



for the payment of reciprocal compensation for the termination of "Local Traffic," which includes "ISP Traffic."

2. After the Agreements became effective on or about October 13, 2006, Socket began billing CenturyTel "reciprocal compensation" for terminating certain traffic to Socket's customers. Socket asserts that such traffic is "Local Traffic" under the Agreements and that it was originated by CenturyTel's customers. This alleged Local Traffic for which Socket is billing CenturyTel reciprocal compensation includes "ISP Traffic," or traffic destined to Internet Service Providers. Socket continues today to bill CenturyTel for terminating such traffic.

3. However, even assuming such traffic constitutes Local Traffic under the Agreements, the Agreements *do not* provide for the payment of reciprocal compensation for the termination of Local Traffic. Rather, the Agreements provide that the parties exchange Section 251(b)(5) Traffic and ISP Traffic (collectively, Local Traffic) on a *bill-and-keep* basis.

## II. MATERIAL UNDISPUTED FACTS

CenturyTel acknowledges that 4 CSR 240-2.117(1)(B) directs a party to file with its motion for summary determination any testimony, discovery, and/or affidavits "*not previously filed that are relied on in the motion.*" However, CenturyTel has not filed any testimony, discovery or affidavits with this Motion since the Motion only requests that the Commission interpret the existing terms of the Parties' Agreements as a matter of law and does not rely on any facts that are not already in the Commission's record. CenturyTel respectfully requests that the Commission take judicial notice of the facts that already are in the Commission's record and

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"Agreement" or "ICA" shall refer to both the Agreement or ICA between CenturyTel and Socket and the Agreement or ICA between Spectra and Socket.

which are identified immediately below. There are no genuine issues of dispute regarding these material facts:

4. The Agreements at issue were both arbitrated before the Missouri Public Service Commission ("Commission") pursuant to Section 252 of the Telecommunications Act of 1996 in Case No. TO-2006-0299 (the "Arbitration").

5. The Agreements became effective on October 13, 2006. *See* Orders Approving Interconnection Agreement, Case No. TO-2006-0299 (issued October 3, 2006).

6. Since the Agreements became effective, Socket has billed CenturyTel in excess of \$100,000.00 for terminating what it asserts to be Local Traffic originated by CenturyTel's customers. *See* Socket Telecom's Answer to CenturyTel's Complaint at ¶ 11 (filed October 12, 2007) *and* Socket Telecom's Answer to Spectra's Complaint at ¶ 11 (filed November 5, 2007), Case No. IC-2008-0068.

7. The "Local Traffic" at issue includes ISP Traffic, or traffic destined to Internet Service Providers served by Socket. *See* Socket Telecom's Answer to CenturyTel's Complaint at ¶ 13 *and* Socket Telecom's Answer to Spectra's Complaint at ¶ 12, Case No. IC-2008-0068.

8. During the prior Arbitration, Socket explained its position on intercarrier compensation as follows:

On the intercarrier compensation issues in Article V, *Socket's position is a straightforward one.* Socket has proposed that *all local, FX (including VNXX), and ISP-Bound traffic be exchanged on a bill-and-keep basis*, the same way traffic is exchanged in MCA areas today. By proposing bill-and-keep, Socket gives up its statutory right to receive compensation from CenturyTel for terminating traffic originated by CenturyTel's customers. Moreover, Socket gives up any possible "arbitrage" opportunity associated with charging CenturyTel for termination of ISP-Bound traffic.

See Post-Hearing Brief of Socket Telecom, LLC at 9-10, Case No. TO-2006-0299 (filed May 5, 2006) (emphasis added).

9. Commenting on the Commission's determinations in the prior Arbitration relative to the treatment of ISP Traffic, Socket stated:

The Arbitrator addressed *compensation for ISP-Bound Traffic* (a subset of Information Access Traffic) in other provisions of Article V. *The Arbitrator's determinations that bill-and-keep applies to the transport and termination of such traffic* does not resolve the issue raised by Socket's proposed [IP-PSTN] language.

See Comments of Socket Telecom, LLC on the Arbitrator's Final Report at 28, Case No. TO-2006-0299 (filed May 31, 2006) (emphasis added).

### III. MOTION FOR SUMMARY DETERMINATION

#### A. The Agreements Apply "Bill-and-Keep" to "Local Traffic" as a Matter of Law.

10. Even assuming that the traffic at issue constitutes "Local Traffic" under the Agreements, CenturyTel is entitled to summary determination in its favor because the Agreements, as a matter of law, do not provide for either party to charge reciprocal compensation for the termination of Local Traffic. Rather, as set forth more fully in CenturyTel's Legal Memorandum, the Agreements clearly provide that the parties will exchange Local Traffic on a *bill-and-keep* basis.

