

FILED²

APR 25 2006

Missouri Public
Service Commission

Exhibit No.:

Issue(s): Article II (Definitions); Article VII
(UNEs)

Witness: Alfred Busbee

Type of Exhibit: Rebuttal Testimony

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

Case No.: TO-2006-0299

Date Testimony Prepared: April 6, 2006

REBUTTAL TESTIMONY

OF

Alfred Busbee

ON BEHALF OF

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

CASE NO. TO-2006-0299

Exhibit No. M
Case No(s) TO-2006-0299
Date 1-12-06 Rptr KF

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

CASE NO. TO-2006-0299

STATE OF ARKANSAS

COUNTY OF PULASKI

AFFIDAVIT OF ALFRED W. BUSBEE

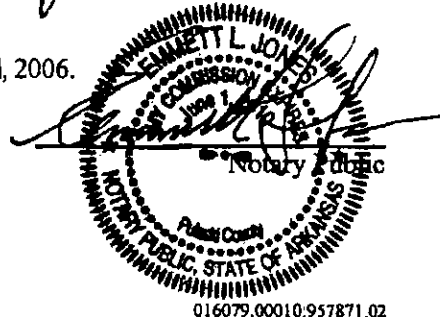
I, Alfred W. Busbee, of lawful age and being duly sworn, state:

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

Alfred W. Busbee
Alfred W. Busbee

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

My Commission expires: 6/1/2010



016079.00010:957871.02

TABLE OF CONTENTS

I. DISPUTED DEFINITION OF “DEDICATED TRANSPORT” IN ARTICLES II & VII.....	1
Article II (Issue 6)—Socket Issue Statement: Can CenturyTel avoid its obligation to provide currently available services at parity by shifting the ability to provide those services to an affiliate: CenturyTel Alternative Issue Statement: Should the parties’ ICAs extend obligations to CenturyTel affiliates?.....	1
Article II (Issue 34) & Article VII (Issue 32) – What is the appropriate definition for “dedicated transport” that should be incorporated into the parties’ Agreement?	2
II. ARTICLE VII DISPUTED ISSUES	7
ISSUE 22: (A) If CenturyTel asserts that it cannot provision a UNE, should it be required to provide a “reasonably detailed” explanation of the reason why it cannot provide the requested UNE?	
(B) If the reason CenturyTel cannot provide the requested UNE is due to lack of facilities, should CenturyTel be required to identify any capacity it is reserving for itself, and to submit to Socket and the Commission a construction plan for expanding its facilities?.....	7
UNE ISSUE 35: Should Article VII, Section 7.10.1 include a provision that, consistent with the FCC’s rules, imposes a cap of 10 on the number of unbundled DS1 dedicated transport circuits Socket may obtain on each route where DS1 dedicated transport is available on an unbundled basis?.....	14
III. CONCLUSION	18

1 **REBUTTAL TESTIMONY OF ALFRED BUSBEE**
2 **ON BEHALF OF CENTURYTEL OF MISSOURI, LLC AND SPECTRA**
3 **COMMUNICATIONS GROUP, LLC d/b/a CENTURYTEL**

4 **Q. PLEASE STATE YOUR NAME.**

5 A. My name is Alfred Busbee.

6 **Q. ARE YOU THE SAME ALFRED BUSBEE WHO FILED DIRECT TESTIMONY IN**
7 **THIS PROCEEDING?**

8 A. Yes.

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

10 A. My direct testimony supported the appropriate definition of "Dedicated Transport" disputed
11 in Article II (Issue 34) and Article VII (Issue 32). In addition, I addressed UNE Issues 22 and
12 35 in Article VII. In an effort to help the Commission correlate my rebuttal testimony with
13 my direct testimony, I have addressed the issues in the order I addressed them in my direct
14 testimony. I have also included a related response to Article II, Issue 6, which rebuts Mr.
15 Kohly's discussion of that issue. Mr. Simshaw also addresses this issue.

16 **I.**
17 **DISPUTED DEFINITION OF**
18 **"DEDICATED TRANSPORT" IN ARTICLES II & VII**

19 **Article II (Issue 6)—Socket Issue Statement: Can CenturyTel avoid its**
20 **obligation to provide currently available services at parity by shifting the**
21 **ability to provide those services to an affiliate:**

22 **CenturyTel Alternative Issue Statement: Should the parties' ICAs extend**
23 **obligations to CenturyTel affiliates?**
24

1 **Article II (Issue 34) & Article VII (Issue 32) – What is the appropriate**
2 **definition for “dedicated transport” that should be incorporated into the**
3 **parties’ Agreement?**

4 **Q. WITH RESPECT TO THE DEFINITION OF “DEDICATED TRANSPORT” IN**
5 **ARTICLE II, ISSUE 34, AND ARTICLE VII, ISSUE 32, DO YOU HAVE ANY**
6 **GENERAL COMMENTS ON THE DIRECT TESTIMONY OF MATTHEW**
7 **KOHLI?**

