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STATE OF MISSOURI NOV 08 2004  
PUBLIC SERVICE COMMISSION

Missouri Public  
Service Commission

IN THE MATTER OF THE FILING OF NEW TARIFF  
SHEETS FOR SOCKET TELECOM, LLC, TO PROVIDE A  
MARKET TRIAL FOR FREE LOCAL EXCHANGE  
SERVICES

Case No. TT-2005-0089

**ORIGINAL**

Oral Argument - Volume 1

October 20, 2004

**FILED**

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Missouri  
Public Service Commission

## MIDWEST LITIGATION SERVICES

*"From Discovery to Trial"*

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1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
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6 TRANSCRIPT OF PROCEEDINGS  
7 Oral Argument  
8 October 20, 2004  
9 Jefferson City, Missouri  
10 Volume 1  
11

12 In the Matter of the Filing of )  
13 New Tariff Sheets for Socket )  
14 Telecom, LLC, to Provide a Market ) Case No. TT-2005-0089  
15 Trial for Free Local Exchange )  
16 Services )

17 LEWIS MILLS, Presiding,  
18 DEPUTY CHIEF REGULATORY LAW JUDGE.  
19  
20 CONNIE MURRAY,  
21 JEFF DAVIS,  
22 LINWARD "LIN" APPLING,  
23 COMMISSIONERS.  
24  
25

22 REPORTED BY:  
23 KELLENE K. FEDDERSEN, CSR, RPR, CCR  
24 MIDWEST LITIGATION SERVICES  
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FOR: Staff of the Missouri Public  
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1 P R O C E E D I N G S

2 JUDGE MILLS: We're on the record this  
3 morning for oral argument in Case No. TT-2005-0089. We'll  
4 begin by taking entries of appearance, starting with the  
5 Staff.

6 MR. HAAS: Good morning. The Staff appears  
7 by William K. Haas. My address is P.O. Box 360, Jefferson  
8 City, Missouri 65102.

9 JUDGE MILLS: Thank you. And for Socket?

10 MR. LUMLEY: Good morning, Judge. I'm  
11 pleased to enter my appearance on time this morning. Carl  
12 Lumley, Curtis Heinz firm, representing Socket Telecom,  
13 130 South Bemiston, Suite 200, Clayton, Missouri 63105.

14 JUDGE MILLS: There must be a story there.

15 MR. LUMLEY: Yes, there is, and it's not a  
16 pretty one.

17 JUDGE MILLS: Mr. Dority?

18 MR. DORITY: Good morning. Appearing on  
19 behalf of CenturyTel of Missouri, LLC, Larry W. Dority,  
20 Fischer & Dority PC. Our address is 101 Madison,  
21 Suite 400, Jefferson City, Missouri 65101.

22 JUDGE MILLS: Thank you.

23 As I stated just before we went on the  
24 record, we'll begin with Socket, who has the burden of  
25 proof in proving that their tariff is just and reasonable.

1 We'll have a response from CenturyTel, then from the  
2 Staff, and then we will close with Socket again. So let's  
3 go ahead, Mr. Lumley.

4 MR. LUMLEY: Good morning. We're here  
5 seeking approval of our market trial tariff and,  
6 therefore, an end to the suspension. We do appreciate the  
7 expedited approach that the Commission has taken to this  
8 particular dispute. Obviously a market trial tariff is  
9 important to the company and its efforts to expand its  
10 operations.

11 Quickly to review the terms of the tariff,  
12 it expressly says that it is for trial purposes, to test  
13 the company's ability to provide services and the related  
14 systems necessary to provide services, both its own and  
15 those of other vendors, which would include CenturyTel as  
16 a supplier of UNES and things like that. The tariff  
17 expressly says it's not a public offering, that there's to  
18 be a maximum of 50 participants in the trial, only to be  
19 tried in areas where the company has authority to provide  
20 service, a maximum of 12 weeks for a trial, that there  
21 would be no charge and no liability except for willful  
22 misconduct.

23 As noted in our pleadings filed after the  
24 suspension of the tariff, our market trial tariff is based  
25 on an approved and effective SBC tariff under which SBC

1 has been authorized from time to time to engage in market  
2 trials providing services on a trial basis without charge  
3 for what they refer to as operational readiness testing,  
4 which is what we're talking about, testing of their  
5 systems, including an emphasis on billing systems, which  
6 as we understand is a point of contention on CenturyTel's  
7 part that somehow we would not be able to test our billing  
8 systems with a no-charge trial.

9 Obviously Southwestern Bell agrees with us  
10 that you can trial your billing systems without charging  
11 the customers. The SBC tariff's available to business or  
12 residential customers for the trial basis, five customers  
13 per trial, eight weeks per trial, and again there's no  
14 starting and ending point. Their tariff expressly allows  
15 trials from time to time.

16 Some other tariffs that have been mentioned  
17 in the pleadings, AT&T had a trial tariff for SBC  
18 territory under which it was able to waive charges. Time  
19 Warner had a similar tariff, again for SBC territory.  
20 Charter Communications had a trial tariff in SBC territory  
21 expressly calling for free service to the trial  
22 participants.

23 So with this background of market trial  
24 tariffs being an accepted means of companies determining  
25 whether or not their services are ready to go for

1 full-scale service, we certainly are concerned that  
2 CenturyTel is really just trying to obstruct our market  
3 entry with its efforts, its complaints about this tariff.

4 We believe the testing is essential to  
5 credible market entry. We don't believe that it's  
6 appropriate to use paying customers as guinea pigs. As  
7 mentioned in our pleadings, Socket envisions trial  
8 participants taking trial service as a redundant service,  
9 not as a replacement service, because of the potential for  
10 service failure, obviously, while you're testing it.

