

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

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

SOCKET TELECOM'S ANSWER TO COMPLAINT AND COUNTERCLAIM

COMES NOW Socket Telecom, LLC pursuant to 4 CSR 240-2.070 and 47 USC 252 and for its Answer to the Complaint and its Counterclaim in this matter states to the Commission:

Answer

1. Socket admits the averments of paragraph 1 of the Complaint.
2. Socket admits the averments of paragraph 2 of the Complaint.
3. Socket admits the averments of paragraph 3 of the Complaint.
4. Socket lacks sufficient knowledge or information to form a belief as to the truth of the averments of paragraph 4 of the Complaint and, therefore, denies those averments.
5. Socket admits the averments of paragraph 5 of the Complaint.
6. Socket admits the averments of paragraph 6 of the Complaint.
7. Socket admits the averments of paragraph 7 of the Complaint.
8. Socket admits the averments of paragraph 8 of the Complaint.
9. Socket admits that CenturyTel makes the request as described in paragraph 9 of the Complaint, and Socket admits that CenturyTel has accurately set forth the definitions of "Local

Traffic”, “Section 251(b)(5) Traffic”, and “ISP Traffic” from the parties’ Interconnection Agreement. Socket denies that the agreement provides for the mutual exchange of such traffic at no charge for transport and termination under Section 251(b)(5) of the Act, states that CenturyTel is not entitled to the relief it seeks by its request, and denies any remaining averments of paragraph 9 of the Complaint.

10. Socket admits that the parties’ Interconnection Agreement provides that they will interconnect their respective networks for the mutual exchange of “Local Interconnection Traffic” as defined in the agreement, including “Local Traffic” as defined in the agreement. Socket admits that “Local Traffic” includes “Section 251(b)(5) Traffic” and local “ISP Traffic” as defined in the agreement. Socket denies the remaining averments of paragraph 10 of the Complaint.

11. Socket admits that on or about December 7, 2006 it began submitting invoices to CenturyTel including charges for reciprocal compensation for termination of CenturyTel-originated Local Traffic as defined in the parties’ Interconnection Agreement. Socket admits that it has invoiced over \$100,000.00 in reciprocal compensation charges to CenturyTel. Socket admits that to date CenturyTel has not invoiced Socket for reciprocal compensation under the parties’ Interconnection Agreement. Socket denies the remaining averments of paragraph 11 of the Complaint.

12. Socket admits that CenturyTel paid the first two invoices that Socket submitted for reciprocal compensation under the parties’ Interconnection Agreement (Invoice No. 129 for \$7,232.33 dated December 7, 2006 for the period from October 13, 2006 to November 30, 2006, and Invoice 131 for \$3,619.08 dated January 11, 2007 for the period from December 1, 2006 to December 31, 2006). Socket admits that it has continued to submit monthly invoices for

subsequent months, that the amount of traffic subject to reciprocal compensation has continued to grow and so the amounts of the invoices have likewise increased over time. On May 18, 2007, CenturyTel disputed and refused to pay Invoice #216 which included current charges for terminating CenturyTel originated Local Traffic for the month of April and past due balances for January, February and March. CenturyTel has disputed and refused to pay subsequent invoices pursuant to disputed payment terms of the parties' Interconnection Agreement. Socket denies the remaining averments of paragraph 12 of the Complaint.

13. Socket admits that all of the traffic billed under its reciprocal compensation invoices issued to CenturyTel pursuant to the parties' Interconnection Agreement constitutes "Local Traffic" as defined in the agreement and that such traffic includes local "ISP Traffic" as defined in the agreement. Socket denies that it has billed CenturyTel reciprocal compensation for any "VNXX Traffic" as defined in the agreement and denies the remaining averments of paragraph 13 of the Complaint.

14. Socket admits that the parties have unsuccessfully engaged in dispute resolution pursuant to the provisions of the Interconnection Agreement regarding the matters described in the Complaint and this Answer and Counterclaim, and that Socket continues to assert it is entitled to reciprocal compensation in accordance with the terms and conditions of the interconnection agreement including payment from CenturyTel of the currently-disputed invoices.

15. Socket admits that CenturyTel seeks a determination and order from the Commission as described in paragraph 15 of the Complaint, that there is a real, substantial, and presently-existing controversy between the parties regarding the application of reciprocal compensation to Local Traffic exchanged by the parties pursuant to their Interconnection Agreement, that both

parties have pecuniary interests at stake, that Socket continues to assert it is entitled to payment of reciprocal compensation for termination of Local Traffic originated by CenturyTel, and that this controversy is ripe for adjudication. Socket denies that CenturyTel is entitled to any relief and denies the remaining averments of paragraph 15 of the Complaint.

16. Socket admits that CenturyTel specifically seeks a determination and order as described in paragraph 16 of the Complaint, denies that CenturyTel is entitled to any relief, and denies the remaining averments of paragraphs 16 and 17 of the Complaint.

17. In further answer to the Complaint and as an affirmative defense, Socket states that CenturyTel paid invoice numbers 129 and 131 without reservation or protest and the parties reached an accord and satisfaction as to those invoices.

WHEREFORE, Socket moves the Commission to dismiss CenturyTel's Complaint for failure to state a claim upon which relief may be granted and to grant such other and further relief to Socket as the Commission deems meet and proper in the premises.

Counterclaim

1. Socket Telecom, LLC ("Socket") is a Missouri limited liability company, with its principal place of business located at 2703 Clark Avenue, Columbia, Missouri 65202. Socket is a certificated competitive local exchange carrier in Missouri that provides service in various parts of Missouri, including in CenturyTel's service territory.

