

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

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

**MOTION TO DISMISS, ANSWER
AND AFFIRMATIVE DEFENSES OF
CENTURYTEL OF MISSOURI, LLC AND
SPECTRA COMMUNICATIONS GROUP, LLC, D/B/A CENTURYTEL**

COME NOW CenturyTel of Missouri, LLC ("CenturyTel") and Spectra Communications Group, LLC, d/b/a CenturyTel ("Spectra") (collectively "Respondents"), pursuant to Missouri Public Service Commission ("Commission") Rules 4 CSR 240-2.070(6), (8) and 2.050(1) and the Commission's *Notice of Complaint*, and respectfully submit their Motion to Dismiss, Answer and Affirmative Defenses to the Complaint and Motion for Expedited Treatment filed by Socket Telecom, LLC ("Socket" or "Complainant").

INTRODUCTION

While complying with the Commission's decision to unilaterally shorten the normal 30-day time frame allowed in the Commission's rules for filing an Answer, Respondents initially must voice their strong objections to Complainant's request for continued expedited treatment of the substantive factual, legal, policy and technical

issues that will need to be addressed should this "complaint" ultimately be allowed to proceed.

Irrespective of the rather virulent rhetoric which cloaks Socket's pleading, the Commission should reject and dismiss Socket's attempt to broaden and expand the legal obligations of Respondents with respect to local number portability. Socket's porting requests are not legitimate, as it is seeking *location portability*, which Respondents are not legally obligated to provide. Simply put, Respondents have denied Socket's requests to port an existing number to a customer (in CenturyTel's case, Socket's own affiliated ISP) moving outside of Respondents' existing service areas, which clearly meets the definition of a geographic port.

As will be fully addressed herein, Respondents actions are not a violation of but, rather, in compliance with the requirements of the Telecommunications Act of 1996 (the "Act"), Federal Communications Commission ("FCC") rules, and the parties' Interconnection Agreements. In Socket's latest subterfuge (which, as noted above, involves its affiliated ISP, Socket Holdings Corporation dba Socket Internet), Socket is attempting to re-write the FCC rules in a manner that will inappropriately advantage its own affiliate while congesting the Respondents' interoffice networks, to the detriment of Respondents' customers.

While Respondents acknowledge that, under the dispute resolution process of their respective Interconnection Agreements with Socket, either party may elect to present a dispute to binding arbitration before this Commission (if the Commission is

selected as the arbitrator, its arbitration rules shall apply)¹, Socket's self-induced scheme that defies current FCC orders clearly does not qualify for expedited resolution procedures contemplated by the Interconnection Agreements.

MOTION TO DISMISS

Pursuant to Commission Rule 4 CSR 240-2.070(6), Respondents hereby move that the Commission dismiss the above-captioned matter for failure to state a claim upon which relief may be granted as more specifically set forth below. In support of their motion, Respondents respectfully state as follows:

1. There is no *legal* requirement for Respondents to port the numbers at issue in this proceeding. Socket's porting requests are not legitimate, as it is seeking *location portability* which Respondents clearly are not legally obligated to provide. Respondents' obligation to provide "number portability" when a customer changes providers is stated at Section 147 U.S.C. 251 (b)(2). The term "number portability" is specifically defined as *excluding* attempts to change the service location of the customer. Section 147 U.S.C. 151 (30) defines "number portability" as follows:

The term 'number portability' means the ability of users of telecommunications services to retain, *at the same location*, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another (emphasis supplied).

¹ Article III, Section 18.3, Arbitration. . . . At the election of either Party, arbitration shall be before the Commission, FCC, or court of competent jurisdiction. Otherwise, arbitration shall be by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association ("AAA") except that the Parties may select an arbitrator outside American Arbitration Association rules upon mutual agreement. If the Commission is selected as the arbitrator, its arbitration rules shall apply. Otherwise, the rules described in part (a) below shall be applicable. . . .

Consistent with the Act, the FCC rules have defined "location portability" in terms of *physical location*. 47 CFR 52.21(j) defines the term location portability as "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*" (emphasis supplied).

Socket has never denied that each of the subject requests for Respondents to port the number of a customer changing providers from Respondents to Socket involved Socket changing the actual service location of the customer. Under the law, the meaningful comparison is the customer's service location under Socket service to the ported number, versus the customer service location under the prior CenturyTel/Spectra service to that same number. In this case, the result of that comparison is a location in St. Louis, versus a location in Willow Springs or Ellsinore. Respondents' obligation to port numbers when a customer changes service providers arises only when service is to be "at the same location."

2. While Socket suggests that the rating points for calls to the ported numbers will not change, this is not a relevant consideration. Neither 47 U.S.C. 153(30) nor 47 CFR 52.21(j) speak in terms of rating points. Rather, they speak in terms of the customer's physical location. That physical location would change under the subject number ports here at issue. As a result, the Complaint should be dismissed.