11 One issue mentioned in the pleadings is a  
12 concern that we would use market trials not only for  
13 testing purposes but as a basis of establishing first  
14 contact with a customer and, therefore, as a marketing  
15 tool. I will submit that every market trial has that  
16 potential aspect to it. You are dealing with someone  
17 that's trying your services. If they like it, you know,  
18 it's going to have a marketing side to it. There's no way  
19 around it. The fact that we expressly acknowledge that in  
20 our pleadings, we don't feel should be held against us.

21 The main issue seems to be the idea that  
22 there's not -- under the tariff there's not to be a charge  
23 for the trial services, and as I've noted, we're not the  
24 first company to propose such a tariff, and there are  
25 tariffs in effect to that effect.

1 CenturyTel alleges that this violates  
2 Section 392.220.3. We disagree. First of all, expressed  
3 in the tariff, this is not a public offering, so it's even  
4 questionable whether the tariff is necessary or not,  
5 whether this truly would constitute regulated services or  
6 not. The definitions of telecom companies and services  
7 and facilities incorporate the idea of services for hire,  
8 which has been interpreted in older case law as meaning  
9 services to the general public.

10 Moreover, the tariff express -- the  
11 statutes expressly allow promotions, and CenturyTel itself  
12 has had free services in its promotions. And from our  
13 perspective free is free; it doesn't matter whether it's  
14 full bore basic local service or a side service, there is  
15 an acknowledgement that in some instances free services  
16 are allowable.

17 We believe that the focal -- the focus of  
18 Section 392.220.3 is a prohibition of discrimination that  
19 a company that's charging for services can't pick out a  
20 select few special customers and give them service for  
21 free on a discriminatory basis, and that's not what we're  
22 talking about here. We're talking about a limited market  
23 trial to make sure services work before market entry is  
24 accomplished.

25 Finally, it's expressly a limited time



1 proposition. We're not suggesting and the tariff does not  
2 permit a permanent free arrangement. It's a trial  
3 arrangement. So Socket is seeking approval, consistent  
4 with the Staff recommendation, of its market trial tariff.  
5 And again, we do appreciate the fact you've entered a  
6 limited suspension and proceeded to these arguments on  
7 such an expedited basis so we can resolve this issue.

8 JUDGE MILLS: Mr. Lumley, before you step  
9 down, we're going to see if there are questions from the  
10 Bench. Commissioner Murray?

11 COMMISSIONER MURRAY: Good morning,  
12 Mr. Lumley.

13 MR. LUMLEY: Good morning.

14 COMMISSIONER MURRAY: In relation to  
15 392.220.3, is your interpretation of that that a  
16 company -- if you're looking at these specific customers  
17 who were set out in that statute, officers, employees,  
18 agents, surgeons, physicians, et cetera, is it your  
19 position with regard to those enumerated customers that a  
20 telecommunications company could directly or indirectly  
21 give a free or reduced service indefinitely or as a  
22 permanent?

23 MR. LUMLEY: That would be my understanding  
24 of that part of the statute, and then similarly there's  
25 language at the end about state and local contracts, I

1 believe. So government can also be the recipient of free  
2 services.

3 COMMISSIONER MURRAY: And I'm wanting to  
4 understand your interpretation, that it's your  
5 interpretation that this justifies to a service that's  
6 being offered as a -- well, an unlimited -- over an  
7 unlimited time period.

8 MR. LUMLEY: Well, a public offering, just  
9 a general service being afforded to the public. And the  
10 distinction I'm drawing is, first of all, the statutes in  
11 other sections, specifically 392.200, permit promotional  
12 rates, which the Commission has regularly interpreted as  
13 allowing a total waiver of charges for a service. And  
14 secondly -- so we feel that a market trial can qualify as  
15 a promotion.

16 But secondly that we're not -- we're not  
17 picking and choosing between customers and saying,  
18 Customer A, you're going to pay for this service and,  
19 Customer B, you're not. We're engaging in a very limited  
20 trial, and so there's no discrimination going on. We  
21 believe that the import of this statute is to prohibit  
22 discrimination.

23 COMMISSIONER MURRAY: Okay. And because  
24 you are only offering it as a free service, there can be  
25 no discrimination; is that right?

1 MR. LUMLEY: That's right.

2 COMMISSIONER MURRAY: Okay. Thank you.

3 JUDGE MILLS: Thank you. Commissioner  
4 Appling?

5 COMMISSIONER APPLING: No questions.

6 JUDGE MILLS: Thank you. Next, Mr. Dority?

7 MR. DORITY: I feel like I should be asking  
8 if I have two minutes or 90 seconds.

9 Good morning. May it please the  
10 Commission? For the record my name is Larry Dority, and I  
11 represent CenturyTel of Missouri, LLC in this matter.

12 Upon review of the Socket local market  
13 trial tariff, CenturyTel identified a number of factors  
14 that, when taken together collectively, raised concerns  
15 about opportunities for abuse and also were  
16 distinguishable from other market trial tariffs with which  
17 we were familiar.

18 At the outset, let me assure you that,  
19 contrary to Socket's allegations, and they were mentioned  
20 again here this morning by Mr. Lumley, CenturyTel did not  
21 raise these concerns to delay or impede Socket's market  
22 entry. Neither filed in a promotions section of the  
23 company's tariff nor using the words "promotion" anywhere  
24 in their tariff Section 8, CenturyTel raised the issue  
25 that the tariff under consideration here would violate the

1 provisions of Section 392.220.3, rather than falling  
2 within the exception provided for promotional programs  
3 allowed by Section 392.200.2, which Mr. Lumley has visited  
4 with you about this morning.

5 I would point out that a quick review of  
6 the tariffs attached to Socket's most recent pleading  
7 reveals that both SBC Missouri and CenturyTel's tariffs  
8 that are referenced are contained in sections clearly  
9 denoted as either special promotions or promotional rates.  
10 In addition, there was no specific end point set forth in  
11 the tariff provisions which would allow for perpetual and  
12 successive market trials.