8 **A. Yes. At the outset, I would point out that Mr. Kohly’s testimony never even mentions the**
9 FCC’s definition of “dedicated transport,” which is in some circumstances subject to the
10 unbundling that Socket seeks. Choosing to ignore the FCC’s definition—that is, incumbent
11 LEC transmission facilities between wire centers or switches owned by incumbent LECs, or
12 between wire centers or switches owned by incumbent LECs and switches owned by
13 requesting telecommunications carriers—Mr. Kohly prefers to extend his argument that the
14 Commission should ignore the lawful definitions and apply incumbent-LEC unbundling
15 obligations to non-incumbent LECs or even non-LECs. *See* Article II, Issue No. 6: (“Should
16 the parties’ ICA extend obligations to CenturyTel affiliates?”)

17 Still worse, Mr. Kohly chooses a basis for his attack that this Commission rejected in
18 the context of a dispute between these parties just months ago—that is, Mr. Kohly again
19 suggests that the Commission should disregard the legal organization of the separate
20 CenturyTel companies to promote an outcome that Socket seeks. *See* Kohly at 35:6-35:15;
21 *see also In the Matter of the Confirmation of Adoption of an Interconnection Agreement with*
22 *CenturyTel of Missouri, LLC d/b/a CenturyTel and Spectra Communications Group, LLC*
23 *d/b/a CenturyTel by Socket Telecom, LLC, Case No. CO-2005-0066, Report and Order*
24 (effective December 24, 2004) at 13-17.

1 However, Dedicated Transport has been determined to be subject to unbundling only
2 between the wire centers or the central offices of the incumbent LEC from which Socket, as a
3 requesting carrier, may seek such facilities.¹ Because CenturyTel of Missouri, LLC and
4 Spectra Communications Group, LLC are separate incumbent LECs, Socket may not bind
5 them as if they were one. In seeking arbitration pursuant to section 252(b) of the FTA,
6 Socket acknowledged that negotiations were with CenturyTel of Missouri LLC and Spectra
7 Communications Group, LLC. As CenturyTel witness, Mr. Calvin Simshaw, testified, each
8 of these incumbent LECs is negotiating and arbitrating a separate interconnection agreement
9 with Socket. The two CenturyTel incumbent LECs agreed to a joint proceeding in this
10 matter solely as a convenience to the Commission and the parties. The terms of an
11 Interconnection Agreement between the individual parties can only bind the parties that are
12 signatories to the Agreement. Accordingly, an agreement must only contain terms and
13 conditions applicable to the parties governed by the agreement. See Simshaw Direct at
14 44:17-22.

15 Going further, in the context of Article II, Issue No. 6 (definition of "Currently
16 Available"), Mr. Kohly suggests that CenturyTel Fiber II d/b/a Lightcore should also be
17 bound by the agreements that result from this arbitration. See Kohly Direct at 24-27. Socket
18 seeks to bind non-parties to the negotiations and non-signatories to the agreement, despite the
19 clear import of Socket's Petition for Arbitration that the only parties to the negotiations or to
20 the resulting agreements are Socket and the respective incumbent LECs, CenturyTel of

¹ See *In the Matter of Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, at ¶66-68, 136-138 (released February 4, 2005) ("Triennial Review Remand Order" or "TRRO"). The TRRO also places other restriction upon the availability of Unbundled Dedicated Transport, but these are significant only to the scope of unbundling, not the definition itself.

1 Missouri, LLC or Spectra Communications Group, LLC. CenturyTel of Missouri, LLC,
2 Spectra Communications Group, LLC, and Lightcore are separate legal entities.

3 Even Socket's "equity" arguments do not hold water for at least four reasons. First,
4 CenturyTel's purchase of certain transport services between certain points in its network is
5 not made to avoid unbundling—the CenturyTel incumbent LECs must only unbundle what
6 they have, and they are not required to deploy or build facilities for the purpose of providing
7 unbundled capacity. At the same time, the CenturyTel incumbent LECs purchase their
8 services from Lightcore on an arm's-length basis. Because Lightcore is a common carrier,
9 anyone seeking to purchase transport services from Lightcore could do so on a non-
10 discriminatory basis, on just and reasonable rates, terms, and conditions. That is, Socket
11 could obtain the same transport services at the CenturyTel incumbent LECs' costs. Second,
12 contrary to Socket's implication, Lightcore's existence is not the result of the "spin-off" of
13 one or more of the CenturyTel incumbent LECs' assets to a non-incumbent LEC. Setting
14 aside the fact that the incumbent LEC obligations would potentially follow the assets under
15 Section 251(h)(1)(B)(ii) if an incumbent were to attempt to spin-off part of its franchise
16 territory to a different entity to avoid its Section 251(c) obligations, CenturyTel, Inc.'s
17 ownership of Lightcore presents a stark contrast to a "spin-off." Lightcore and both
18 CenturyTel of Missouri and Spectra Communications Group are the result of a series of four
19 *acquisitions* from four different carriers.² Third, Socket's contentions that it cannot obtain
20 functionality equivalent to the enhanced extended link ("EEL") without conscripting

² CenturyTel acquired the assets of Spectra Communications Group, LLC from GTE in 2000 and the assets of CenturyTel of Missouri, LLC from Verizon in 2002. Subsequently, the assets making up Lightcore were acquired from different transactions involving Digital Teleport, Inc. and Level 3 Communications, Inc.

