



Socket does little more than rehash the arguments it made in its Cross Motion for Summary Determination, which this Commission considered, found unpersuasive and rightfully denied. Moreover, in arguing for rehearing, Socket resorts to the tactic of distorting certain provisions of the Commission's Order.<sup>1</sup> Therefore, the Commission should deny Socket's Application for Rehearing.

4. Setting aside Socket's litany of perceived infirmities, the Commission's Order correctly made several findings and/or conclusions that are conclusive in this proceeding and that definitively support its grant of relief to CenturyTel. As Socket itself acknowledges, the Commission was required to interpret and enforce the parties' Agreements. *See* Socket's Application at 2.<sup>2</sup> The Commission did precisely that. In doing so, it found and/or concluded the following:

- While the Agreements contain terms that are "indicative of" or "suggest" the applicability of both a reciprocal compensation and a bill-and-keep regime, the Agreements do not contain terms that expressly apply either regime to the parties' exchange of Local Traffic. *See* Order, ¶ 32 ("The Interconnection Agreements do not contain a definitive declaration that bill-and-keep applies to

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<sup>1</sup> For example, Socket asserts that the "Commission now accurately finds [that the reciprocal compensation-related provisions in the Agreement] *establish* a reciprocal compensation regime." Socket's Application at 3 (para. (d)) (emphasis added). The Order says nothing of the sort. Rather, the Commission found that such provisions are "indicative of" or "suggest" a reciprocal compensation arrangement. Order, ¶¶ 27-28. Of course, Socket also ignores the Commission's commensurate finding that other provisions of the agreement "suggest" the application of a bill-and-keep regime for Local Traffic. *See* Order, ¶ 30.

<sup>2</sup> Summary judgment should be granted in favor of the moving party as a matter of law when there is no genuine issue of material fact. *Allied Mutual Ins. Co. v. Brown*, 105 S.W.3d 543, 545 (Mo.App. E.D. 2003). Because the interpretation of a contract is a question of law, *see Goellner v. Goellner Printing*, 226 S.W.3d 176, 178 (Mo.App. E.D. 2007), summary judgment is particularly appropriate when the construction of an unambiguous contract is at issue. *See Lupo v. Shelter Mutual Ins. Co.*, 70 S.W.3d 16, 18-19 (Mo.App. E.D. 2002). In Missouri, the guiding principle of contract interpretation is that a tribunal or court will seek to ascertain the intent of the parties and to give effect to that intent. *Triarch Industries, Inc. v. Crabtree*, 158 S.W.3d 772, 776 (Mo. 2005) (en banc). The intent of the parties to a contract is presumed to be expressed by the ordinary meaning of the contract's terms. *Id.* If the contract is unambiguous, it will be enforced according to its terms. *Id.* *See also Leggett v. Missouri State Life Ins. Co.*, 342 S.W.2d 833, 851 (Mo. 1961).

Local Traffic nor do they contain a definitive declaration that reciprocal compensation applies to Local Traffic, but rather contain *conflicting inferences* as to the intended compensation method for Local Traffic.” (emphasis added)).

- Even though the terms of the Agreements contain “conflicting inferences,” they unambiguously do not apply the inferred compensation regimes to the parties’ exchange of Local Traffic. See Order at pp. 16 (“The Interconnection Agreements do not contain a definitive declaration that bill-and-keep applies to Local Traffic nor does it contain a definitive declaration that reciprocal compensation applies to Local Traffic. However, that confusion does not imply that the Interconnection Agreements are ambiguous . . . .”) and 17 (“[T]he Commission rejects Socket’s argument that the conflicting inferences regarding compensation for Local Traffic in the Interconnection Agreements must be resolved in favor of reciprocal compensation.”).
- In the absence of terms expressly applying a bill-and-keep compensation regime to Local Traffic, the Federal Telecommunications Act of 1996 (“FTA”) does not require the application of a reciprocal compensation regime. See Order at 17 (“[S]ections 252(d)(2)(a) and (b) [of the FTA] do not set a default mechanism of either bill-and-keep or reciprocal compensation . . . . Accordingly, the Commission rejects Socket’s argument that the conflicting inferences regarding compensation for Local Traffic in the Interconnection Agreements must be resolved in favor of reciprocal compensation.”).

5. Regardless of any of Socket’s other perceived infirmities in the Commission’s Order, these critical Commission findings and conclusions alone support the relief granted by the

Order. In interpreting and enforcing the Agreements, the Commission correctly and properly found that Agreement's terms cannot be interpreted as requiring CenturyTel to pay compensation to Socket for the exchange of Local Traffic.

### CONCLUSION

Based on the foregoing, the Commission should deny Socket's Application for Rehearing.

Respectfully submitted,

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**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 29<sup>th</sup> day of September, 2008.

/s/ Larry W. Dority

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