13 While Socket would suggest that the SBC  
14 Missouri operational readiness testing tariff provided the  
15 framework for its market trial proposal, there are  
16 striking differences between the two tariffs, as pointed  
17 out in CenturyTel's responsive pleading filed in this  
18 matter.

19 And before I address the SBC tariff, let me  
20 point out that other tariffs referenced in CenturyTel's  
21 original motion, which Socket acknowledges, contemplated  
22 that those service providers would be charging rates that  
23 are competitively priced to similar services offered by  
24 the incumbent local exchange carrier. Used to test system  
25 capabilities such as service over cable TV facilities or

1 new break provisioning, those tariffs had specific dates  
2 for the time frames in which they would be offered, which  
3 included specific end dates for those particular trials.

4 Now, let's quickly look at the SBC  
5 offering. First, as noted above, it is contained in the  
6 promotional rate section of its general exchange tariff,  
7 and it is clearly described as, quote, operational  
8 readiness testing, end quote. Indeed, by the very terms  
9 of that tariff, it states that the services are offered  
10 for the limited purpose of operational readiness testing.  
11 Socket, on the other hand, lists testing the capabilities  
12 of systems as a part of its market trial promotional.

13 SBC is limited to no more than five  
14 customers. Socket refers to 50 targeted participants.  
15 SBC provides that customer involvement will not exceed  
16 eight weeks. Socket has no similar limitation on the  
17 amount of time a particular customer can be targeted for  
18 inclusion in its market trial.

19 SBC provides that on or before the end of  
20 the eight-week testing period, the telephone company will  
21 either make a tariff filing to add the product or service  
22 to its tariff or it will discontinue the test. Socket  
23 simply provides that each trial will last for a maximum of  
24 12 weeks.

25 Again, when CenturyTel looked at all of the

1 various components of Socket's proposal, when taken  
2 together, they are contrary to custom and practice for  
3 previously approved trials and, most importantly, as  
4 Mr. Lumley referenced, these trials appear to be focused  
5 on marketing rather than simply system operational  
6 readiness.

7 Socket confirmed this concern by its own  
8 words in its request for reconsideration when it stated,  
9 Socket also needs to understand what services customers  
10 may desire and be willing to purchase, end of quote. As  
11 pointed out in CenturyTel's response, the proposed tariff  
12 by its language would allow Socket to target 50 business  
13 customers in CenturyTel's Columbia exchange and offer them  
14 free service for a three-month period of time while it  
15 sought to determine what service the particular customer  
16 desired and would be willing to purchase.

17 CenturyTel could simply not stand on the  
18 sidelines and allow such actions to occur. Revisions to  
19 Socket's tariff could address these concerns, and we would  
20 hope that Socket would be willing to conform to the  
21 typical custom and practice of such trials. Thank you.

22 JUDGE MILLS: Thank you. Questions,  
23 Commissioner Murray?

24 COMMISSIONER MURRAY: Thank you.

25 Mr. Dority, if Socket were to file

1 substantially the same tariff under the promotional rate  
2 section of its tariff, would CenturyTel still object?

3 MR. DORITY: We would, Commissioner, to the  
4 extent that we feel the time frames need to be set out  
5 with some specificity. We would object to the idea that  
6 50 targeted customers could be approached in any one given  
7 exchange, and we would still have concerns about not  
8 providing the services at competitive market price  
9 compared to the ILEC's underlying services.

10 COMMISSIONER MURRAY: Let's look for a  
11 moment at the SBC tariff. The SBC tariff is limited to an  
12 8-week testing period. The Socket tariff is limited to a  
13 12-week testing period, as I understand it.

14 MR. DORITY: That's correct.

15 COMMISSIONER MURRAY: So if the Socket  
16 tariff were limited to an 8-week testing period, would  
17 that be acceptable?

18 MR. DORITY: I think 8 weeks would be  
19 acceptable. I would also point out another provision in  
20 the SBC tariff that really underscores our concern with  
21 Socket, and that is that SBC provides that customer  
22 involvement in these tests will not exceed 8 weeks.

23 We would contend that customer involvement  
24 under the Socket tariff, as it is now worded, would allow  
25 a customer to engage in successive 12-week market trials

1 should the company wish to do so. And if they are willing  
2 to put in language similar to SBC that customer  
3 involvement in a given test would be limited to 8 weeks or  
4 12 weeks, then I think that would address some of our  
5 concerns.

6 And we also pointed out that SBC's language  
7 indicates that before the end of that particular testing  
8 period, it would either make a tariff filing to add the  
9 product or service or discontinue the test. It clearly  
10 contemplates that a test in a given exchange would only  
11 occur for an 8-week period of time, whereas there's no  
12 similar provision in the Socket tariff.

13 If they wish to add language that would  
14 clearly indicate that a market trial will only be  
15 conducted for an 8-week or 12-week period of time in any  
16 one exchange, again, that would go towards addressing our  
17 concerns.

18 And I guess I would also point out,  
19 Commissioner Murray, that as I indicated in my statement,  
20 SBC's promotional operational readiness testing tariff is  
21 clearly limited for the purpose of operational readiness  
22 testing and that is not found in Socket's tariff.

23 COMMISSIONER MURRAY: In Socket's tariff  
24 filing -- let me see. I just had the language a minute  
25 ago. The language that each trial will last for a maximum



1 of 12 weeks, what do you interpret that language to mean?

2 MR. DORITY: Literally that each particular  
3 trial would last for a maximum of 12 weeks. I guess I  
4 would like to see it clarified that each particular trial  
5 will last for a maximum of 12 weeks in any one exchange.  
6 We would also like to see the number of participants  
7 reduced. If you'll recall, SBC's tariff provides for a  
8 maximum of five participants. Socket has indicated that  
9 while it envisions simultaneous trials might be occurring  
10 in various exchanges in the state, a total of 50  
11 participants would be the maximum, and perhaps two or  
12 three would be included in each particular exchange.

