

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

**PETITION OF SOCKET TELECOM, LLC FOR)
COMPULSORY ARBITRATION OF)
INTERCONNECTION AGREEMENTS WITH)
CENTURYTEL OF MISSOURI, LLC AND)
SPECTRA COMMUNICATIONS GROUP, LLC) CASE NO. TO-2006-0299
PURSUANT TO SECTION 252(b)(1) OF THE)
TELECOMMUNICATIONS ACT OF 1996)**

**CENTURYTEL’S RESPONSE IN OPPOSITION
TO SOCKET’S MOTION FOR RECONSIDERATION**

COME NOW Spectra Communications Group, LLC, and CenturyTel of Missouri, LLC (collectively, “CenturyTel”),¹ and pursuant to Commission Rule 4 CSR 240-2.080(15), file their Response in Opposition to Socket’s Motion for Reconsideration, and respectfully state as follows:

I. INTRODUCTION.

Late yesterday afternoon, Socket filed a “Motion for Reconsideration” of the Final Commission Decision (“Decision”), ostensibly under the auspices of 4 CSR 240-2.160.² Under the guise of attacking the Commission’s compromise POI decision, Socket mischaracterizes both the substance of the POI dispute and the nature of the remedy the Commission has fashioned. While neither party can claim victory on this issue, on the whole, the Commission’s solution provides a middle-ground for sharing the interconnection burden that promotes competitive entry, but properly recognizes the economics of interconnection with the existing, largely rural,

¹ The two CenturyTel ILECs, Spectra Communications Group, LLC (“Spectra Communications”) and CenturyTel of Missouri, LLC (“CenturyTel of Missouri”), are referred to collectively as “CenturyTel” strictly as a matter of convenience. They are separate ILECs under the FTA, and each will each operate under a separate agreement with Socket. Exhibit F (Simshaw Rebuttal) at 44-45.

² Notably, Socket did not seek expedited treatment of its motion under 4 CSR 240-2.080(16).

incumbent network. The Commission should reject Socket's motion and stay the course with respect to the POI decision reflected in the Decision for the following reasons:

- The Commission's rules permit it to weigh the parties' final offers and craft a separate solution that is consistent with the FTA.
- The Commission's separate solution on the POI dispute reflects a middle ground between the parties' final offers and is consistent with its authority and precedent.
- The POI dispute is about apportioning the extraordinary costs associated with Socket's selection of an expensive form of interconnection, not technical feasibility.

Because of critical procedural defects and substantive errors in Socket's motion and re-arguments, the Commission should deny Socket's motion in all respects.³

II. ARGUMENT

A. **The Commission properly developed a “middle ground” resolution to the parties’ disputed POI issue that is consistent with the FTA.**

Socket's motion attempts to seize upon Commission discussions of a potential outcome that would fall not in between the parties' final positions, but would lie far beyond even Socket's original demand for an OC12 POI threshold. Socket takes the Commission to task for ultimately developing a resolution to the POI issue that neither party proposed and that differed from the Arbitrator's proposed resolution, but that ultimately effects a sound policy decision consistent with the facts of this case, Commission precedent, the FTA, and FCC rules and orders.

At bottom, Socket's motion errs both in suggesting that the Commission is limited to selecting one of the parties' final offers and in assuming the Commission is bound by the Arbitrator's Final Report. Neither claim is true. Under the Commission's rules regarding final offers (4 CSR 240-36.040(5)), the decision here is between CenturyTel's DS1 final offer, Socket's OC3 final offer, “or adopting a result not submitted by any party that is consistent with the requirements of section 252(c) of the Act, and the rules prescribed by the commission and the

³ In light of the FTA and the Commission's rules, as well as Socket's prior position in this proceeding, its unilateral offer to extend the June 30th deadline solely for the reconsideration of one issue, Article V, Issue 7, Section 4.1, is improper and ineffectual.

[FCC].” Here, the Arbitrator rejected both parties’ final offers in favor of a compromise result based on certain increased traffic volumes. Reviewing that decision, “[t]he commission may adopt, modify or reject the arbitrator’s final report, in whole or in part.”⁴ Procedurally, therefore, it was permissible both for the Arbitrator to craft his initial proposed compromise result and for the Commission thereafter to modify that recommendation.

In addition to its adoption consistently with the Commission’s rules, the Commission’s selection of a “middle-ground” resolution to the POI dispute was supported by applicable authority. Faced with competing final offers of a DS1 threshold versus an OC3 threshold (or Socket’s post-final fallback offer of a DS3 threshold) for establishing additional POI(s) in a LATA, the Commission arrived instead at a compromise resolution based on the size of exchange at issue. Under the Commission’s approach, the threshold for establishing additional POI(s) is a sliding scale based on the size of the exchange at issue, starting at a DS1 traffic level trigger for the smallest exchanges and moving higher as the exchange size increases. The Commission essentially adopts a sliding POI trigger that moves from CenturyTel’s proposal (DS1) in the smallest exchanges toward (and potentially exceeding) Socket’s post-final offer fallback position (DS3) in the larger exchanges. The Commission’s solution represents a compromise with which neither party may be completely happy, but recognizes that Socket may maintain a single POI per LATA up to a certain level (*i.e.*, as an entry vehicle to facilitate competition), after which, consistent with the FTA’s goal of promoting facilities-based competition, it must assume the effort of deploying facilities to establishing an additional POI. The Commission arrived at a procedurally proper, substantively permissible, and economically rational result that need not—and should not—be further changed.