1 Lightcore facilities is incorrect. Contrary to what Mr. Kohly suggests, unlike an end-to-end
2 EEL, which does have a collocation requirement at the Dedicated Transport end of the link,
3 Socket may obtain an unbundled loop from CenturyTel and combine it to transport provided
4 by a third-party, provided Socket has appropriate arrangements with both the incumbent LEC
5 and the transport provider. There is no impediment to Socket's provisioning issues that it
6 cannot cure through placing and coordinating orders. Specifically, I point to undisputed
7 Article VII: UNEs, Sec. 2.12, which acknowledges Socket's right to combine a UNE loop
8 with a Socket facility provided by a third-party.³ Fourth, extending interconnection
9 agreement obligations to Lightcore, a non-party to this action that has not been subject to an
10 obligation or opportunity to negotiate, was not "cited" with the arbitration, or afforded notice
11 and an opportunity to be heard, would be both unfair and contrary to what I understand to be
12 the negotiate-before-you-arbitrate framework of the Act.

13 **Q. ARE THERE ANY ERRORS IN MR. KOHLY'S TESTIMONY ADDRESSING**
14 **DEDICATED TRANSPORT?**

15 A. Yes. On page 35 of his Direct Testimony, Mr. Kohly says that dedicated transport is
16 currently available for interconnection purposes between CenturyTel of Missouri, LLC and

³ Article VII, Sec. 2.12, provides

CenturyTel will provide Socket nondiscriminatory access to the unbundled Network Elements identified and provided for in this Article, including combinations of Network Elements and Unbundled Network Elements, to the extent required by Applicable Law and subject to the terms and conditions of this Article. Socket is not required to own or control any of its own local exchange facilities before it can purchase or use Network Elements or the Unbundled Network Elements identified in this Article to provide a telecommunications service under this Agreement. CenturyTel will allow Socket to order each Unbundled Network Element individually or in combination with any other Network Elements or any other Unbundled Network Elements in order to permit Socket to combine such Unbundled Network Elements with other Unbundled Network Elements or Network Elements obtained from CenturyTel or with network components provided by itself or by third parties to provide telecommunications services to its customers, provided that such combination is technically feasible and would not impair the ability of other carriers to obtain access to other Unbundled Network Elements or to interconnect with CenturyTel's network. Any request by Socket for CenturyTel to provide a type of connection between Network Elements that is not currently being utilized in the CenturyTel network and is not otherwise provided for under this Agreement will be made in accordance with the Bona Fide Request (BFR) process described in Section 2.38. (emphasis added)

1 Spectra Communications Group, LLC. This is incorrect. Mr. Kohly's conclusion appears to
2 be based on a reference in a prior Commission Order that recognized the fact that the two
3 companies use a single ordering system and share administrative resources. The quotation
4 carved from the order does not support Socket's desired conclusion that dedicated transport
5 must be unbundled between the separate incumbent LECs' wire centers or central offices.

6 **Q. DO YOU AGREE WITH MR. KOHLY'S CONCLUSIONS, BEGINNING ON PAGE**
7 **36 OF HIS TESTIMONY, REGARDING THE FCC'S DISCUSSION OF SECTION**
8 **251(F) WITH REGARD TO THE DEFINITION OF DEDICATED TRANSPORT?**

9 A. No. Mr. Kohly cites the FCC's discussion on rural exemptions out of context. The citation
10 Mr. Kohly referenced in the *Local Competition Order*, adopted in 1996, deals strictly with
11 exemptions, suspension and modifications. Neither CenturyTel of Missouri, LLC nor
12 Spectra Communications Group, LLC is currently seeking an exemption, suspension or
13 modification of Section 251 requirements for dedicated transport. In the cited portion of the
14 *Local Competition Order*, the FCC clarified as a matter of statutory construction that total
15 company access lines, measured at the holding company level, was to be the benchmark
16 established for determining whether or not an incumbent LEC may petition the state
17 commission for relief of the requirements set forth under Section 251. In that context, the
18 FCC determined that the state commission must consider total access lines at the holding
19 company level when deciding if a carrier is eligible to petition for a suspension or
20 modification of unbundling requirements. The FCC did not otherwise address specific
21 unbundling requirements that were subsequently defined, and this Commission is not
22 presented with the kind of statutory analysis in which the FCC was engaged.