13 By the very words of the tariff such a  
14 limitation is not there. They could, in fact, have a  
15 trial for 50 business customers in Columbia, then proceed  
16 to Centralia and have another trial for 50 business  
17 customers in Centralia, move on into the SBC exchanges in  
18 which they serve exclusively business customers and engage  
19 in the same conduct.

20 COMMISSIONER MURRAY: So part of the  
21 concern is that they would be doing targeted marketing to  
22 as many as 50 customers in a single exchange at one time?

23 MR. DORITY: That's correct.

24 COMMISSIONER MURRAY: If the tariff were  
25 limited to no more than five in any one exchange but up to

1 a 50 total, would that eliminate those concerns?

2 MR. DORITY: Commissioner, with all due  
3 respect, I would probably need to check with my client  
4 about that, but the point being we feel there are some  
5 changes that can be made that would address our concerns,  
6 and we would hope that we would have the opportunity to  
7 sit down with Socket and try to come up with some language  
8 that would be agreeable.

9 COMMISSIONER MURRAY: Okay. You know,  
10 I'm -- of course, we're charged with following the  
11 statutes, and I'm trying to see whether this tariff fits  
12 within the statutory provisions. But assuming that we  
13 found that it did, there isn't any reason that we should  
14 prevent another carrier from marketing to customers in  
15 CenturyTel's exchanges, is there?

16 MR. DORITY: Absolutely not, and that's not  
17 why we are here. What we are concerned about is the  
18 opportunity that this tariff would allow for Socket to  
19 market to customers, targeted business customers  
20 exclusively for services free of charge. It's the old  
21 bait and switch, if you will, that they may, in fact, be  
22 able to provide service for up to three months, and during  
23 that time frame, as they themselves point out, try and  
24 determine what particular services a customer might want  
25 and what they would be willing to pay for it. And we

1 think that should be prohibited. But in terms of another  
2 carrier coming in and marketing its services, of course  
3 that would be allowed.

4 COMMISSIONER MURRAY: And how are you  
5 suggesting that customer involvement in -- particular  
6 customer involvement be limited to a specific time period?

7 MR. DORITY: In this particular tariff, we  
8 would like to see the tariff explicitly indicate that it  
9 is, in fact, only for operational readiness testing, and  
10 we see no need to have an unlimited number, not limited by  
11 a large number of customers such as 50 business customers  
12 involved in any particular such trial in any one given  
13 exchange.

14 COMMISSIONER MURRAY: Is it part of your  
15 concern that the same customer could be offered a  
16 different package free beyond the 12-week period for  
17 another trial period?

18 MR. DORITY: Yes, ma'am. There's nothing  
19 in the language of that tariff that would appear to  
20 preclude that from happening, whereas SBC's tariff  
21 explicitly states that customer involvement will, in fact,  
22 be limited to a maximum of 8 weeks.

23 COMMISSIONER MURRAY: Okay. Assume that  
24 Socket provides a trial to a specific business customer  
25 and that customer signs up at the end of that period to

1 receive paid service from Socket, and then Socket would  
2 like to also offer another package of services or one more  
3 service or whatever on a trial basis. Is it your  
4 understanding that that same customer could then be --  
5 could then be offered another free service for another  
6 3-month period of time?

7 MR. DORITY: Again, under the literal  
8 language of the tariff, I believe that is possible, yes.

9 COMMISSIONER MURRAY: But if they had a  
10 promotional tariff, there wouldn't be anything that would  
11 prevent them from signing up a customer in a package  
12 offering certain service or a number of services free if  
13 you take A, B and C, would there?

14 MR. DORITY: No, there would not. If it  
15 was purely a promotional type of service offering, we  
16 would really acknowledge that many carriers, including  
17 CenturyTel, bundle services together and offer them as a  
18 package rate and have particular perhaps waiver of charges  
19 such as nonrecurring charges for a particular amount of  
20 time. But again, pursuant to the statute, those  
21 promotions are, in fact, for a very specific period of  
22 time. I believe 392.200.2 requires that.

23 COMMISSIONER MURRAY: Okay. And I'm just  
24 trying to see if I can understand your concern about the  
25 customer involvement, a specific customer involvement

1 beyond the 12-week period. Clearly Socket could have a  
2 tariff that would allow them to offer bundles with some  
3 free services, and I'm trying to understand why they would  
4 even want to offer free services to the same customer  
5 beyond a 12-week period.

6 MR. DORITY: Commissioner, I don't know,  
7 but I can only suggest that that would be a possibility,  
8 and in order to get a particular customer, they might be  
9 willing to do that for a particular point in time.

10 COMMISSIONER MURRAY: I don't think I have  
11 anything else right now. Thank you.

12 JUDGE MILLS: Commissioner Appling?

13 COMMISSIONER APPLING: Larry, I think you  
14 cleared up the questions that I had. I was just trying to  
15 get a fix and a frame on exactly why you're here this  
16 morning, and I think I have that. Thank you, and good to  
17 see you this morning.

18 MR. DORITY: Thank you, Commissioner.

19 JUDGE MILLS: Thank you. Mr. Haas?

20 MR. HAAS: Good morning. As I will  
21 explain, the Staff recommends that the Commission deny  
22 CenturyTel's motion to suspend.

23 CenturyTel asks the Commission to suspend  
24 Socket's market trial for two reasons. First, CenturyTel  
25 objects to the market trial because it does not have a

1 specific ending date, which is contrary to custom and  
2 practice for previously approved market trials.  
3 CenturyTel points to no rule, statute or order requiring a  
4 market trial to have a specific ending date, and  
5 CenturyTel points to no rules, statute or order requiring  
6 all market trials to look alike.

7 And they don't all look alike. AT&T's  
8 market trial tariff was applicable to all Southwestern  
9 Bell exchanges. Fidelity's market trial was limited to  
10 just one Sprint exchange, the Rolla exchange. Socket's  
11 market trial would allow it to test its equipment in a  
12 Southwestern Bell exchange, and then maybe in another  
13 Southwestern Bell exchange, and then maybe in a Sprint  
14 exchange or a CenturyTel exchange, and so on and so on.  
15 Socket's market trial is a reasonable means to test its  
16 equipment in new exchanges and for new services.

