

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Socket Telecom, LLC,)	
)	
Complainant,)	
)	
v.)	Case No. TC-2007-0341
)	
CenturyTel of Missouri, LLC and)	
Spectra Communications Group, LLC,)	
d/b/a CenturyTel,)	
)	
Respondents.)	

**MOTION REGARDING PROCEDURAL SCHEDULE
AND MOTION FOR EXPEDITED TREATMENT**

COME NOW Respondents, CenturyTel of Missouri, LLC (“CenturyTel”) and Spectra Communications Group, LLC, d/b/a CenturyTel (“Spectra”) (collectively “Respondents”), pursuant to 4 CSR 240-2.110 and 4 CSR 240-2.080(16), and for their *Motion Regarding Procedural Schedule and Motion For Expedited Treatment*, respectfully state as follows:

1. **The sole issue in this case is whether Respondents were lawfully obligated to complete the porting requests for the two customers specified in the Complaint at the time Complainant submitted its porting requests.** If Respondents were under no legal obligation to complete these two specific porting requests at the time the requests were made, then any issues involving future, similar porting requests are rendered moot.¹ Stated differently, this legal determination is the threshold issue for determining the outcome of this proceeding.

¹ See, *Socket Telecom’s Response to CenturyTel’s Motion For Expedited Ruling and Motion For Summary Determination and Socket Telecom’s Cross Motion For Summary Determination*, pages 1-2 (“Socket’s Complaint seeks relief as to two specific port orders submitted on behalf of two specific

2. The Complainant in its testimony filing of June 25, 2007, and the Staff in its testimony filing of June 12, 2007 , have improperly attempted to expand the scope of this proceeding beyond the two porting requests at issue to include many other items such as: a) requests to establish and resolve broader complex policy issues that impact the industry and third party carriers that are not parties to this proceeding; and b) requests for resolution of many issues between Complainant and Respondents (beyond Complainant's two porting requests) that are required to be raised and addressed under the express procedures specified in Article III, Section 18 of the Interconnection Agreements ("ICAs"). This complaint proceeding is not the appropriate forum to address such wide ranging issues beyond the two porting requests. Moreover, it is most inappropriate to consider and attempt to resolve such broad issues on the expedited basis that was requested by Complainant in contravention of the procedure specified by the ICAs in Article III, Section 18.4. For the reasons discussed below, the Commission should either:

a.) Grant Respondents' *Motion To Dismiss* and/or *Motion For Summary Determination* in full and close this case; and after so doing, and if the Commission desires to pursue the broader issue of "industry agreed-upon practices"² and other industry-wide issues, it then should open a new generic case, provide formal notice and allow *all* affected incumbent carriers the opportunity to seek to intervene, and set a procedural schedule appropriate for that purpose; or in the alternative

customers...Socket's complaint also seeks a determination that in addition to these specific orders, similar future orders should be fulfilled."); see, also, Voight Rebuttal, pages 15-16.

² "Industry agreed-upon practices" only apply to LRN and DID porting per the ICAs. See, ICAs Sections 3.21 and 6.4.4-5. Additionally, these issues should first be raised between Complainant and Respondents for Informal Dispute Resolution efforts prior to submitting a dispute to the Commission. Any Complaint case filings without following the provisions of the ICAs Article III, Section 18 should be deemed premature.

b.) Grant partial dismissal and summary determination in favor of Respondents with respect to the legal obligations imposed on Respondents by currently applicable federal statutes, Federal Communications Commission (“FCC”) rules, and FCC decisions to port the customer-specific numbers at issue; and after so doing, and if the Commission desires to address the broader issue of “industry agreed-upon practices” and other industry-wide issues, then suspend this proceeding, and order that the Complainant and Respondents must utilize Article III, Section 18 of their ICAs to try to informally resolve some of these newly raised issues. Failing resolution via this contractually required process, a non-expedited generic proceeding could then be initiated that would allow other interested carriers to seek to intervene, and set a new procedural schedule appropriate for that purpose; or in the alternative

c.) Limit the issues to be argued and decided in the scheduled July 11-12 hearing to the sole issue of whether Respondents are lawfully obligated as a matter of currently applicable federal statute, FCC rules, or FCC decisions to port the customer-specific numbers at issue, order the remaining issues held in abeyance until formal notice and an opportunity to intervene has been provided to other interested carriers, and then set a new procedural schedule to address the remaining issues which have been raised by Complainant and the Staff.