1 Q. HOW SHOULD THE ARBITRATOR RULE ON THESE ISSUES?

2 A. The Arbitrator should adopt CenturyTel's language on Article II, Issues 6 and 34, and
3 Article VII, Issue 32.

4
5 II.

6 ARTICLE VII DISPUTED ISSUES

7 ISSUE 22: (A) If CenturyTel asserts that it cannot provision a UNE, should
8 it be required to provide a "reasonably detailed" explanation of the reason
9 why it cannot provide the requested UNE?

10 (B) If the reason CenturyTel cannot provide the requested UNE is due
11 to lack of facilities, should CenturyTel be required to identify any capacity it
12 is reserving for itself, and to submit to Socket and the Commission a
13 construction plan for expanding its facilities?

14
15 Q. MR. KOHLY ASSERTS THAT SOCKET IS RAISING ISSUE 22 BECAUSE
16 CENTURYTEL HAS ASSERTED, "ON SEVERAL OCCASIONS," THAT IT HAS
17 LACKED FACILITIES TO PERMIT SOCKET TO INTERCONNECT AND IS
18 CONCERNED THAT CENTURYTEL WILL USE "NO FACILITIES" AS A REASON
19 TO NOT PROVISION UNES THAT SOCKET ORDERS. CAN YOU PLEASE
20 RESPOND?

21 A. Mr. Kohly's fears are unfounded and are not based on any substantiated facts. Indeed, Mr.
22 Kohly completely mischaracterizes the facts pertaining to the parties' history. His testimony
23 alleges that CenturyTel deliberately and systematically denies its competitors interconnection
24 and access to UNES in an effort to thwart competition. Mr. Kohly would have the
25 Commission believe that CenturyTel unilaterally denies CLEC requests, provides no
26 explanation, and refuses to work with carriers to identify alternatives or construction plans to
27 expand network functionality in order to accommodate the requesting carrier. That simply is
28 not the case.

29 Mr. Kohly testifies, beginning on page 101 of his direct testimony, that there have
30 been instances where Socket's request for interconnection was denied. He also makes vague

1 and unsubstantiated allegations of “similar instances.” *See* Kohly Direct at 102:3. These
2 allegations are not true, and the “facts” Mr. Kohly uses to support his allegations are
3 completely mischaracterized. For example, with respect to the one specific allegation he
4 makes concerning Socket’s purported attempt to “interconnect with CenturyTel in the
5 Branson area in late 2004[,]” Mr. Kohly suggests that CenturyTel denied Socket’s request for
6 interconnection. That is not the case. It is true, as the Commission should be aware, that
7 CenturyTel was experiencing switch port capacity issues in Branson in late 2004. As
8 CenturyTel witness, Guy Miller, further explains, CenturyTel was in the process of
9 augmenting capacity at that time, and that capacity limitation coincided with the
10 simultaneous requests for interconnection from numerous carriers. During this timeframe,
11 CenturyTel explained the situation to Socket in a planning meeting—not in response to
12 rejecting any Socket order. What Mr. Kohly does not state in his testimony is that
13 CenturyTel in fact augmented port capacity in the Branson area and, upon completion of the
14 augment, made interconnection available for any carrier that had a pending order for
15 interconnection in place. Notably, Socket never placed an order for interconnection in
16 Branson, either before the capacity issue was discussed or after the augment when
17 interconnection was made available to requesting carriers. Accordingly, CenturyTel never
18 denied a Socket request for interconnection because none was ever submitted. Nor did
19 CenturyTel deny any other carrier since all orders were worked pursuant to an availability
20 schedule that had been worked out with each carrier. *See also* Miller Rebuttal at 33-34.

21 On page 103 of his direct testimony, Mr. Kohly further contends that “[o]ne type of
22 order that CenturyTel rejected claiming lack of facilities was Socket’s order to lease

1 interconnection facilities from CenturyTel[.]” It is unclear whether, by this, Mr. Kohly is
2 referring to the Branson situation in 2004, or some other alleged order rejection. In either
3 case, however, the statement is not true. CenturyTel has never rejected a Socket order for
4 interconnection due to lack of facilities. *See* Miller Rebuttal at 33-34. It appears Mr. Kohly
5 is mischaracterizing facts in order to justify its position that unduly burdensome provisions
6 should be incorporated into the Agreement. While the provision Socket proposes in UNE
7 Article, Section 2.37 (Issue 22) suffers several other defects, it clearly is not justified by Mr.
8 Kohly’s contorted and disingenuous version of history.