ANSWER TO COMPLAINT

For their Answer to the Complaint, Respondents state as follows:

1. Except as specifically admitted herein, Respondents deny each and every allegation, averment and statement in the Complaint.

2. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 of the Complaint, and therefore deny same.

3. Paragraph 2 of the Complaint makes no factual allegations and does not require a response.

4. Respondents admit that CenturyTel of Missouri, LLC is a limited liability company organized and existing under the laws of the State of Louisiana and authorized to conduct business in the State of Missouri. Respondents admit the remaining allegations of paragraph 3 of the Complaint with the exception of the assertion that CenturyTel is a non-competitive exchange carrier. CenturyTel notes that its services have been declared competitive in various exchanges pursuant to Section 392.245 RSMo.

5. Respondents admit the allegations of paragraph 4 of the Complaint with the exception of the assertion that Spectra is a non-competitive exchange carrier. Spectra notes that its services have been declared competitive in various exchanges pursuant to Section 392.245 RSMo.

6. Respondents admit that Missouri statutes confer upon the Commission jurisdiction over certain activities of telecommunications companies such as Socket and Respondents. Except as expressly admitted herein, Respondents deny the allegations of paragraph 5 of the Complaint.

7. Respondents deny the allegations of paragraph 6 of the Complaint.

8. Respondents admit the allegations of paragraph 7 of the Complaint.

9. Respondents admit the allegations of paragraph 8 of the Complaint.

10. Respondents deny the allegations of paragraph 9 of the Complaint. Further answering, Socket has erroneously characterized the definition of a Firm Order

Commitment ("FOC") and has not properly followed the industry porting procedures. An FOC does not "confirm a due date and indicate a port order was provisioned." There is no "commitment" implied in an FOC. An FOC is a confirmation that a properly filled out and complete order was received and is ready for processing. The problem here is not the FOC. The OBF maintains the industry standard format for ASRs, LSRs and FOCs. An FOC is required, according to mandated LNP provisioning rules, no more than 48 hours after successful submission of a properly completed LSR. If an FOC was indeed a commitment to port, as Socket implies, there would be no need for the NPAC option to put a pending port into conflict after the FOC date. Regardless, automatic concurrence after an elapsed waiting period does not confirm that all provisioning for a port is complete. There is a due date that is set after the date of FOC for the port to actually be complete. Pursuant to LNP provisioning rules, both LECs have until the due date to communicate whether or not the port can occur on the specified date. In each case, CenturyTel notified Socket on or before the due date that the port could not be completed. Socket was notified both through email and through CenturyTel's web-based order notification system that the port could not be completed. If the number was activated with a LRN and Socket knew that CenturyTel did not provision the switch for proper routing, such actions confirm that Socket failed to abide by mandated LNP provisioning rules and purposefully allowed a customer to be improperly routed to itself using LNP.

11. Respondents admit that Socket was appropriately and timely notified that the subject port was unworkable via email message from Joey Bales and through the Web-based ordering system. Respondents state that the provisions of those messages speak for themselves. Except as expressly admitted herein, Respondents deny the allegations of paragraph 10 of the Complaint.

Further answering, Respondents state that Socket did not properly submit its port request. As stated in the CenturyTel Service Guide, the requested port could not be completed using a ten-digit trigger; therefore, the port must be manually worked on the actual due date. CenturyTel, therefore, had until the close of business on February 7th to process the port. When CenturyTel attempted to work the port on the due date, it was discovered that the port was not technically feasible. In processing the port, it was

determined that the CenturyTel customer, Socket Holdings Corporation dba Socket Internet, had 120 trunks in place, with traffic studies indicating a customer need of 121 trunks. Completing the port to Socket Telecom would result in this traffic flowing over the existing common toll tandem trunk group between the Willow Springs end office and the Branson tandem. The traffic would then be handed to Socket at their POI in Branson. The common toll tandem trunk group between the Willow Springs end office and Branson has 96 trunks in place, with traffic studies indicating 59 were required. Socket was immediately notified that the port was not workable and was technically infeasible. Completing the requested port would have immediately caused blockage, negatively impacting all of the Willow Springs customers' ability to complete toll calls.

12. Respondents admit that a conference call between the parties did take place, as the ICA contemplates that the parties, through their representatives on the Implementation Team or such other appropriate representatives, will meet to discuss any matters that relate to the performance of the agreement, as may be requested from time to time by either of the parties. As one of the items on the meeting agenda, Respondents again confirmed that not only was the port technically infeasible, but it was not an eligible port. Socket confirmed that the customer service location was moving from Willow Springs to St. Louis. In addition, CenturyTel referred Socket to both the ICA and the CenturyTel Service Guide concerning procedures for properly placing port orders that cannot be completed using a Ten Digit Trigger. Except as expressly admitted herein, Respondents deny the allegations of paragraph 11 of the Complaint.

