

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

CenturyTel of Missouri, LLC, et al)	
)	
Complainants,)	Case No. IC-2008-0068
)	
vs.)	
)	
Socket Telecom, LLC)	
)	
Respondent.)	

SOCKET TELECOM, LLC'S APPLICATION FOR REHEARING

Comes Now Socket Telecom, LLC pursuant to Section 386.500 RSMo., 4 CSR 240-2.160, 4 CSR 240-2.070, and 47 USC 252, and for its Application for Rehearing states to the Commission:

1. The Commission issued its Order Granting CenturyTel's Motion for Summary Determination (the "Order") herein on September 9, 2008, with an effective date of September 19, 2008. Socket Telecom hereby timely files its Application for Rehearing prior to that effective date. Socket does not simply reargue points previously made, but rather identifies false, contradictory and unlawful provisions of the Order that require the Commission to change its decision in this case.

2. Socket Telecom seeks rehearing on the Commission's decision to grant CenturyTel's Motion for Summary Determination and its decision to deny Socket Telecom's Cross-Motion for Summary Determination for the reasons stated herein. In further support of this Application for Rehearing, Socket Telecom incorporates herein by this reference its Response to CenturyTel's Motion for Summary Determination and Cross Motion for Summary Determination, and all other pleadings and materials submitted by Socket Telecom in support of that response and cross-motion.

3. The Commission acted unlawfully, unjustly and unreasonably, and erred in reaching its decision and issuing its Order in the following respects:

(a) The Commission must interpret and enforce the Interconnection Agreements as submitted and previously approved by it. The Commission has no equitable jurisdiction to reform or revise a contract, nor did any party seek such relief. See, e.g., Report and Order, Case No. CO-2005-0066 (12/14/04)(“As a creature of statute, ‘the Commission does not have the authority to do equity or grant equitable relief.’”), citing *State ex rel GST Steel Company v. Public Service Commission*, 116 S.W.3d 680, 696 (Mo. App. W.D. 2003)). Moreover, the Commission’s prior orders approving the agreements are not subject to change in collateral proceedings. See Section 386.550 RSMo. Likewise, the Commission cannot embellish upon its prior arbitration order and issue new decisions on such matters, whether to accomplish prior intentions or otherwise. Id. The Commission must accept the language of the approved agreements “as is” and enforce those agreements under 47 USC 252.

(b) The Commission did not in its arbitration decision require the parties to submit Interconnection Agreements that applied bill-and-keep to the exchange of Local Traffic (Order, p.18). As the undisputed evidence shows, and as the Commission finds in numbered findings 41-46 of its Order, the Commission simply rejected various aspects of the parties’ competing positions. The Commission rejected specific language proposed by CenturyTel (Order, para. 41), did not accept Socket’s proposal (Order, para. 43), decided that VNXX traffic would be subject to bill-and-keep (Order, para. 44), and accepted a revised version of Socket’s proposed definition of bill-and-keep (Order, para. 46). Beyond these specific rulings, the parties were left to negotiate a resolution to the issue of reciprocal compensation and submit the agreements. As the Commission describes in the Order, it did not reject or adopt a compensation regime. (Order, p. 18). CenturyTel admitted that the Commission left the issue of reciprocal compensation up to the parties to resolve. (Tr. 15-16).

(c) As the Commission itself acknowledges in the Order, CenturyTel did in fact seek reciprocal compensation under certain circumstances in the arbitration (Order, para. 40). Hence statements in the Order to the effect that “no party sought reciprocal compensation in the arbitration” (Order, para. 37, 39) are incorrect and inconsistent with other findings in the Order.

(d) The parties submitted and obtained approval of interconnection agreements that definitively call for payment of reciprocal compensation. The undisputed evidence shows that after the Commission made its limited rulings in the arbitration case, the parties resumed negotiations and intentionally left in the agreement provisions that the Commission had not rejected, which the Commission now accurately finds establish a reciprocal compensation regime (Order, para. 25-28, citing Article V, Section 9.7.2, and schedule of transport and termination rates in Article VIIA). The Commission erroneously fails to mention the other contract sections that Socket Telecom identified which further demonstrate that the interconnection agreements establish a reciprocal compensation regime. (Art. III, Sec. 10.2, 10.4; Article V, Sec. 12.3). The record conclusively demonstrates that all of these provisions were initially proposed by CenturyTel to achieve reciprocal compensation and were intentionally left in after the arbitration to achieve just that purpose.

