

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

**FILED<sup>2</sup>**  
AUG 07 2006

SOCKET TELECOM, LLC,

Complainant,

v.

MCI COMMUNICATIONS  
SERVICES, d/b/a VERIZON  
BUSINESS SERVICES,

Respondent.

**Missouri Public  
Service Commission**

Case No. TC-2006-0479

**ANSWER AND COUNTERCLAIM**

COMES NOW, MCI Communications Services, Inc., d/b/a Verizon Business Services, Respondent in the above-styled action, and for its Answer and Counterclaim, respectfully shows as follows:

**DEFENSES**

1. The Commission is without jurisdiction to hear the instant dispute, as the services which are the subject of the Complaint are interstate in nature, and neither regulated by this Commission nor subject to its jurisdiction.
2. In the alternative, to the extent the services which are the subject of the Complaint are intrastate in nature, the Complaint fails to state a claim upon which relief may be granted, as the services are exclusively subject to tariffs on file with the State and governed solely by the rates, terms and conditions therein.
3. The Commission is without jurisdiction to hear the instant dispute, as the parties have chosen a forum other than the Public Service Commission to hear disputes or proceedings arising under the Agreement between them.

Verizon responds to the individually numbered paragraphs as follows:

1. Responding to the averments of paragraph 1, Verizon denies that Socket is entitled to the relief it seeks, admits that it has indicated an intent to discontinue provision of services to Socket for nonpayment, and has, unsuccessfully, sought to resolve the dispute with Socket. Verizon denies all other averments contained in paragraph 1, except that it notes the judicial admission of Socket that it uses the circuits for local and intraLATA exchange service in a manner which appears to violate its representations in the Agreement between the parties.

2. Verizon is without sufficient information to either admit or deny the averments of paragraph 2.

3. Paragraph 3 does not require affirmative response by Respondent.

4. Verizon admits the averments of paragraph 4, except that service of pleadings and notices in the instant proceeding, should instead be made to:

Bruce D. Cohen  
Associate General Counsel  
Verizon  
600 Hidden Ridge Drive, HQE03J27  
Irving, Texas 75038  
bruce.d.cohen@verizon.com

and

Tina M. Crow Halcomb  
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### **Jurisdiction**

5. Responding to the averments of paragraph 5, Verizon denies the jurisdiction of this Commission over the instant proceeding, as the Commission's jurisdiction does not

extent to interstate facilities, or to complaints respecting interstate facilities, including the dedicated, private-line services at issue in this proceeding.

### **Count I**

6. Responding to the averments of paragraph 6, Verizon admits the existence of an Agreement between Socket and Verizon, the terms of which speak for themselves. Verizon is without sufficient information to admit or deny all other averments contained in paragraph 6.

7. Responding to the averments of paragraph 7, Verizon admits that it submitted rate quotations to Socket, the terms of which speak for themselves. Verizon denies all other averments contained in paragraph 7.

8. Responding to the averments of paragraph 8, Verizon admits that it charged the lawful rates and charges pursuant to the Agreement between Socket and Verizon, the terms of which speak for themselves, and admits that Socket has disputed the charges appearing on its statements. Verizon denies all other averments contained in paragraph 8.

9. Responding to the averments of paragraph 9, Verizon admits that it provided credits to Socket as an accommodation to an existing customer, but denies that it committed (or recognized) any error. Verizon further admits that it has charged the lawful rates and charges pursuant to the Agreement between Socket and Verizon, the terms of which speak for themselves, and admits that Socket has disputed the charges appearing on its statements. Verizon denies all other averments contained in paragraph 9.

10. Responding to the averments of paragraph 10, Verizon admits that it is a party to the Agreement between it and Socket, the terms of which speak for themselves. Verizon denies all other averments contained in paragraph 10 of the Complaint.

## **Count 2**

11. Responding to the averments of paragraph 11, Verizon admits the existence of an Agreement between Socket and Verizon, the terms of which speak for themselves. Verizon is without sufficient information to admit or deny all other averments contained in paragraph 11.

12. Responding to the averments of paragraph 12, Verizon admits that it submitted rate quotations to Socket, the terms of which speak for themselves. Verizon denies all other averments contained in paragraph 12.

13. Responding to the averments of paragraph 13, Verizon admits that it charged the lawful rates and charges pursuant to the Agreement between Socket and Verizon, the terms of which speak for themselves, and admits that Socket has disputed the charges appearing on its statements. Verizon denies all other averments contained in paragraph 13.