Under any of these alternative procedural scenarios, Complainant certainly would be free to pursue any *other* specific ICA issues it might have with Respondents under a second case filed for that purpose and consistent with the procedures set forth in Article III, Section 18 of the ICAs.

I. CURRENTLY APPLICABLE FEDERAL REQUIREMENTS

3. Complainant's argument that the two customer number porting requests at issue somehow do *not* constitute "location portability" is contrary to the clear language of 47 C.F.R. Section 52.21(j) and is contrary to the pre-filed testimony that undisputedly shows:

- a.) the first customer (porting request for 417-469-9090 and 417-469-4900) is physically relocating out of its existing exchange from Willow Springs to St. Louis; and
- b.) the second customer (porting request for 573-322-8421) is physically relocating out of its existing exchange from Ellsinore to St. Louis.³

Without question, these two porting requests are in fact "location portability".⁴ Even the Staff, who otherwise supports Complainant, does not deny this.⁵

4. Respondents have clearly and repeatedly shown that the most straightforward and plain meaning of current federal statutes, current Federal Communications Commission ("FCC") rules, and current FCC decisions *do not* place any legal obligation whatsoever on Respondents to provide "location portability", i.e. to complete the two porting requests (or any future similar requests) at the time the requests were made.

³ Respondents just discovered that they inadvertently and unintentionally reversed the particular telephone numbers at issue in its *Motion For Expedited Ruling on Respondents' Pending Motion To Dismiss and Motion for Summary Judgment* and is here correcting the mistake. Complainant also reversed these numbers in its *Response To CenturyTel's Motion For Expedited Ruling and Motion For Summary Determination and Socket Telecomm's Cross Motion For Summary Determination* (see, page 5, paragraph 8). This error on the part of both Parties is harmless and is here corrected.

⁴ 47 C.F.R. Section 52.21(j). "The term *location portability* means the ability of users of telecommunications services to retain existing telecommunications numbers without impairment of quality, reliability, or convenience when moving from one physical location to another."

⁵ Voight Rebuttal pages 8, 20.

Complainant's efforts to cleverly use alternative definitions of the word "location" should not mislead and obfuscate the express meaning of applicable legal authorities.

Complainant's tortured attempts to unilaterally re-write the clear language of existing federal requirements should be obvious. Additionally, as noted below in further detail, it is telling that neither Complainant nor Staff have yet to present any substantive and express legal authorities to the contrary nor can they. Complainant's best efforts at producing actual legal authorities have only yielded unfounded allegations that an "evolution" has occurred that has "leapfrogged" all written rules, regulations and even the FCC's website.

5. Staff in its pre-filed testimony admits that there currently is no federal requirement that places any legal obligation upon Respondent to complete the two porting requests⁶. Moreover, Staff wholly fails to address or even mention federal statutes, current FCC rules, and FCC decisions in *Staff's Response To Respondents' Motion To Dismiss and Motion For Summary Determination*.⁷ Staff's intentional omission should be quite telling.

6. Complainant's only response to the issue of federal requirements has been that *even if* its two porting requests constitute "location portability":

- a) the FCC's *Intermodal Order*⁸ somehow trumps or overrides currently applicable federal statutes, FCC rules, and FCC decisions with respect to Respondents' legal obligations; and/or

⁶ *Id.*

⁷ Respondents intend to respond to both the Staff's and the Complainant's respective filings but will do so outside the instant Motion.

b) that some sort of “evolutionary change” has occurred or is now occurring at the federal level that somehow trumps or overrides currently applicable federal statutes, FCC rules, and FCC decisions.

Neither the federal statutes nor the FCC rules have changed since they were adopted, so they obviously are controlling as a matter of law with respect to any federal requirements. Moreover--and aside from the fact that most recent FCC decisions have specifically and clearly *declined* to require “location portability” or change its definition or carrier obligations with respect thereto--the *Intermodal Order* by its very terms **does not apply to wireline to wireline situations**. Even the Staff agrees with this.⁹ Further, if *arguendo* the *Intermodal Order* is used as a legal basis, even in the realm of wireline-to- wireless porting the FCC has ruled that the requesting carrier must actually provide service at the same location.¹⁰

As to any “evolutionary change”, even assuming *arguendo* that federal changes to “location portability” definitions and carrier obligations currently may be under discussion at some lower levels, no formal federal action has been taken at this time, let alone at the time Complainant submitted the porting requests that are at issue in this case. As such, the Commission cannot lawfully impose any requirement for Respondent to port the numbers in question based on currently applicable federal requirements. The Commission can and should finally dispose of this portion of Complainants’ arguments forthwith.