17 Second, CenturyTel claims that providing  
18 services at no cost during the market trial would be a  
19 violation of Section 392.220.3 of the Missouri statutes.  
20 That subsection does provide that no telecommunications  
21 company shall give any free service, and that prohibition  
22 has been in place since 1913.

23 However, statutes are to be read together.  
24 In 1987 the Legislature passed House Bill 3650 which  
25 amended subsection 392.200.3 to allow telecommunications

1 companies to offer promotional programs. That subsection  
2 currently provides promotional programs for  
3 telecommunications services may be offered by  
4 telecommunications companies for periods of time, so long  
5 as the offer is otherwise consistent with the provisions  
6 of this chapter and approved by the Commission.

7 In 2003, the Legislature passed House  
8 Bill 208, which added a new subsection 11 to  
9 Section 392.200. That new subsection reads,  
10 notwithstanding any other provision of this section, every  
11 telecommunications company is authorized to offer  
12 discounted rates or other special promotions on any of its  
13 telecommunications services to any new and/or former  
14 customers. Although not labeled a promotion, Socket's  
15 market trial could be viewed as a promotion.

16 But how should the Commission address the  
17 apparent conflict between Section 392.220.3, which has the  
18 prohibition and free services, and Section 392.200, which  
19 authorizes promotions? First, there is a rule of  
20 statutory construction that when there is a conflict, the  
21 later enacted statute controls.

22 Second, there is a rule of statutory  
23 construction that when there is a conflict, the more  
24 specific statute controls. And third, the Legislature has  
25 provided Section 392.185 as a guide for the construction

1 of the statutes in Chapter 392.

2 Various subsections seem applicable to this  
3 case. Reading from Section 392.185, the provisions of  
4 this chapter shall be construed to, No. 2, maintain and  
5 advance the efficiency and availability of  
6 telecommunications services; No. 3, promote diversity in  
7 the supply of telecommunications services and products  
8 throughout the state of Missouri; No. 5, permit flexible  
9 regulation of competitive telecommunications companies and  
10 competitive telecommunications services; and No. 6, allow  
11 full and fair competition to function as a substitute for  
12 regulation when consistent with the protection of  
13 ratepayers and otherwise consistent with the public  
14 interest.

15 Applying these guides to construction,  
16 Socket's market trial is allowed by the later and more  
17 specific statutes, and Socket's market trial advances the  
18 availability of telecommunications services, promotes  
19 diversity in the supply of telecommunications services and  
20 products throughout Missouri, is consistent with flexible  
21 regulation, and allows competition consistent with  
22 protection of ratepayers and with the public interest.

23 For these reasons, the Staff recommends  
24 denial of CenturyTel's motion to suspend Socket Telecom's  
25 market trial tariff. Thank you.



1 JUDGE MILLS: Thank you. Questions from  
2 the Bench. Commissioner Murray?

3 COMMISSIONER MURRAY: I don't know that I  
4 have any questions, but thank you for a thorough analysis.

5 JUDGE MILLS: Commissioner Appling?

6 COMMISSIONER APPLING: Mr. Haas, how are  
7 you doing this morning?

8 MR. HAAS: Fine, thank you.

9 COMMISSIONER APPLING: Good. Would you  
10 address for me just a little bit about CenturyTel's  
11 concern about the operation of readiness testing, would  
12 you talk to me a little bit about it and your  
13 interpretation of that? And also talk to me about the  
14 ending time, the 12 weeks. What's your interpretation of  
15 that, if I make any sense to you?

16 MR. HAAS: Southwestern Bell has an  
17 operational readiness tariff. It looks like maybe Socket  
18 Telecom has combined two items in their tariff, one an  
19 operational readiness tariff and a marketing tariff. I'm  
20 not sure that there's any prohibition on combining those  
21 two. Maybe we wouldn't be here if they were two sections  
22 labeled differently. But there is an operational  
23 readiness aspect of Socket's tariff filing.

24 Regarding the 12-week ending time, as the  
25 market trial tariff was originally filed, it did not have

1 that -- that language in it. That was a Staff request.  
2 If you're going to view this as a promotion, it needs to  
3 have an ending period, and we had suggested an ending  
4 period, and I don't know if it was Staff or Socket that  
5 came up with the 12-week period.

6 COMMISSIONER APPLING: See any way of  
7 settling this?

8 MR. HAAS: Pardon?

9 COMMISSIONER APPLING: See any way to  
10 settle this?

11 MR. HAAS: I suppose the Commission could  
12 schedule a settlement conference and see if Socket and  
13 CenturyTel could come up with language that was acceptable  
14 to both.

15 JUDGE MILLS: I'm way ahead of you.

16 COMMISSIONER MURRAY: Judge, I had a  
17 question.

18 JUDGE MILLS: Commissioner Murray?

19 COMMISSIONER APPLING: I knew if I hung  
20 around enough, Commissioner Murray would come up with  
21 something.

22 COMMISSIONER MURRAY: Mr. Haas, no one else  
23 has filed a motion to dismiss this tariff; is that  
24 correct?

25 MR. HAAS: CenturyTel has filed the motion

1 to suspend.

2 COMMISSIONER MURRAY: I mean no one other  
3 than CenturyTel; is that correct?

4 MR. HAAS: That's correct. I don't think  
5 that Public Counsel has taken a position, and the Staff  
6 position is that the motion should be denied.

7 COMMISSIONER MURRAY: And I just want to  
8 clarify, does CenturyTel -- or does Socket's tariff apply  
9 to exchanges other than CenturyTel's?

10 MR. HAAS: I think the answer is yes. It  
11 doesn't say in there, but Socket was granted a certificate  
12 to provide service in the exchanges of Southwestern Bell,  
13 Sprint, CenturyTel and Spectra.