9 Mr. Kohly also disingenuously mischaracterizes the facts in the Fulltel Complaint
10 referenced on page 102 of his testimony. The dispute in that case was not about a UNE
11 request but rather about the jurisdictional nature of traffic to be exchanged on the
12 interconnection facilities between the parties. More to that point, Mr. Kohly takes a sentence
13 out of context from the Commission’s Order Directing Filing. Following is the sentence
14 with the proper context:

15 The Commission will require the parties to file a joint pleading, including
16 affidavits stating whether FullTel will provide local service pursuant to the
17 interconnection agreement at issue in this case. If the parties are unable to agree
18 on this fact, the Commission will expect them to file pleadings so stating, and to
19 state specifically their belief about what nature of traffic will travel through the
20 anticipated interconnection.

21
22 Additionally, the Commission is aware that CenturyTel has made the argument
23 that it is not able to handle the volume of traffic FullTel intends to deliver. The
24 Commission will require the parties to indicate whether CenturyTel’s statement
25 stems from technical infeasibility or network inefficiency. (emphasis added).
26

1 The Fulltel case has not been fully adjudicated. However, Mr. Kohly's suggestion that
2 CenturyTel's position regarding non-local traffic in the Fulltel case is further evidence of
3 Socket's concerns is unfounded.

4 **Q. MR. KOHLY SUGGESTS THAT SOCKET'S PROPOSED LANGUAGE IS**
5 **NECESSARY TO DETER CENTURYTEL FROM CLAIMING A LACK OF**
6 **FACILITIES WHEN SUCH FACILITIES ACTUALLY EXIST. CAN YOU PLEASE**
7 **RESPOND?**

8 **A.** Yes. There is no justification for Socket's proposed language in UNE Article, Section 2.37.

9 As I stated above, CenturyTel has never rejected a Socket request for interconnection due to
10 lack of facilities. See Miller Rebuttal at 33-34. As CenturyTel witnesses Guy Miller and
11 Marion Scott both testify, CenturyTel neither reserves capacity for its own use nor maintains
12 significant amounts of excess capacity due to its very low consumer demand. Therefore, any
13 capacity that exists is made available to Socket (or any other requesting carrier) when it
14 makes a valid request. If no capacity exists, the capacity will need to be built. See also
15 Miller Rebuttal at 26-27; Scott Rebuttal at 13.

16 **Q. IN A QUESTION POSED BY SOCKET ON PAGE 103 OF MR. KOHLY'S DIRECT**
17 **TESTIMONY, SOCKET ASSERTS THAT ITS PROPOSED LANGUAGE IN**
18 **SECTION 2.37, AMONG OTHER THINGS, "WOULD "REQUIRE CENTURYTEL**
19 **TO PROVIDE A COPY OF AN ASSERTION IT MAKES TO SOCKET THAT IT**
20 **LACKED FACILITIES" TO THE PSC'S MANAGER OF THE DEPARTMENT OF**
21 **TELECOMMUNICATIONS. IS THIS AN ACCURATE INTERPRETATION OF**
22 **THE ISSUE?**

23 **A.** No. According to the language of Section 2.37, which Socket proposed, CenturyTel would
24 have to provide a "detailed explanation" to Socket in the event CenturyTel asserts it does not
25 have the ability to provide a UNE requested by Socket. Socket's question, to the extent it
26 suggests that CenturyTel would have to provide this same explanation to the PSC's Manager

1 of the Department of Telecommunications, is misleading as that is not what Socket's
2 proposed language purports to require.

3 **Q. DOES CENTURYTEL DISPUTE SOCKET'S PROPOSAL THAT CENTURYTEL BE**
4 **REQUIRED TO PROVIDE SOCKET WITH A "DETAILED EXPLANATION" IN**
5 **THE EVENT CENTURYTEL ASSERTS IT DOES NOT HAVE THE ABILITY TO**
6 **PROVIDE A REQUESTED UNE?**

7 A. No. This particular issue in Section 2.37 has been resolved. However, I would like to
8 reiterate that CenturyTel never contended that it would not provide Socket with an
9 explanation in the event CenturyTel denied a Socket request for a UNE. Earlier in
10 negotiations, the parties had disputed whether CenturyTel should provide Socket with a
11 "detailed explanation" (Socket's proposal) or a "reasonably detailed explanation"
12 (CenturyTel's proposal). CenturyTel's proposal was based on its concern that, given the tone
13 and the nature of the obligations in Socket's proposed Section 2.37, Socket likely would
14 dispute whether CenturyTel's explanation was ever detailed enough. Nevertheless,
15 CenturyTel has consistently stated in negotiations that the level of detail it would provide
16 would be sufficient for Socket to understand the reason for any UNE order denial. This issue
17 was settled when CenturyTel accepted Socket's proposed "detailed explanation" language.