14. Responding to the averments of paragraph 14, Verizon admits that it provided credits to Socket as an accommodation to an existing customer, but denies that it committed (or recognized) any error. Verizon further admits that it has charged the lawful rates and charges pursuant to the Agreement between Socket and Verizon, the terms of which speak for themselves, and admits that Socket has disputed the charges appearing on its statements. Verizon denies all other averments contained in paragraph 14.

15. Verizon denies the averments of paragraph 15.

### **Count 3**

15. Responding to the averments of the second paragraph 15, Verizon admits the existence of an Agreement between Socket and Verizon, the terms of which speak for themselves. Verizon is without sufficient information to admit or deny all other averments contained in paragraph 15.

16. Responding to the averments of paragraph 16, Verizon admits that it submitted rate quotations to Socket, the terms of which speak for themselves. Verizon denies all other averments contained in paragraph 16.

17. Responding to the averments of paragraph 17, Verizon admits that it charged the lawful rates and charges pursuant to the Agreement between Socket and Verizon, the terms of which speak for themselves.

18. Verizon denies the averments of paragraph 18.

### **COUNTERCLAIM**

Verizon denies the jurisdiction of this Commission over the instant dispute, and denies the necessity of its seeking relief in the instant proceeding. Subject to the foregoing, and solely for the purposes of specially pleading its cause of action in the event jurisdiction is exercised by this Commission, Verizon respectfully pleads as follows:

1. Socket, by bringing the underlying action, has asserted the jurisdiction of this Commission, and to the extent that the Commission has jurisdiction over this matter, has subjected itself to the jurisdiction of this Commission for purposes of claims related to the underlying action.

2. Pursuant to the Paragraph 11 of the Agreement between the parties which is the subject of the underlying action, Socket was required to make an express representation that its interstate use of the Interexchange Service provided thereunder was greater than ten percent (10%) of the total traffic on special access lines comprising Local Access associated with the Interexchange Service, as those terms are defined therein.

3. The same Paragraph of the Agreement specifies that:

If it is determined at any time that such Interexchange Service or circuit is subject to state regulation, [Verizon] may (i) provide the Interexchange Service pursuant to applicable state laws, regulations and tariffs, (ii) assign the Interexchange Service or circuit to an affiliated company to be provided in accordance with such affiliated company's tariff, or (iii) discontinue provision of the affected Interexchange Service or circuit.

4. Verizon does not have an affiliated company with a tariff under which the services in question may be provided.

#### **Count I – Claim on an Open Account**

5. Verizon restates and incorporates the averments of paragraphs 1 through 4 of its Counterclaim, as if stated herein.

6. To the extent that the services provided are subject to state regulation, Verizon is required to provide them at the tariffed rates, rather than at the contractual rate specified in the Agreement, or, alternatively, to discontinue such service.

7. In such event, the amount due and owing for Verizon's provision of such service at the tariffed rate is approximately \$475,082 less credits for amounts already paid.

8. Therefore, in the event that this Commission has jurisdiction over the underlying action, Verizon is entitled to a judgment in counterclaim against Socket in the amount of \$475,082, less credits for amounts already paid.

## **Count II – Termination**

9. Verizon restates and incorporates the averments of paragraphs 1 through 4 of its Counterclaim, as if stated herein.

10. To the extent that the services provided are subject to state regulation, Verizon is required to provide them at the tariffed rates, rather than at the contractual rate specified in the Agreement, or, alternatively, to discontinue such service.

11. To the extent that the Commission grants interim relief limiting Verizon's contractual and common-law rights to discontinue service to Socket for nonpayment of sums due, Verizon is authorized by tariff to discontinue its service.

12. Verizon, therefore, is entitled to a Order from this Commission permitting it to discontinue service to Socket.

WHEREFORE, having fully answered each and every averment of the Complainant, and having specially pleaded its Counterclaim for the limited purpose of protecting its interests, Verizon respectfully prays that the Commission:

- (1) Dismiss the instant action for want of jurisdiction;
- (2) Dismiss the instant action as moot;
- (3) Grant a Decision against Socket and in favor of Verizon on Socket's claim for an abatement of amounts due;
- (4) Grant a Decision against Socket and in favor of Verizon on Verizon's specially pleaded counterclaim; and

(5) Grant such other and further relief as may be appropriate.

This 7 day of August, 2006.

Respectfully submitted,



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Counsel for Respondent



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was sent by prepaid first class mail / facsimile transmission to David L. Woodsmall, counsel for Complainant, and Bruce D. Cohen, counsel for Respondent, at their addresses shown in the pleadings on this 7 day of August, 2006.

  
Tina M. Crow Halcomb