14 COMMISSIONER MURRAY: And there's nothing  
15 in this tariff that they filed that limits their local  
16 market trial to CenturyTel's exchanges; is that correct?

17 MR. HAAS: That's correct.

18 COMMISSIONER MURRAY: So apparently it's  
19 not a concern to the other carriers within whose exchanges  
20 they could offer this?

21 MR. HAAS: I don't know if the other  
22 carriers saw this tariff filing.

23 COMMISSIONER MURRAY: All right. But  
24 it's -- it's not Staff's recommendation that there be an  
25 attempt at settlement, it's Staff's recommendation that we

1 dismiss or we reject the motion to suspend; is that right?

2 MR. HAAS: I wouldn't say that Staff is  
3 opposed to the two parties coming together and seeing if  
4 they can work out agreeable language, but if they can't,  
5 then it would be the Staff recommendation that the motion  
6 to suspend be denied.

7 COMMISSIONER MURRAY: Did you indicate in  
8 your remarks that Staff had worked with Socket in the  
9 development of this language in the beginning in terms --  
10 I believe you mentioned the 12-week trial.

11 MR. HAAS: The tariff as originally filed  
12 did not have any ending date, and the Staff contacted  
13 Socket and said, we would like to see an ending date in  
14 it.

15 COMMISSIONER MURRAY: But Staff did  
16 thoroughly review the tariff and that was the only concern  
17 that you had at the time?

18 MR. HAAS: Yes, I believe that's so.

19 COMMISSIONER MURRAY: I think that's all.  
20 Thank you.

21 JUDGE MILLS: Thank you. Mr. Lumley?

22 MR. LUMLEY: Thank you. Again, we don't  
23 feel like we're plowing new ground here with the  
24 precedents of the SBC tariff and the other tariffs that  
25 I've discussed. And certainly we're willing to clarify

1 tariff language to meet Commission concerns. We're not  
2 particularly interested in negotiating with a competitor  
3 about what our tariff says, but if the Commission has  
4 concerns that it's not clear enough, we're willing to  
5 clarify things.

6 We don't believe that CenturyTel is engaged  
7 in a fair reading of our tariff, and we don't believe that  
8 there's any striking differences between our tariff and  
9 the SBC tariff. Whether it's expressly labeled a  
10 promotion or not at the top of the tariff page, it's  
11 labeled a trial, but we don't have any problem with adding  
12 a heading of promotional to the tariff, because we don't  
13 believe it's a substantive point anyway.

14 We disagree that there's not an end point.  
15 As Staff has indicated, there expressly is an end point.  
16 We don't believe there's a substantive difference between  
17 our 12 weeks and SBC's 8 weeks, and other carriers have  
18 had one-year-long trial tariffs.

19 We do believe that it's limited to testing.  
20 It expressly talks about testing. It's not a free trial  
21 for the customer's purpose. It's a free trial for the  
22 company's purposes and that's what the tariff says.

23 It's not marketing focused. We simply  
24 acknowledge that any time that a company has a  
25 relationship with a customer or potential customer,

1 there's always going to be a marketing aspect to it,  
2 whether you're overt about it or not. If a customer  
3 doesn't like our trial services, they're probably not  
4 going to take it on a paying basis. If they do like it,  
5 they may well sign up for it.

6 But again, this is not a wide-ranging  
7 promotion to any and all new customers. This is for the  
8 company to try its systems out on a limited basis to a  
9 limited number of people.

10 We don't have a problem -- as Commissioner  
11 Murray pointed out with her questions, it does say that a  
12 trial has an end point, and we don't believe it would be a  
13 reasonable interpretation for us to say Customer A can  
14 roll from 12-week to 12-week to 12-week, as CTel says  
15 they're worried. So we don't have any problem clarifying  
16 that, if that's necessary, but we think it's already clear  
17 from the face of the tariff.

18 The maximum of 50 customer is lower than  
19 many of the others. There's a Fidelity tariff that calls  
20 for 100 customers. I think some of the other tests were  
21 even larger than that. We don't believe that five  
22 customers is sufficient. SBC did; that's their business.  
23 We didn't feel that that was enough. If it had to be  
24 limited for an exchange, we would be looking for a number  
25 something on the order of 8 to 10 in a particular

1 exchange, if that's an absolute maximum.

2 CenturyTel pointed out the language that  
3 SBC has that says at the end of the trial they'll either  
4 discontinue the trial service or file a permanent tariff.  
5 We feel that's implicit in ours, but we don't have any  
6 objection to such language to make the point absolutely  
7 clear, if there's some concern about that.

8 A couple final points. We feel that the --  
9 it's historically accepted that market trials on a  
10 no-charge basis are permissible. SBC's tariff remains in  
11 effect. They're allowed to use that tariff any time they  
12 see fit to try out something new.

13 And my last point is, if we are going to  
14 get into some voluntary tariff changes to clarify things,  
15 we would really not want to be engaged in another full  
16 30 days of reviewing that, because we've been slowed down  
17 as it is. So we would like the review of that language to  
18 be expedited, and we would appreciate that kind of an  
19 accommodation.

20 JUDGE MILLS: Thank you. Questions from  
21 the Bench. Commissioner Murray?

22 COMMISSIONER MURRAY: Yes. Mr. Lumley, I  
23 lost a couple of things you said there on -- you  
24 indicated, as I noted, if I was correct, about four areas  
25 in which you were willing to clarify. I think I

1 understood the first one was that you would have no  
2 problem adding a heading that it's a promotional tariff?

3 MR. LUMLEY: Right.

4 COMMISSIONER MURRAY: And secondly, that  
5 you wouldn't have a problem clarifying that each customer  
6 would be limited to a 12-week trial period?