18 **Q. IF CENTURYTEL WERE TO REJECT A SOCKET UNE ORDER DUE TO LACK**
19 **OF FACILITIES, SOCKET'S PROPOSED LANGUAGE IN ARTICLE VII,**
20 **SECTION 2.37, WOULD REQUIRE CENTURYTEL TO IDENTIFY ANY**
21 **CAPACITY THAT CENTURYTEL IS RESERVING FOR ITS OWN USE. IS THIS**
22 **REASONABLE OR NECESSARY?**

23 A. No. It is neither reasonable nor necessary. First, as I stated above, because of CenturyTel's
24 rural network and lack of demand growth, CenturyTel does not maintain much idle or spare
25 capacity in its network. Furthermore, CenturyTel does not reserve capacity for its own future
26 growth. Whatever spare capacity is available is made available equally to CenturyTel and

1 any other requesting carrier. *See also* Miller Rebuttal at 26-27; Scott Rebuttal at 13. That
2 notwithstanding, even if CenturyTel did reserve capacity for its own future use, there is no
3 obligation under applicable law to provide Socket with such sensitive information. *See also*
4 Miller Rebuttal at 22-24. Socket's proposed language purporting to require CenturyTel to
5 identify its reserved capacity is unnecessary. It also is unreasonable to require CenturyTel in
6 the Agreement to provide information on something it does not do, particularly where no
7 obligation to do so exists under applicable law.

8 **Q. IF CENTURYTEL WERE TO REJECT A SOCKET UNE ORDER DUE TO LACK**
9 **OF FACILITIES, SOCKET'S PROPOSED LANGUAGE IN ARTICLE VII,**
10 **SECTION 2.37, ALSO WOULD REQUIRE CENTURYTEL TO SUBMIT TO BOTH**
11 **SOCKET AND THE COMMISSION A CONSTRUCTION PLAN FOR SETTING**
12 **FORTH THE TIMELINE FOR ADDING THE ADDITIONAL CAPACITY? IS THIS**
13 **REASONABLE?**

14 **A.** No, it is not reasonable. This issue is very similar to another disputed issue in Article V.
15 CenturyTel witness Guy Miller testifies extensively about Socket's similar proposal in the
16 context of what CenturyTel is required to do if it rejects a Socket request for interconnection.
17 His testimony applies to the issue presented here with equal force. *See* Miller Rebuttal at
18 22-26.

19 There is no question that, by its proposed language, Socket is attempting to force
20 CenturyTel to construct facilities for Socket's use. That point is made clear by Mr. Kohly's
21 statement, on page 104, that he believes "CenturyTel is not engaging in a reasonable
22 expansion of its facilities." As I've stated above, however, Mr. Kohly's belief is not
23 consistent with the facts, and it belies a misunderstanding of the way CenturyTel's more rural
24 network is constructed—namely, without a lot of extra or idle capacity. Furthermore, it is
25 inappropriate to incorporate language into an interconnection agreement that, at a minimum,

1 suggests that an ILEC must construct facilities to meet a CLEC's demand. CLECs are
2 entitled to access the unbundled network elements of an ILEC's existing network. Where
3 facilities do not exist, a CLEC should not be able to rely on a provision in its interconnection
4 agreement to thwart applicable law. Specifically, Socket likely would rely on the language in
5 its proposed Section 2.37 as the basis for a purported contractual right to require, where no
6 network elements are available, that CenturyTel build new network elements. Such a
7 provision is not consistent with CenturyTel's obligations under the FTA. In paragraph 630
8 of the *Triennial Review Order (TRO)*, the FCC acknowledged that "section 251(c)(3)
9 requires unbundled access only to an incumbent LEC's existing network – not to a yet
10 unbuilt superior one." An ILEC is not required to construct facilities to satisfy a CLEC's
11 demand. Socket's proposed Section 2.37 erroneously suggests otherwise, yet in his direct
12 testimony, Mr. Kohly does not provide any legal or other justification for Socket's position.

13 Also, I am aware of no requirement that an incumbent LEC file construction plans
14 with any regulatory agency to prove that facilities really do not exist. Socket's proposal to
15 require CenturyTel to file construction plans with the Commission is nothing more than an
16 attempt to force the construction of facilities it desires when those facilities do not exist.
17 That proposal is all the more inappropriate because it also attempts to bypass the contractual
18 dispute resolution process to which the parties' already have agreed. That is the process to
19 which Socket should turn if it really does not believe CenturyTel's explanation for why a
20 Socket UNE request is denied.

21 To the extent Socket wants CenturyTel to construct facilities for its use, CenturyTel is
22 willing to do so subject to Socket submitting a construction plan to CenturyTel, and subject

1 to Socket paying the costs. Furthermore, to the extent CenturyTel already plans to perform
2 construction to augment its facilities, it is CenturyTel's practice to consider CLEC demands
3 in developing its own construction plan. This is precisely what happened in the Branson area
4 in 2004. CenturyTel needed additional switch port capacity for its own demand, yet
5 CenturyTel met with CLECs to determine their needs and then augmented facilities so as to
6 be able to offer interconnection to other requesting carriers.