(e) The undisputed evidence shows that the agreements unambiguously establish a reciprocal compensation regime, without any “conflicting inferences” (Order, para. 32-33). Section 9.8, which is the only provision cited by the Commission as causing any ambiguity in light of the other provisions that the Commission expressly finds call for reciprocal compensation (Order, para. 29-31), can and must be read in harmony with those other provisions. *Phillips v. American Nat. Assur. Co.*, 58 SW2d 814, 816 (Mo. App. 1933)(“**Effect must be given, if at all possible, to all parts of an instrument. Different portions are not to be construed conflicting if they can be**

harmonized and both upheld.”). Section 9.8 simply prohibits the parties from abusing the MCA/VNXX bill-and keep exceptions to the reciprocal compensation general rule by combining non-local traffic such as switched access traffic with the exceptional bill-and-keep traffic. It only relates to the “bill-and-keep arrangement described in this section [9]”, which consists solely of the bill-and-keep arrangements for MCA and VNXX traffic. Section 9.8 does not in any way erase or override the other provisions of Article V which, as found by the Commission, expressly require the parties to pay each other for the transport and termination of Local Traffic other than MCA and VNXX traffic. CenturyTel admitted that Section 9.8 did not establish a bill-and-keep regime. (Tr. 11, 15-16). Had the Commission followed the law, it would have simply reconciled Section 9.8 with the other provisions that it finds call for reciprocal compensation. Instead, it erroneously failed to even attempt such reconciliation.

(f) The provisions that require the parties to pay each other reciprocal compensation are not “surplusage” (Order, para. 49). The Commission cannot lawfully interpret contract language as having no meaning (*Phillips, supra*) or reform the contract by removing the language (*GST Steel, supra*). As indicated above, under the law (i.e. *Phillips*), the Commission was obligated to harmonize and uphold all the involved contract clauses.

(g) The undisputed evidence shows that the parties intentionally left the reciprocal compensation language in the agreement, fully aware of the Commission’s limited arbitration decision points. CenturyTel “admits that it agreed to submit the intercarrier compensation provisions precisely as conformed to the Final Commission Decision [in the arbitration].” (CenturyTel’s Joint Response to Socket Telecom’s Cross Motion for Summary Determination, p. 14). CenturyTel reiterated at oral argument that the parties intentionally submitted this text, “exactly as required by the final Commission decision.” (Tr. 54, 59). The parties did not do “a poor job of incorporating the

Commission's final arbitration decision" (Order, p. 16). As CenturyTel admitted, the Commission did not make a complete decision for the parties to incorporate. (Tr. 15-16). Instead, the Commission allowed the parties to resolve the matter of reciprocal compensation themselves and submit the agreements for approval.

(h) Whatever the Commission's unstated "intentions" in the arbitration may have been, they are completely irrelevant to this proceeding. The parties took intentional action to negotiate and prepare the interconnection agreements based on the Commission's stated decisions, not its unstated "intentions".¹ The Commission then approved the agreements as submitted. It cannot lawfully change the agreements now, nor can it lawfully alter or undo its orders approving the agreements.

(i) The parties "stated intent" in submitting the agreements for approval provides no support for the Commission's Order (Order, para. 35-36, p. 15-17). The undisputed evidence shows that the parties intentionally submitted the provisions at issue for approval, having decided that such reciprocal compensation language was consistent with the Commission's limited decisions. The Commission approved the language as submitted. Neither the arbitration decision nor the agreements adopt bill-and-keep for the exchange of Local Traffic and the Commission's determination to the contrary (Order, p. 18) is not supported by substantial and competent evidence and is unlawful and unreasonable.

(j) CenturyTel argued in this case that nothing in the agreements calls for reciprocal compensation. The Commission correctly rejected CenturyTel's argument. (Order, para. 25-28). That should have been the end of the analysis, as Section 9.8 can and must be read in harmony with those provisions. The Commission does not have authority to revise the previously

¹ The Commission's finding no. 21 is also erroneous, as the undisputed evidence shows that the parties negotiated portions of the agreements both before and after the arbitration. For example, CenturyTel admitted to this at oral argument. (Tr. 60).

approved agreements. The Commission must enforce the agreements “as is”, notwithstanding CenturyTel’s efforts to avoid the express language of the agreements once it found out that it was going to have to pay reciprocal compensation rather than collect it.

(k) The Commission erroneously failed to take into account CenturyTel’s various admissions that it owed reciprocal compensation to Socket.

(l) The Commission erroneously interpreted 47 USC 252(d), in that there is no evidence in the record to support a conclusion that Socket Telecom in any way waived its rights to reciprocal compensation.

Conclusion

For all the foregoing reasons, the Commission's Order Granting CenturyTel’s Motion for Summary Determination herein is unlawful, unjust and unreasonable. It is not supported by substantial and competent evidence. Socket Telecom has provided sufficient reason for the Commission to grant and hold rehearing pursuant to Section 386.500 RSMo. and 4 CSR 240-2.160. Socket has not simply reargued points previously made, but rather has identified false, contradictory and unlawful provisions of the Order. The Order is unjust, unwarranted and should be changed. The Commission should grant Socket Telecom the relief it has requested in this proceeding and issue an order denying CenturyTel’s Motion for Summary Determination and granting Socket Telecom’s Cross Motion for Summary Determination.

WHEREFORE, Socket Telecom respectfully requests the Commission to grant and hold rehearing and thereupon issue an order denying CenturyTel’s Motion for Summary Determination and granting Socket Telecom’s Cross Motion for Summary Determination.

Respectfully submitted,

CURTIS, HEINZ,
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/s/ Carl J. Lumley

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was emailed to the parties listed below on this 17th day of September, 2008.

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