So it's really a change to a particular
5 part of the language that we're requesting on that
6 one.

7 In Article 5, Issue 7 is the large and
8 much discussed issue of points of interconnection.
9 And as we outlined earlier, Socket's very concerned
10 about the practicalities of the proposal that's laid
11 out in the report. We would suggest either that the
12 Commission incorporate into the Interconnection
13 Agreement the language that's used in the M2A
14 arbitration or that Socket's proposal, which it has
15 presented to CenturyTel of a DS-3 threshold, be
16 adopted.

17 Article 5, Issue 14 relates to trunking
18 requirements. Our issue there is that Socket had
19 proposed some very detailed requirements on trunking.
20 We are concerned about the vagueness and ambiguity of
21 the CenturyTel language and, in addition, concerned
22 that the adoption of the CenturyTel language actually
23 ends up with language that violates the Commission's
24 Records Exchange Rule in that it can allow CenturyTel
25 to require separate trunk groups, which is contrary

1 to what's in the Records Exchange Rule. So we think
2 it's an inconsistency primarily with the Commission's
3 rules.

4 Article 5, Issue 20 concerns the rating
5 of calls for jurisdictional purposes. Socket
6 proposed that that -- that the NPA-NXX or, you know,
7 caller identification information, ANI as those terms
8 are often used, be used to determine jurisdiction.

9 The arbitrator's decision was that this
10 issue is dealt with in the Chapter 29 Records
11 Exchange Rules. Our concern here is that the actual
12 rating of the calls is not addressed in the rule;
13 that the rule requires an exchange of information,
14 but it doesn't go the next step to determine a
15 rating. So we think, again, that it's not covered by
16 the rule and we need the language in the agreement.

17 Similarly, on Article 5, Issue 24 about
18 meet-point billing calling data. The -- Socket's
19 language which was based out of the M2A is rejected
20 because of sort of a similar concern, that this is
21 already dealt with in Chapter 29's rules and there
22 isn't a need for Interconnection Agreement language.

23 And we -- we believe that if you read
24 Chapter 29 rules, it doesn't address this issue, and
25 it isn't an issue that's currently addressed in the

1 Interconnection Agreement and should be addressed in
2 the successor that we're arbitrating here.

3 Article 5, Issue 31 concerns
4 compensation for enhanced-services traffic or IP-PSTN
5 traffic. Socket proposed language that is directly
6 out of approved arbitrated language in the M2A,
7 addresses an issue that we don't believe is addressed
8 anywhere else in the agreement. The arbitrator's
9 report said that it was addressed elsewhere, didn't
10 need to be in the agreement.

11 As you read in our comments, we don't
12 find where the issue is addressed. Moreover, that
13 language is still on appeal in the Federal District
14 Court in St. Louis, and the decision not to include
15 the language would be inconsistent with the appellate
16 decision the Commission is still supporting in that
17 case as well as the M2A decision. And we disagreed
18 with CenturyTel's position that those issues are
19 preempted. We just don't think there's any support
20 for that.

21 Article 5, Issue 32 concerns the
22 definition of the term FX or foreign exchange. The
23 arbitrator's report noted that either the definition
24 from the M2A should be used or there should be no
25 definition. And we believe there should be a

1 definition, and we'd urge the Commission to adopt the
2 M2A definition as an appropriate one.

3 On Article 7 is the pricing issues. And
4 obviously, we'd talked a fair amount about these. I
5 guess to break it down, on the nonrecurring charges
6 we made a proposal that's detailed in testimony as
7 well as in the briefs concerning the use of
8 Commission-approved nonrecurring charges from the SBC
9 arbitrations. So that is what we would support
10 there.

11 There are no nonrecurring charges in the
12 current Socket/CenturyTel agreement. The old GTE
13 agreement didn't have any. The current nonrecurring
14 charges are zero. So those -- there's nothing to
15 carry over into this agreement. So we would propose
16 that those be used as supporting our testimony.

17 On the resale discount, we're not
18 appealing. We think the arbitrator's report is fine,
19 supported by the evidence.

20 Then on the recurring rates, just to be
21 sure there's a fine point on it, for the recurring
22 rates, we would support the rates that are -- that
23 are set forth in our comments as Socket's compliance
24 rates for DS-3 -- DS-1 and DS-3 loops. Those are
25 provided as well in the handout we gave you, but

00683

1 those are reflected in Socket's comments.

2 On the DS-1 loop rate, we believe that
3 the number generated by the compliance run submitted
4 by Mr. Turner on Socket's behalf accurately
5 implements the judge's order and those rates should
6 be used.

7 On DS-3, we haven't really talked a lot
8 about DS-3, but I do want to make a point because
9 it's discussed in the comments. And there's a twist,
10 which is the DS-3 loop is a fiber loop. That's how
11 DS-3 loops are put together. The arbitrator's report
12 says that the agreed two-wire/four-wire loop rates
13 should be incorporated into the DS-3 loop rerun of
14 the study just like it was the DS-1.

15 We did that. But we're concerned -- and
16 it generates very low rates. It generates DS-3 rates
17 that we'd love to have, but we don't think they're
18 reasonable. And we describe all this in our
19 comments. And so you really need a fiber cost.

20 And CenturyTel -- and then the
21 arbitrator also said that CenturyTel's new fiber
22 costs should be used, the one that wasn't
23 incorporated in their studies before.