7 MR. LUMLEY: Right.

8 COMMISSIONER MURRAY: But third, I missed  
9 what you had indicated you would be willing to clarify for  
10 No. 3.

11 MR. LUMLEY: Well, another one was, we're  
12 willing to include that language from the SBC tariff that  
13 says -- expressly says at the end of the trial, we either  
14 put up or shut up basically. We either terminate the  
15 trial or we file public tariff rates. So that was either  
16 three or four, and then the other point was, if there's  
17 truly a concern about the number of -- the 50 maximum  
18 customers on a per exchange basis, we could live with an 8  
19 to 10 per exchange maximum.

20 COMMISSIONER MURRAY: Okay.

21 MR. LUMLEY: I think those were the -- I  
22 think four was the right number.

23 COMMISSIONER MURRAY: And the procedure for  
24 doing that would be to -- correct me if I'm wrong -- to  
25 withdraw the tariff and file another one or amend this



1 tariff?

2 MR. LUMLEY: We would propose to file  
3 substitute pages, and I'm just looking for a little  
4 feedback. And we can submit them tomorrow if we have to.

5 JUDGE MILLS: At this point you can't file  
6 substitute sheets, because the tariff really isn't in your  
7 hands, it's in our hands. We've suspended the tariff;  
8 it's under our jurisdiction. You can't simply file  
9 substitute sheets on a tariff that's been suspended.

10 MR. LUMLEY: Then I guess, alternatively,  
11 we'd look for direction from the Commission that says --  
12 and you've done this before on other occasions -- we don't  
13 like the tariff exactly the way it is, but if you change  
14 X, Y and Z, file it right away, and obviously you're not  
15 going to tie your hands in terms of how long you will take  
16 to approve it. I'm just indicating our preference is that  
17 it be handled expeditiously.

18 JUDGE MILLS: And there's another way to  
19 get to that, and I'll get to that a little later, when  
20 we're done with questions from the Commissioners.

21 COMMISSIONER MURRAY: I think that's all I  
22 have. Thank you.

23 JUDGE MILLS: Commissioner Davis?

24 COMMISSIONER DAVIS: No questions at this  
25 time.

1 JUDGE MILLS: Commissioner Appling?

2 COMMISSIONER APPLING: No further  
3 questions. Thank you very much.

4 JUDGE MILLS: Okay. Let me jump in here,  
5 because I think from what Mr. Dority said and what you've  
6 said, I think that the disagreements are not as large as  
7 they appeared when we first started this morning. And I  
8 understand from your point of view you're reluctant to  
9 negotiate with a competitor over what your tariff looks  
10 like and I certainly understand that.

11 However, from my point of view, I've got a  
12 contested case with two parties who happen to be  
13 competitors but from my point of view are essentially just  
14 parties to a case, who have some areas of disagreement  
15 that appear to be at least potentially resolvable.

16 And so I'm going to -- I'm not going to set  
17 a time and a place for you-all to get together and sit  
18 down and talk about this, but I am going to order that  
19 both CenturyTel and Socket file a pleading a week from  
20 today saying that we have had discussion, either jointly  
21 or separately. If you can file it together, that's fine,  
22 saying that we have had discussions, we've talked about  
23 what the concerns over the tariff are, and either resolved  
24 them or we didn't. So I'm going to require that filing.

25 I think in terms of expeditiously getting

1 to a point where your tariff can sail through, probably an  
2 easy way to do that would be for you-all to talk with  
3 CenturyTel, get a proposed tariff to the point where  
4 CenturyTel will tell you, we're not going to object to it  
5 if it looks like that, have Staff tell you, we're not  
6 going to object to it if it looks like that, then you can  
7 withdraw the tariff that's currently suspended, file a new  
8 tariff with some assurance that it won't be objected to.  
9 You can file it with a motion for expedited treatment.  
10 The Commission can act on it relatively quickly if there  
11 are no objections to it.

12 That's just a possible procedural way to  
13 get over the hump of CenturyTel's objections and get over  
14 the 30 days and further suspension, just for your  
15 consideration.

16 Is there anything further from the Bench?  
17 Yes, Commissioner Murray.

18 COMMISSIONER MURRAY: I'd like to ask  
19 Mr. Dority more questions.

20 JUDGE MILLS: Okay.

21 COMMISSIONER MURRAY: Mr. Dority, as I  
22 listened to Mr. Lumley and all the things that he said  
23 that Socket would be willing to alter on their tariff, it  
24 seemed to me that all of your objections were met.

25 MR. DORITY: Commissioner, I'm not sure if

1 that's the case or not, but as I indicated at the  
2 beginning of my remarks this morning, we'll certainly  
3 welcome the opportunity to sit down with Socket and work  
4 through these issues, and they may, in fact, address our  
5 concerns.

6 I think as I indicated in my remarks, when  
7 you look at the totality of their particular tariff, and  
8 perhaps it doesn't uniquely fit within a specific SBC  
9 tariff or the Time Warner tariff or the AT&T tariff, AT&T  
10 and Time Warner had provisions that the service they would  
11 be providing under a market trial would be priced at rates  
12 comparable to the underlying ILEC.

13 SBC has the provisioning of this particular  
14 operational readiness testing service free of charge, but  
15 again, in that particular context it's only five customers  
16 maximum for the state.

17 So again, we have to look at things in  
18 total, and I'm very hopeful that we can come to an  
19 agreement as to what a reasonable tariff would look like.

20 COMMISSIONER MURRAY: Mr. Dority, the Staff  
21 indicated, and I think correctly so, that all market  
22 trials don't have to look alike.

23 MR. DORITY: That's correct.

24 COMMISSIONER MURRAY: And I have -- I have  
25 concerns in forcing -- I mean, if we've got a tariff

1 before us that we can look at it on its face, particularly  
2 with adjustments being made to accommodate a competitor  
3 who's objecting, I have concerns forcing the party wanting  
4 to file a tariff to negotiate with a competitor before  
5 they can get consideration of their tariff. I mean, that  
6 just concerns me.