⁸ See, FCC, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, released November 10, 2003 (“*Intermodal Order*”).

⁹ Voight Rebuttal, page 26.

¹⁰ *Intermodal Order*, paragraph 22.

II. “INDUSTRY AGREED-UPON PRACTICES”

7. Having failed to show that any currently applicable federal statutes, FCC rules, or FCC decisions impose any legal obligation upon Respondents to complete the two porting requests at issue, Complainants next argue that Respondents’ ICAs impose an obligation to provide “location portability” by virtue of the ICAs’ “industry agreed-upon practices” language.¹¹ The Staff has based its entire testimony and position on this proposition. The key question with respect to this argument is: what exactly are these “industry agreed-upon practices”?

8. Regardless of the dispute as to whether the ICAs’ “industry agreed-upon practices” language somehow trumps other ICA provisions specifically referencing federal requirements (which Respondents would argue it clearly does not)¹², the Commission should not and frankly cannot properly and adequately address the broad issue of what constitutes “industry agreed-upon practices” within the limited confines of this complaint proceeding, let alone under the current expedited procedural schedule, for several very important reasons.

9. First, other Missouri incumbent carriers, such as but not limited to AT&T and Embarq as referenced by Complainant, are not parties to this proceeding. As such, Respondents--and more importantly the Commission itself--have no way in this case to

¹¹ ICAs, Article XII, Section 3.2.1. Complainant and the Staff conveniently often omit the “agreed-upon” language and simply use the phrase “industry practices”. The also rely on the phrase “industry guidelines” in the context of guidelines set forth by the North American Numbering Council (“NANC”) and referenced in Article XII, Section 6.4.4 of the ICAs. For simplicity and purposes of this Motion only, the phrase “industry-agreed-upon practices” also will include “industry guidelines” although there certainly are important distinctions between the two which are important in other contexts.

¹² See, e.g., ICAs, “Scope and Intent of Agreement” and the dominant porting terms of Article XII, Section 1.1 and also footnote 2 which shows the true context of the ICAs industry practices terms.

obtain and review any information *directly from the source* respecting what these other incumbent carriers' official current policies and practices might be as to "location portability". While it is certainly true that the Respondents necessarily will provide evidence in this case as to what constitutes their own current policies and practices, this reflects only Respondents' position. Even with the addition of Complainant's and Staff's contrary anecdotal third-party speculations,¹³ this in no way gives the Commission sufficient information and legal basis to determine the current state of "industry agreed-upon practices" in Missouri, let alone nationally.¹⁴ Despite Complainant's and Staff's desire that the Commission make this determination in a vacuum, the Commission simply cannot determine what constitute the current state of "industry agreed-upon practices" without taking first-hand evidence from the industry.

Beyond this, it should greatly concern the Commission that what little information that has been presented in this proceeding by Complainant and Staff directly conflicts with information obtained from the public record from another state respecting Embarq. *See, Petition of Core Communications, Inc. for Arbitration of Interconnection Rates, Terms and Conditions with The United Telephone Company of Pennsylvania d/b/a Embarq Pennsylvania pursuant to 47 U.S.C. Section 252(b)*, Pennsylvania Public Service Commission, Docket No. A-310922F7002, Direct Testimony of James M. (Mike

¹³ See, Voight Rebuttal, page 18, lines 4-5 where Staff couches its position by carefully stating that AT&T and Embarq only "*appear* to have adopted" the type of porting practice requested by Complainant. *See, also*, Voight Rebuttal, Schedule 10, Staff DR #5 to Complainant requesting specific examples of when AT&T and Embarq "routinely ported numbers to Socket when the customer is moving between rate centers". Complainant's response: "At this time, Socket does not have a comprehensive list but will be compiling that information."

¹⁴ This is so even if the current "industry agreed-upon practices" are in fact as asserted by the Complainant and the Staff, which Respondents at this time suspect is not the case.

Maples), prefiled April 27, 2007 (copy attached); *see, also*, Smith Surrebuttal, pages 16-19, filed June 25, 2007.