7 **Q. ARE THERE REMEDIES WITHIN THE UNDISPUTED PROVISIONS OF THE**
8 **AGREEMENT SHOULD SOCKET BELIEVE THAT CENTURYTEL IS UNFAIRLY**
9 **OR UNLAWFULLY DENYING IT ACCESS TO UNES?**

10 **A.** Yes. The dispute resolution process, which already is incorporated into the Agreement by
11 way of undisputed terms, is the appropriate mechanism to handle disputes if Socket believes
12 that CenturyTel has unreasonably or unlawfully denied access to requested UNEs. Socket's
13 proposed language in Section 2.37 unreasonably attempts to short circuits that established
14 process.

15 **UNE ISSUE 35: Should Article VII, Section 7.10.1 include a provision that,**
16 **consistent with the FCC's rules, imposes a cap of 10 on the number of**
17 **unbundled DS1 dedicated transport circuits Socket may obtain on each route**
18 **where DS1 dedicated transport is available on an unbundled basis?**

19 **Q. WHAT IS THE BASIS OF THE PARTIES' DISPUTE REGARDING THE DS1**
20 **TRANSPORT CAP?**

21 **A.** As I assumed in my direct testimony, and as Mr. Kohly now confirms in his, Socket
22 interprets ¶ 128 of the FCC's *TRRO* as "limiting" the application of the DS1 transport cap
23 found in 47 C.F.R. § 51.319(e)(2)(ii)(B). Whereas the FCC's rule expressly states that the 10
24 DS1 transport cap applies "on each route where DS1 dedicated transport is available on an
25 unbundled basis," Socket interprets ¶ 128 of the *TRRO* as limiting the application of the cap

1 to only those routes where DS3 transport is no longer required to be unbundled. As I stated
2 in my direct testimony, since virtually all of CenturyTel's wire centers are Tier 3 wire
3 centers, CenturyTel is required under the FCC's rules to unbundle DS3 transport on virtually
4 all routes. Therefore, Socket's position essentially is that the DS1 transport cap would never
5 apply on routes with a CenturyTel wire center at one or both ends.

6 **Q. COULD YOU PLEASE COMMENT ON THE BASIS OF SOCKET'S POSITION?**

7 **A.** Yes. In order to accept Socket's interpretation of Rule 51.319(e)(2)(ii)(B), the Commission
8 would have to ignore the plain and unambiguous text of the rule. Even Mr. Kohly admits
9 that the rule itself "does not mention that the DS1 cap is limited to those routes where DS3
10 transport is non-impaired[.]" Kohly Direct at 106:7-8. If the FCC had intended the
11 application of the DS1 cap to be limited to just that situation, the FCC would have put that
12 limitation on the cap expressly in the rule itself. However, the FCC did not put such limiting
13 language in the rule, and the Commission should apply the rule as it is written.

14 **Q. MR. KOHLY STATES: "THE FCC IN ITS ORDER IS ABSOLUTELY EXPLICIT:**
15 **THE LIMITATION OF 10 DS1 TRANSPORT CIRCUITS ONLY APPLIES ON**
16 **THOSE PARTICULAR ROUTES WHERE THE ILEC NO LONGER IS**
17 **OBLIGATED TO PROVIDE DS3 TRANSPORT, I.E., ON ROUTES WHERE THERE**
18 **IS NO LONGER IMPAIRMENT FOR DS3 TRANSPORT." COULD YOU PLEASE**
19 **COMMENT ON THIS STATEMENT?**

20 **A.** Yes. Socket's position unnecessarily and erroneously creates an inconsistency between the
21 text of Rule 51.319(e)(2)(ii)(B) and the language of the *TRRO*'s ¶ 128. As Mr. Kohly states,
22 Socket interprets the language of ¶ 128 as saying that the 10 DS1 transport cap "only" applies
23 on routes where DS3 dedicated transport is not required to be unbundled. However, the word
24 "only" does not appear in ¶ 128. Socket's insistence on inserting that word into its
25 interpretation of ¶ 128 is what causes its interpretation to conflict with the plain text of Rule

1 51.319(e)(2)(ii)(B). Setting aside the issue of whether it is even proper for the Commission
2 to give weight to any language in the *TRRO* that is inconsistent with the plain text of the
3 FCC's rule, the language of ¶ 128 actually can be interpreted so as not to conflict with the
4 rule itself. For example, as properly interpreted recently by the Texas PUC, ¶ 128 is intended
5 to clarify that the DS1 transport cap "also" applies to those routes where unbundled DS1
6 dedicated transport is available and DS3 unbundled dedicated transport is not available.⁴
7 There is no reason to interpret ¶ 128 as stating that the cap applies "only" where DS3
8 transport is not available as a UNE, particularly when doing so unnecessarily places the
9 interpretation of ¶ 128 in conflict with the plain text of Rule 51.319(e)(2)(ii)(B).