⁴ 4 CSR 240-36.040(24).

B. Contrary to Socket’s misdirection, the POI issue is ultimately about the substantial costs associated with Socket’s selection of an expensive form of interconnection, not about technical feasibility.

Under the guise of challenging the Commission’s authority to craft a compromise resolution, Socket once again—and again unsuccessfully—re-argues aspects of the merits of the POI dispute.⁵ In doing so, Socket raises the same arguments that CenturyTel has repeatedly rebutted.⁶

Contrary to the main thrust of Socket’s argument, the POI issue presented to the Commission is not about “technical feasibility” at all. CenturyTel has not argued and does not contend that, in theory, a single POI is not technically feasible when traffic exceeds, for example, a DS1 threshold. Instead, CenturyTel’s argument has always been based upon the FCC’s orders providing for the economic allocation of both cost and responsibility for interconnection arrangements. As the FCC observed in the *First Report and Order*, “[o]f course a requesting carrier that wishes a ‘technically feasible’ but expensive interconnection would, pursuant to Section 251(d)(1), be required to bear the cost of that interconnection, including a reasonable profit.”⁷ Therefore, if Socket selects a “technically feasible” but expensive form of interconnection (*i.e.*, a single POI in Branson requiring traffic to be brought from 60-plus

⁵ Socket also attempts to, yet again, change its POI position. Through this proceeding, Socket has changed from proposing an OC12 threshold to proposing an OC3 threshold to proposing a DS3 threshold to now proposing no threshold at all.

⁶ Compare Socket’s Motion for Reconsideration at 3-4 with CenturyTel’s Post-Hearing Brief on Certain Disputed Arbitration Issues at 5, 9-28 and CenturyTel’s Comments on Arbitrator’s Final Report at 2, 5-7. Socket also ignores that the legal viability of a single POI requirement remains suspect. Neither the FTA nor any FCC regulation provides that CLECs are entitled to a single POI per LATA, much less that they are so entitled virtually in perpetuity. See, *e.g.*, CenturyTel’s Post-Hearing Brief on Certain Disputed Arbitration Issues at 14-16. Socket has never responded or otherwise challenged the conclusion.

⁷ See *Local Competition First Report and Order* at ¶ 199.

exchanges throughout the Springfield LATA to that single POI),⁸ then Socket should bear the burden of that interconnection.⁹

Thus, the POI dispute is about apportioning the burden associated with Socket's selection of an expensive form of interconnection. Here, the Commission apportioned responsibility by adopting certain thresholds for Socket's establishment of additional POIs. The Commission's effort is consistent with the FTA and the FCC's *First Report and Order*, as well as ample other authority. And, the specific mechanism selected, graduated thresholds ranging from CenturyTel's DS1 proposal upward towards (and potentially beyond) Socket's threshold proposal, is not unreasonable.

III. CONCLUSION.

For the reasons set forth above, the Commission should deny Socket's motion in all respects.

⁸ See, e.g., Exhibit E (Simshaw Direct) at 15-23; ; Exhibit F (Simshaw Rebuttal) at 12-13; Tr. at 211:2-16, 225:3-226:2 (Simshaw).

⁹ See *MCI Telecommunications Corp. v. Bell Atlantic Pennsylvania*, 271 F.3d 491, 518 (3rd. Cir. 2001); *Petition of AT&T Communications of the Southern States, Inc., for Arbitration of Certain Terms and Conditions of a Proposed Interconnection Agreement with BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. Section 252*, Docket No. 2000-527-C, Order on Arbitration, Order No. 2001-079 (SC Pub. Serv. Comm'n 2001); *In the Matter of Arbitration of Interconnection Agreement Between AT&T Communications of the Southern States, Inc., and TCG of the Carolinas, Inc., and BellSouth Telecommunications, Inc., Pursuant to the Telecommunications Act of 1996*, Docket Nos. P-140, Sub 73, P-646, Sub 7 (NC Util. Comm'n 2001).

Respectfully submitted,

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**ATTORNEYS FOR CENTURYTEL OF
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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), the Office of the Public Counsel at (opcservice@ded.mo.gov), and counsel for Socket Telecom, LLC at (clumley@lawfirmemail.com; lcurtis@lawfirmemail.com; and b.magness@phonelaw.com) on this 29th day of June 2006.

/s/ Larry W. Dority _____

Larry Dority