One would assume that, before making such an important and potentially far-reaching decision as to what constitutes “industry agree-to practices”, the Commission would want these other incumbent carriers on the record and appearing before it to answer under oath any questions the Commission might have. Again using Embarq as an example, at minimum the Commission presumably would want Embarq to clarify its current policies and practices on the record.

As the situation currently stands, *any* Commission decision could not be based on competent and substantial evidence and in all likelihood would not withstand a challenge on appeal--brought by either the Respondent *or* the Complainant.

10. Second, as a simple matter of due process, Respondents need access to this very relevant information from these other carriers in order to adequately respond to Complainant’s and Staff’s anecdotal statements. But Respondents have no way through formal discovery or cross-examination to obtain, review and question such information. Respondent can only do so if these other carriers are parties to this proceeding.

11. Third, as alluded to above, any Commission decision in this case respecting “industry agreed-upon practices” most likely, if not certainly, will impact these other incumbent carriers, not only with respect to their own Missouri ICAs but also in the context of the positions they might take or currently are taking at the federal level on the issue of location portability. Because Complainant chose to file this case as a complaint proceeding, these other carriers have been denied formal notice of this proceeding and have not been given the opportunity to intervene as parties to put forth their respective

positions and protect their respective interests. Whether these positions and interests coincide with those of the Respondents or those of the Complainant, or even if these other carriers might choose not to participate is irrelevant at this point; that these other carriers are at least given notice and the opportunity to participate is what is important.

12. Finally, the potential interests of other incumbent carriers aside, by raising the broad issue of “industry agreed-upon practices” within the limited confines of what Complainants repeatedly and wrongly characterize as merely a dispute between two parties,¹⁵ Complainants are intentionally attempting to place not only the Respondents, but the Commission as well, in an untenable position. The Complainant’s expedited procedural schedule (based upon urgency to resolve the two customer-specific porting requests at issue), and the fact that Staff has based its entire position solely on the “industry agreed-upon practices” issue (in testimony filed only twelve days before Respondents’ surrebuttal testimony was due), make the situation even more untenable and objectionable due to the absence of these other necessary parties.

III. IMPROPERLY BROADENING THE SCOPE OF THIS PROCEEDING

13. The Staff, and now the Complainant in its Surrebuttal Testimony filing of June 25, 2007, have intentionally and improperly broadened the scope of this proceeding far beyond a mere dispute between two parties over two customer-specific porting requests in an attempt to obtain an expedited resolution of matters that: a) call for significant changes in Commission policy that will have a far reaching impact and affect

¹⁵ See, *Socket’s Response to MTIG’s Application For Leave to File Amicus Brief*, page 1 (“discrete dispute between the parties”), and page 2 (“This case presents a dispute between Socket and CenturyTel.”; see, also, *Socket Telecom’s Response to CenturyTel’s Motion For Expedited Ruling and Motion For Summary Determination and Socket Telecom’s Cross Motion For Summary Determination*, pages 1-2; Voight Rebuttal, pages 15-16.

other carriers not parties to this case; and b) cannot be properly, fairly and adequately addressed under the current expedited procedural schedule. These issues include, but are not limited to:

- a.) what is meant by “industry agreed-upon practices” and “industry guidelines”;
- b.) whether “industry agreed-upon practices” and “industry guidelines” should be determined at the state or at the federal level;
- c.) the very definition of “exchange” versus “interexchange” service;
- d.) whether VNXX and foreign exchange (FX) service should receive the same regulatory treatment;
- e.) impacts and regulatory treatment of internet service provider (“ISP”) traffic;
- f.) single point of interconnection requirements for competitive carriers;
- g.) complex network capacity issues;
- h.) whether the Commission desires to conserve number resources and confirm that Complainant does not need assigned blocks of numbers to port numbers;
- i.) whether the Local Network Portability Administration Working Group (LNPA-WG) has reached a consensus on the legitimacy of Complainant’s porting requests;
- j.) whether Respondent has changed its porting policies and practices; and
- k.) issues involving the Firm Order Commitment (“FOC”) process.

14. Article III, Section 18.4 of the ICAs define and provide the structure for expedited treatment of disputes between the Parties, and does not allow Complainant to broaden the scope of this Complaint proceeding beyond the two porting requests at issue to include a litany of issues to be decided within the expedited timeframe set in this case.

The Commission certainly is not obligated to sprint down Complainant's desired procedural path with respect to issues beyond the two porting requests.