10 **Q. IN SUPPORTING SOCKET'S INTERPRETATION OF THE DS1 TRANSPORT**
11 **CAP, MR. KOHLY STATES: "THE REGULATORY PURPOSE OF THE 10 DS1**
12 **CAP IS NOT OPERATIVE ON THOSE ROUTES [WHERE DS3 DEDICATED**
13 **TRANSPORT REMAINS AVAILABLE AS A UNE]." DO YOU AGREE WITH MR.**
14 **KOHLY'S STATEMENT?**

15 **A.** No. Mr. Kohly spends several pages attempting to explain that the FCC, in the *TRRO*,
16 discussed the 10 DS1 transport cap in the context of when it would be economically efficient
17 for a CLEC to switch from multiple DS1 transport circuits to a single DS3 transport circuit.
18 The FCC's discussion is sound policy and applies regardless of whether the economic "cross-
19 over" point alluded to by Mr. Kohly requires a CLEC to aggregate traffic to a DS3 UNE
20 transport (on routes where DS3 transport is required to be unbundled) or to a non-UNE DS3
21 facility provided by another carrier or self-provisioned by Socket (on routes where DS3
22 transport is no longer required to be unbundled). Regardless of who provides the DS3

⁴ See Order No. 45-Resolving Remaining Contract Disputes, *Arbitration of Non-Costing Issues for Successor Agreements to the Texas 271 Agreement*, Docket No. 28821 (Tex. P.U.C. Aug. 5, 2005), at p. 11, available at http://interchange.puc.state.tx.us/WebApp/Interchange/application/dbapps/filings/pgSearch_Results.asp?TXT_CNT_R_NO=28821&TXT_ITEM_NO=767.

1 transport facility, the FCC's "pricing efficiencies" rational requires that when a CLEC
2 reaches a 10 DS1 level of traffic, the CLEC would need to aggregate its DS1 traffic to a DS3
3 facility.

4 From this discussion, Mr. Kohly concludes: "It is evident from the Paragraph 128
5 discussion that the FCC did not want CLECs to be able to use multiple DS1 transport circuits
6 as a method for subverting non-impairment findings for DS3 transport[.]" Kohly Direct at
7 107:17-20. In other words, according to Mr. Kohly, the 10 DS1 transport cap is exclusively
8 concerned with preventing CLECs from leasing more than 10 DS1 transport UNEs from an
9 ILEC in an attempt to bypass or get around having to migrate to non-UNE DS3 facility or
10 self-provisioned facility. There is no question that this—thwarting a CLEC's attempt to
11 subvert the FCC's finding of DS3 non-impairment—is "an" underlying reason for applying
12 the DS1 transport cap. However, it is not the exclusive or only reason.

13 As I stated in my direct testimony, there are other regulatory or policy reasons
14 underpinning the DS1 transport cap, and those other reasons demonstrate why the DS1
15 transport cap should apply on all routes, not just those routes on which DS3 transport UNEs
16 are no longer available. For example, Socket's interpretation of the cap would mean that it is
17 entitled to an unlimited number of DS1 dedicated transport circuits between CenturyTel's
18 wire centers. That cannot be what the FCC intended; otherwise, it theoretically would permit
19 Socket to make an end-run around a similar 12 DS3 transport cap on the same route.
20 Conceivably, Socket could order hundreds or thousands of DS1 transport circuits but still be
21 limited to 12 DS3 transport circuits on the same route. That simply does not make sense. In
22 addition, if no DS1 transport cap applied between CenturyTel's wire centers, there would be

1 no regulatory mechanism to encourage Socket to aggregate traffic above the 10 DS1 level to
2 a DS3 UNE facility, thus thwarting the FCC's stated "pricing efficiencies" policy in the
3 *TRRO*. Yes, Socket could argue that, as an economically rational company, it would migrate
4 to DS3 transport UNE facilities at or before it reached a 10 DS1 level of traffic. However,
5 CenturyTel should not have to rely on such assurances from Socket or any other CLEC.
6 Applying the DS1 transport cap as expressly stated in the rule—on all routes—would ensure
7 that Socket and other CLECs comply with the FCC's aggregation requirements. The
8 Commission should not permit Socket to make an end-run around the DS3 transport cap by
9 giving it the contractual right to order unlimited DS1 transport circuits. Doing so would
10 essentially condone Socket's right to operate as an inefficient carrier.

11 **Q. HAS SOCKET EXPLAINED TO CENTURYTEL WHY IT DOES NOT WANT THE**
12 **DS1 TRANSPORT CAP TO APPLY ON ALL ROUTES.**

13 A. Not to my knowledge. If Socket intends to act in an economically rational manner by
14 aggregating its traffic to a DS3 transport circuit at or before it reaches a 10 DS1 level on any
15 route, it difficult for me to understand why Socket would argue that the 10 DS1 transport cap
16 should not apply on all routes. After all, the 10 DS1 transport cap would only require Socket
17 to aggregate to a DS3 circuit at a point the FCC has determined it to be economically
18 efficient.

19 **III.**
20 **CONCLUSION**

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

22 A. Yes, it does.