7 I think that Socket has come here today,  
8 adequately defended its tariff and offered four major  
9 changes to that tariff to accommodate the concerns that  
10 you raised. In my opinion, they addressed those concerns.  
11 I'd like to know why we should not just go forward with  
12 what we've heard today. Why should we force a  
13 negotiation?

14 MR. DORITY: I think it would give us the  
15 opportunity to -- No. 1, for me to confer with my clients  
16 and make sure that this would, in fact, address all of  
17 their concerns. I think we still have a concern in terms  
18 of how many customers are going to be getting absolutely  
19 free service in any particular exchange. Now, if we can  
20 come to some agreement as to an appropriate number, then  
21 the idea of having the service provided free of charge to,  
22 you know, two customers or three or whatever they're  
23 suggesting, that might alleviate our concern.

24 But I guess I would like to have the  
25 opportunity to confer with my client and see if we can

1 come to a reasonable accommodation. I agree with the  
2 Judge that it needs to happen very quickly. I would also  
3 suggest that the Staff be involved in those discussions so  
4 we don't have to wait for the Staff to file a responsive  
5 pleading to what the companies might file a week from  
6 today.

7 COMMISSIONER MURRAY: May I remind you that  
8 Staff is in favor of approving -- of us approving the  
9 tariff as it was filed?

10 MR. DORITY: I understand.

11 COMMISSIONER MURRAY: Staff is not  
12 indicating that there is a need to make these adjustments  
13 at all. I think Socket has come forward and offered these  
14 adjustments to accommodate CenturyTel's objections.  
15 Nobody else has objected to this tariff filing. I'm  
16 just -- I'd like to just see some reasonableness here.

17 MR. DORITY: I agree. And we are --  
18 believe me, we are not wanting to appear to be  
19 unreasonable in this, but we have identified what we feel  
20 are some very serious concerns. And what Mr. Lumley is  
21 indicating they might be willing to do, I would simply  
22 like to visit with my client and see if we can reach an  
23 accommodation. And we can do it on a shorter time frame  
24 than a week, if you'd like for us to do that.

25 COMMISSIONER MURRAY: Are you indicating

1 that your client is not available to consult with as to  
2 whether those accommodations -- and it was not my  
3 understanding that he said they might be willing. I  
4 thought he said they would be willing. I'm getting a nod.

5 MR. LUMLEY: Yes. For the record, yes.

6 MR. DORITY: I'm just saying I have not had  
7 the opportunity to confer with my client this morning when  
8 I've been sitting here at counsel table. I don't think it  
9 will take an extraordinary amount of time for me to be  
10 able to do that.

11 COMMISSIONER MURRAY: Do you think it could  
12 be a short conversation that, in other words, we could  
13 recess for and come back and determine?

14 MR. DORITY: That may well be,  
15 Commissioner.

16 COMMISSIONER MURRAY: Judge, I would  
17 suggest that.

18 JUDGE MILLS: I'm certainly amenable to  
19 that, if you think that would be helpful. Is there  
20 anything further from the Bench right now?

21 (No response.)

22 JUDGE MILLS: Okay. Mr. DORITY, how long  
23 do you think you need to confer with your client?

24 MR. DORITY: Could we take 30 minutes?

25 JUDGE MILLS: We'll go off the record and

1 we'll be back on the record at 11:30. Off the record.

2 (A BREAK WAS TAKEN.)

3 JUDGE MILLS: Let's go back on the record.

4 We're back on the record in Case No. TT-2005-0089. We've  
5 had a brief recess to allow the parties to confer.

6 Mr. Lumley, can you tell us where we are  
7 here?

8 MR. LUMLEY: Judge, I just want to on the  
9 record state the specific changes to the tariff that we're  
10 willing to make. First, we would change the heading to  
11 local market operational readiness trial. Secondly, in  
12 Section 8.1.1, which is entitled purpose, we would add an  
13 additional sentence that reads as follows: At or before  
14 the end of the 12-week testing period, the company will  
15 either make a tariff filing to add the product or service  
16 to its tariff or discontinue the test.

17 In Section 8.1.2, which is entitled  
18 eligibility, we would add the following phrase at the end:  
19 With a maximum of 10 participants in any particular  
20 exchange. And finally in Section 8.1.3, which is entitled  
21 availability, we would add a final sentence: Involvement  
22 of any particular customer in a trial will not exceed  
23 12 weeks. Just to clarify those points for the record.

24 JUDGE MILLS: Okay. Thank you. And,  
25 Mr. Dority?



1 MR. DORITY: Thank you, your Honor. I  
2 appreciate the Commission's indulgence to allow us to have  
3 the opportunity to confer on this matter, and we can  
4 support Mr. Lumley's modifications to his tariff and would  
5 agree to those changes as he just outlined.

6 JUDGE MILLS: So in other words, if Socket  
7 were to withdraw the currently pending tariff filing,  
8 refile with those specific changes, CenturyTel would not  
9 object to the tariff; is that correct?

10 MR. DORITY: We would not object, and we  
11 certainly would not stand in the way if they wish to file  
12 a motion for expedited treatment to allow the Commission  
13 to do this on an expedited basis as well. Thank you.

14 JUDGE MILLS: And Staff?

15 MR. HAAS: The proposed changes are also  
16 acceptable to the Staff.

17 JUDGE MILLS: Thank you. Are there any  
18 questions from the Bench?

19 COMMISSIONER MURRAY: I'd just like to  
20 thank all of the parties for working to a quick  
21 resolution.

22 JUDGE MILLS: Thank you.

23 COMMISSIONER APPLING: Thank you very much  
24 CenturyTel, Mr. Lumley, Staff. I wish we could work out  
25 some other orders that we have as we did this morning.

1 Thank you very much, and you-all have a good day.

2 JUDGE MILLS: Is there anything further we  
3 need to do before we go off the record?

4 (No response.)

5 JUDGE MILLS: All right. Thank you. We're  
6 off the record.

7 WHEREUPON, the oral argument in this case  
8 was concluded.

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