CONCLUSION

15. Granting Respondents' *Motion To Dismiss* and/or *Motion For Summary Determination* as this case currently is positioned before the Commission would most efficiently resolve *all* the issues stated above; to the extent that the Commission desires to pursue the broader issue of "industry agreed-upon practices" and related industry issues, it then could open a new generic case, provide formal notice and allow all affected incumbent carriers the opportunity to seek to intervene, and set a procedural schedule appropriate for that purpose.

16. In the alternative, the Commission should grant partial dismissal and summary determination in favor of Respondents with respect to the legal obligations imposed on Respondents by currently applicable federal statutes, FCC rules, and FCC decisions to port the customer-specific numbers at issue; and after so doing, and if the Commission desires to address the broad "industry agreed-upon practices" issue and related industry-wide issues, then suspend this proceeding, and order that the Complainant and Respondents must utilize Article III, Section 18 of their ICAs to try to informally resolve some of these newly raised issues. Failing resolution via this contractually required process, a non-expedited generic proceeding could then be initiated and that would allow other interested carriers to seek to intervene, and set a new procedural schedule appropriate for that purpose.

17. In the alternative, the Commission should limit the issues to be argued and decided in the scheduled July 11-12 hearing to the sole issue of whether Respondents are

lawfully obligated as a matter of currently applicable federal statute, FCC rules, or FCC decisions to port the customer-specific numbers at issue, order the remaining issues held in abeyance until formal notice and an opportunity to intervene have been provided to other interested carriers, and then set a new procedural schedule to address the remaining issues which have been raised by Complainant and the Staff.

18. Under any of these alternative procedural scenarios, Complainant certainly would be free to pursue any *other* specific ICA issues it might have with Respondents under a second case filed for that purpose consistent with the procedures set forth in Article III, Section 18 of the ICAs. Complainant should not be permitted to seek a Commission resolution of these other issues under the guise of expedited treatment for two customer-specific porting requests.

19. Pursuant to 4 CSR 240-2.080(16), Respondents request that the Commission rule on this Motion expeditiously and no later than July 3, 2007. The parties to this proceeding are operating under an expedited procedural schedule with the requirement to make several filings prior to the evidentiary hearing set for July 11-12, 2007. A Commission ruling by July 3, 2007 will avoid the uncertainty of whether the parties and the Commission must incur the cost and expense of proceeding to hearing. There will be no negative effect on the general public as this Complaint involves only two customers, one of which is a corporate affiliate of Complainant and the other an ISP, and does not preclude any customer from receiving basic local and interexchange two-way voice telephone service. Complainant has no legitimate grounds to complain if this Motion is granted as it was the party who intentionally and improperly broadened the scope of the proceeding far beyond the porting requests for two specific customers, especially in its

Surrebuttal testimony filing of June 25, 2007. Respondents have filed this Motion as soon as it could have, given that it first received Complainant's Surrebuttal testimony only one day before Respondent filed this Motion.

WHEREFORE, for the reasons stated herein Respondent moves the Commission as expeditiously as possible, and no later than July 3, 2007 to: **1)** grant Respondents' *Motion To Dismiss and/or Motion For Summary Determination*, or in the alternative, **2)** grant partial dismissal an summary determination in favor of Respondents with respect to the legal obligations imposed on Respondents by currently applicable federal statutes, FCC rules, and FCC decisions to port the numbers of the two customers at issue, order the Parties to utilize Article III, Section 18 of their ICAs to try to informally resolve the remaining issues, suspend this proceeding on the remaining issues, and if necessary, open a non-expedited generic proceeding where all interested parties are provided with formal notice and an opportunity to intervene and a new procedural schedule is set; or in the alternative, **3)** order that the issues to be argued and decided in the scheduled July-11-12, 2007 hearing be limited solely to the issue of whether Respondents are lawfully obligated as a matter of currently applicable federal statute, FCC rules or FCC decisions to port the numbers of the two customers at issue, order the remaining issues held in abeyance until formal notice and an opportunity to intervene has been provided to other interested carriers, and then set a new procedural schedule to address the remaining issues which have been raised by Complainant and the Staff; and **4)** grant such other an further relief as the Commission deems just and proper in the premises.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, transmitted by electronic mail or mailed, First Class, postage prepaid, to the following parties on the 26th day of June, 2007.

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