24 Our comments indicate our concerns about
25 using that number, which is just multiples higher

1 than any fiber costs we've ever seen before. So
2 we've suggested that we use similar to how the judge
3 ordered, to use the two-wire/four-wire agreed loop
4 rates for those copper loops; that we use the agreed
5 dark fiber rate as a fiber costs. That's the GTE
6 arbitrated TELRIC fiber rate, dark fiber rate.

7 Our comments and Mr. Turner's runs on
8 DS-3 incorporated that, and the rates that you see on
9 our handout as well on our comments on DS-3 are based
10 on that compliance run.

11 So we acknowledge it's not exactly what
12 the judge ordered, but we're concerned and I think
13 CenturyTel shared the concern that it's hard to
14 incorporate a two-wire/four-wire copper loop rate
15 into a DS-3 loop because they're not made out of
16 copper. So sorry to spend so long on it, but I just
17 wanted to be sure there wasn't, you know, confusion
18 about that, or any more confusion that just exists by
19 the nature of the issue.

20 Okay. Article 9 on maintenance. The
21 arbitrator's report notes that CenturyTel's provided
22 Socket with a means of contacting CenturyTel for
23 service-related questions without sitting in a queue
24 with retail customers. We had previously been given
25 the same 800 number as a retail customer and had to

1 listen to ads and service offers and that sort of
2 thing.

3 The concern we have about what that leaves
4 us with is that the personnel who we are directed to
5 don't have knowledge of outages, trouble tickets,
6 status reports on various outages, don't have knowledge
7 of 911 interconnection and various interconnection
8 issues that we're concerned about, so we're being
9 directed to maintenance in a way that's not a parity
10 with what CenturyTel has and will end up causing
11 delays, so we suggested changes to that language.

12 On Article 9, Issue 2 concerning the 800
13 number access, there was not a decision by the
14 arbitrator that we could see on that issue, and so we
15 asked that, similarly to Issue 1, that a decision be
16 issued on that with Socket's language.

17 Article 12, Issue 2 concerning the remote
18 call forwarding, number porting. We are satisfied with
19 what the arbitrator's come up with. However, as
20 detailed in the comments, there's some discussion of
21 the payment of intrastate access charges that we simply
22 don't understand how that works in, because it
23 really -- I guess you don't need -- I don't think you
24 need very many pictures to understand this issue.

25 A remote call-forwarded number can be

00686

1 ported over to -- over to Century -- over to Socket.
2 The customer hadn't moved, the customer hasn't
3 changed locations, he's just changed phone companies.
4 The number's gonna live in Socket's switch instead of
5 in CenturyTel's switch, and we think it needs -- the
6 language may not even need to be clarified, but we're
7 concerned about what the arbitrator's report says
8 about the access charges.

9 And finally on 13, Article 13, the OSS,
10 I think I discussed our position on that. We would
11 seek additional conditions regarding access to
12 customer service records and some clarification or
13 tightening of the language that's required to
14 implement the arbitrator's report.

15 COMMISSIONER GAW: Thank you. And I'll
16 ask real quick, anything in addition after that from
17 Socket that you wanted to add onto this list that he
18 maybe didn't bring up that you thought was important
19 to affirm?

20 MR. BROWN: No. I think the only thing
21 I'd say is -- and I apologize. I ought to learn how
22 this works -- is that it's only now coming clear
23 exactly what it is that happened with the cost
24 studies to show why there's such a huge difference in
25 some of the rates.

1 And we would suggest that Mr. Turner's
2 input is not evidence, and that he has done more than
3 simply rerun the compliance runs. And we're sitting
4 here trying to figure out what to do about it because
5 it's there in front of you. The numbers are starkly
6 different.

7 And the question that you must have is,
8 well, if I've been presented a cost study, then why
9 can't I use it? And the answer is that it's never
10 been -- we've never had a discovery response on it,
11 we've never had any information about where these
12 numbers were coming from or why they might be
13 appropriate here.

14 JUDGE JONES: Are you talking about the
15 numbers that he just gave us today?

16 MR. BROWN: Right.

17 JUDGE JONES: Oh, I don't even have mine
18 anymore.

19 COMMISSIONER GAW: The judge may not,
20 but the commissioners do.

21 MR. MAGNESS: And those numbers are
22 reflected in the comments, and given that we were
23 asked -- you know, the parties were asked to do a
24 rerun of the cost studies, that's -- that's what we
25 did.

1 And I have to say too, the disparity in
2 the rates was there -- I mean, that was there in the
3 testimony, that was there in the briefs. It's not
4 that it got created by how we each did the rerun.

5 I mean, CenturyTel's been proposing a
6 \$400 DS-1 loop from the get-go, so there's nothing
7 new about that.

8 MR. BROWN: Just the last thing I'd say
9 is if Socket had wanted to prepare and file a cost
10 study, it's had Mr. Turner in this case from the very
11 beginning. And rather than do that, they wait until
12 now to throw a number out like this. And it's just --
13 it's just not evidence is the point. And we'd
14 appreciate the -- that you deal with it appropriately.

15 JUDGE JONES: Commissioner Gaw?

16 COMMISSIONER GAW: No. I think I just
17 need to absorb what this is and then see from my
18 standpoint what needs to happen next. But that's all
19 the questions I have. Thank you, Judge.

20 JUDGE JONES: Well, with that, then, we
21 are adjourned. Thank you.

22 (WHEREUPON, the recorded portion of the
23 oral argument was concluded.)

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