11. Because the interpretation of the Agreements' terms is a question of law, *see Goellner v. Goellner Printing*, 226 S.W.3d 176, 178 (Mo.App. E.D. 2007), this case can be resolved without an evidentiary hearing and without resort to extrinsic evidence because the ICAs' provisions governing the exchange of and compensation for Local Traffic are unambiguous. *See Eiman Brothers Roofing System, Inc. v. CNS Intern. Ministries, Inc.*, 158 S.W.3d 920, 922 (Mo.App. W.D. 2005)(whether a contract is ambiguous is a question of law).

12. Specifically, the unambiguous terms contained within the four corners of the ICAs clearly provide that the parties are to exchange Local Traffic between their respective networks *without compensating each other* for the termination of such traffic. Indeed, *there is not a single provision in the Agreements applying reciprocal compensation* to the exchange of Local Traffic.

13. Looking, as the Commission is required to do, to the ordinary meaning of the unambiguous terms of the agreements—which express an agreement to *exchange* Local Traffic without provisions requiring either of the parties to *pay* for that exchange—the Agreements can only be interpreted, as a matter of law, as applying a bill-and-keep arrangement for the exchange of Local Traffic.

**B. Socket is Estopped from Arguing the Issue of Which Compensation Arrangement Applies to the Parties' Exchange of Local Traffic.**

14. Socket is both collaterally and judicially estopped from asserting that reciprocal compensation applies under the Agreements to the termination of Local Traffic, which traffic includes ISP Traffic.

15. The parties conformed the intercarrier compensation provisions in the manner ordered by the Commission in Case No. TO-2006-0299. With respect to the parties' exchange of ISP Traffic, the Commission determined *and Socket acknowledged* that bill-and-keep would apply. Therefore, as more fully set forth in CenturyTel's Legal Memorandum in Support of this Motion, Socket is collaterally estopped from asserting now that reciprocal compensation applies to the parties' exchange of ISP Traffic in direct contravention of the Commission's determination.

16. In addition, Socket is judicially estopped from taking the position that reciprocal compensation applies to the exchange of Local Traffic in this dispute proceeding when, in Case

No. TO-2006-0299, it took the position that bill-and-keep should apply to the exchange of such traffic. Indeed, no party advocated in the prior arbitration that reciprocal compensation should be the primary intercarrier compensation arrangement applicable to Local Traffic, and the Commission never determined that reciprocal compensation should apply.

#### **IV.**

#### **REQUEST FOR ORAL ARGUMENT**

17. Pursuant to 4 CSR 240-2.117(1)(G), CenturyTel respectfully requests oral argument on its Motion for Summary Determination on Interpretation of Compensation Arrangements Applicable to Local Traffic.

#### **V.**

#### **PRAYER**

18. WHEREFORE, CenturyTel respectfully requests that the Commission grant its Motion for Summary Determination and declare that the Interconnection Agreements, as a matter of law, require the exchange of Local Traffic, including Section 251(b)(5) Traffic and local ISP Traffic, without the payment of compensation. CenturyTel further requests that the Commission grant its Motion on the additional bases that Socket is collaterally or judicially estopped from asserting that reciprocal compensation applies to such traffic. On the basis of either or all of these grounds, CenturyTel requests that the Commission dismiss Socket's counterclaims and defenses and grant CenturyTel such other and further relief to which it may be justly entitled.

Respectfully submitted,

FISCHER & DORITY, P.C.

**/s/ Larry W. DORITY**

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Larry W. DORITY, #25617  
FISCHER & DORITY, P.C.  
101 Madison, Suite 400  
Jefferson City, Missouri 65101  
Tel.: (573) 636-6758  
Fax: (573) 636-0383  
Email: [lwORITY@sprintmail.com](mailto:lwORITY@sprintmail.com)

HUGHES & LUCE, LLP

Gavin E. Hill  
Texas State Bar No. 00796756  
1717 Main Street, Suite 2800  
Dallas, Texas 75201  
Tel.: (214) 939-5992  
Fax: (214) 939-5849  
Email: [gavin.hill@hughesluce.com](mailto:gavin.hill@hughesluce.com)

**ATTORNEYS FOR CENTURYTEL OF  
MISSOURI, LLC and SPECTRA  
COMMUNICATIONS GROUP, LLC, d/b/a  
"CENTURYTEL"**

**CERTIFICATE OF SERVICE**

I hereby certify that the undersigned has caused a complete copy of the attached document to be electronically filed and served on the Commission's Office of General Counsel (at [gencounsel@psc.mo.gov](mailto:gencounsel@psc.mo.gov)), the Office of the Public Counsel (at [opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov)), Socket Telecom, LLC (at [rmkohly@sockettelecom.com](mailto:rmkohly@sockettelecom.com)) and counsel for Socket Telecom, LLC (at [clumley@lawfirmemail.com](mailto:clumley@lawfirmemail.com); [lcurtis@lawfirmemail.com](mailto:lcurtis@lawfirmemail.com)) on this 13<sup>th</sup> day of December, 2007.

/s/ **Larry W. Dority**

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Larry Dority