13. In addition to the citations to the ICA referenced in paragraph 12 of the Complaint, Respondents provided Socket with the applicable provisions of the Act and FCC rules, as previously discussed herein. Except as expressly admitted herein, Respondents deny the allegations of paragraph 12 of the Complaint.

14. Respondents state that the requested port does, indeed, result in Location Portability. The Act clearly defines Number Portability as the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another. As the FCC has repeatedly stated on its web-

site², number portability does not allow customers to take their telephone numbers with them when they move. Furthermore, Respondents did not express any opinions relative to the numbers being used by an ISP, as the same facts and porting requirements would apply to any customer. The facts are undisputed that the customer is moving from Willow Springs. All of the customer's local service will be removed and relocated outside the Willow Springs exchange. CenturyTel did confirm that the capacity issue could be addressed, but never committed that it could be "readily" addressed, or that CenturyTel should be responsible for network costs required to more than double the existing interoffice network in order to transport calls to a customer relocated outside of the Willow Springs exchange. Except as expressly admitted herein, Respondents deny the allegations of paragraph 13 of the Complaint.

15. Respondents deny the allegations of paragraph 14 of the Complaint.

16. Respondents deny the allegations of paragraph 15 of the Complaint.

17. Respondents agree that a dispute was submitted by Socket and that no resolution was reached. The terms of the parties' ICA speak for themselves, and Respondents do not admit that expedited dispute resolution procedures would apply. Except as expressly admitted herein, Respondents deny the allegations of paragraph 16 of the Complaint.

18. Respondents agree that the Ellsinore exchange is located in the Spectra service area, and that a port request was submitted for the referenced number. As discussed above, this requested port also constitutes location portability, and is technically infeasible resulting in network congestion. While acknowledging that communications by both parties regarding this particular matter could have been improved, except as expressly admitted herein, Respondents deny the allegations of paragraphs 17 through 20 of the Complaint.

19. Respondents deny the allegations of paragraph 21 of the Complaint. Further answering, Respondents state that they are correctly interpreting the Act, FCC rules and the parties' interconnection agreements. Respondents deny that the service proposed by Socket would constitute a legitimate Foreign Exchange (or FX) service and

² See, e.g., <http://www.fcc.gov/cgb/consumerfacts/numbport.html>; <http://www.fcc.gov/Bureaus/CommonCarrier/Factsheets/portable.html>.

in any event FX service is not a local service subject to the interconnection agreements, as such service was found to be a non-local service.

20. Respondents deny the allegations of paragraph 22 of the Complaint.

21. Respondents admit that 47 CSR Section 52.21(j) defines the term "location portability," and that the section speaks for itself. However, Socket misstates the requirements concerning Service Provider Portability. Socket selectively quotes from the definition of "number portability" in the Federal Act. In doing so, Socket conveniently omits the critical "location" element of the definition. The definition of "number portability" at 47 U.S.C. 151 (30) actually refers to the ability of users to retain their telephone number *at the same location* when switching service providers. The Federal Act does not require that a number be ported when a user chooses to take service from a different service provider at a different location. Respondents deny the remaining allegations of paragraph 23 of the Complaint.

22. With respect to paragraph 24 of the Complaint, Respondents deny that any resulting rating points or routing points somehow create an obligation to port a number when a customer changes service location. Respondents deny the remaining allegations of paragraph 24 of the Complaint.

23. Respondents deny the allegations of paragraph 25 of the Complaint.

24. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 26 of the Complaint, and therefore deny same.

25. Respondents deny the allegations of paragraph 27 of the Complaint.

26. Respondents deny the allegations of paragraphs 28, 29, 30, 31 and 32 of the Complaint.

AFFIRMATIVE DEFENSES

To the extent that the Commission denies Respondents' Motion to Dismiss for the reasons herein stated, for their Affirmative Defenses to the Complaint, Respondents state as follows:

1. Complainant fails to state a claim upon which relief can be granted. Respondents incorporate by reference the specific statements and allegations contained in their Motion to Dismiss and their Answer to Complaint, *supra*.

2. Complainant's claims are barred by state and federal law and the terms of the parties' respective Interconnection Agreements, as previously referenced herein.

3. Respondents' actions with respect to Complainant's claims have been entirely in accord and consistent with state and federal law and the terms of the parties' respective Interconnection Agreements, as previously referenced herein.

4. Complainant's claims are barred by laches, waiver and estoppel.

WHEREFORE, having fully answered, CenturyTel of Missouri, LLC and Spectra Communications Group, LLC, d/b/a CenturyTel respectfully request the Commission to enter an Order dismissing Socket's Complaint and Motion for Expedited Treatment.

Respectfully submitted,

/s/ Larry W. Dority

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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 e-mail or mailed, First Class, postage prepaid, to the following parties this 2nd day of April, 2007:

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