2. Centurytel is a Louisiana limited liability corporation that is duly authorized to do business in Missouri. CenturyTel's principal place of business in Missouri is 1151 CenturyTel Drive, Wentzville, Missouri 63885. CenturyTel is a "telecommunications company" and a

"public utility" as those terms are defined in § 386.020 R.S.Mo., and, thus, is subject to the jurisdiction, supervision and control of this Commission.

3. All inquiries, correspondence, communications, pleadings, notices, orders and decisions relating to this matter should be directed to:

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4. CenturyTel and Socket are parties to an interconnection agreement which was arbitrated before the Commission pursuant to § 252(b)(1) of the Act and the Commission's rules in Case No. TO-2006-0299 (hereinafter "Interconnection Agreement" or "Agreement"). After the above-referenced arbitration, the Commission issued an order approving the Interconnection Agreement on October 3, 2006, which order became effective on October 13, 2006.

5. The Commission has jurisdiction over this controversy pursuant to its grant of authority under § 252(e)(1) of the Act to approve negotiated or arbitrated interconnection agreements. This grant of authority to the Commission necessarily includes the power to interpret and enforce approved interconnection agreements. *See Southwestern Bell Telephone Co. v. Connect Communications Corp.*, 225 F.3d 942, 946-47 (8th Cir. 2000). The Commission also has jurisdiction over this controversy pursuant to 4 C.S.R. 240-2.070(3) (governing formal complaints complaining that a party has violated a Commission order or decision).

6. The Commission is the proper forum for this controversy pursuant to Article III, Section 18.3 of the parties' Interconnection Agreement.

7. Pursuant to Article III, Section 18 of the Agreement, the parties have engaged in dispute resolution negotiations regarding the subject matter of this complaint. Accordingly, Socket has directly contacted CenturyTel on the subject matter about which complaint is being made consistent with 4 CSR 240-2.070(5)(E). The parties, however, were unable to resolve this dispute within the time required by the Agreement for such negotiations.

8. The Interconnection Agreement provides that the parties will pay each other reciprocal compensation for the mutual exchange of "Local Traffic" as that term is defined by the agreement.¹ Such "Local Traffic" includes local "ISP Traffic" as defined by the agreement.² However, the agreement expressly provides that "VNXX Traffic" as defined in the agreement³ shall be exchanged on a "bill and keep" basis.⁴

9. Specifically, the Interconnection Agreement provides:

- (a) MCA Traffic will be exchanged on a bill-and-keep basis consistent with prior Commission decisions (Article V, Sec. 9.2, 9.2.1, 9.2.2);

¹ Under the agreement, "Local Traffic includes all Section 251(b)(5) Traffic that is originated by Socket's end users and terminated by CenturyTel's end users (or vice versa) that: (i) originates and terminates to such end-users in the same CenturyTel exchange area; or (ii) originates and terminates to such end-users within different exchange areas that share a common local calling area, as defined in CenturyTel's tariff. *e.g.*, Extended Area Service (EAS), mandatory and optional Metropolitan Calling Area, or other like types of expanded local calling scopes." Agreement, Article III, Sec. 1.78. With respect to "Section 251(b)(5) Traffic," the Agreement at issue provide that "calls originated by Socket's end users and terminated to CenturyTel's end users (or vice versa) will be classified as 'Section 251(b)(5) Traffic' under this Agreement if the call: (i) originates and terminates to such end-users in the same CenturyTel exchange area; or (ii) originates and terminates to such end-users within different exchange areas that share a common local calling area, as defined in CenturyTel's tariff, *e.g.*, Extended Area Service (EAS), mandatory and optional Metropolitan Calling Area, or other like types of expanded local calling scopes." Agreement, Article III, Sec. 1.108.

² The Agreement defines "ISP Traffic" as "traffic to and from an ISP." Agreement, Article III, Sec. 1.57 (included in definition of "Internet Service Provider").

³ The Agreement defines Virtual NXX Traffic (VNXX Traffic) as follows - "As used in this Agreement, Virtual NXX Traffic or VNXX Traffic is defined as calls in which a Party's customer is assigned a telephone number with an NXX Code (as set forth in the LERG) assigned to a Rate Center that is different from the Rate Center associated with the customer's actual physical premises location." (Agreement, Article II, Sec. 1.131).

⁴ The Agreement defines "Bill-and-Keep Agreement" as "a compensation arrangement whereby the Parties do not render bills to each other or charge each other for the switching, transport, and termination of traffic as specified in this Agreement." (Agreement, Article II, Sec. 1.12). See also Agreement, Article V, Sec. 9.4.2: "Bill-and-Keep" refers to an arrangement in which neither of two interconnection Parties charges the other for terminating traffic that originates on the other Party's network."

- (b) VNXX Traffic will be exchanged on a bill-and-keep basis (Article V, Sec. 9.2.3);
- (c) Other Local Traffic shall be subject to the termination rates set forth in Article VII.A⁵ (Article V, Section 9.7, 9.7.1, 9.7.2);
- (d) Other traffic may not be aggregated with bill-and-keep traffic (Article V, Sec. 9.8).
- (e) On request parties will supply Percentage Local Usage for amount of Local Interconnection Traffic minutes to be billed, but if adequate message recording technology is available then the terminating party may use such information to determine Local Interconnection Traffic usage compensation to be paid. (Article III, Sec. 10.2).
- (f) Annual audits can be conducted regarding billing for Local Traffic. (Article III, sec. 10.4).

Copies of the foregoing provision of the Interconnection Agreement are attached hereto and incorporated herein by reference.

10. Consistent with the provisions of the parties' Interconnection Agreement which authorize charges for reciprocal compensation for the exchange of Local Traffic, on or about December 6, 2006, Socket began submitting invoices to CenturyTel including charges for reciprocal compensation for its termination of CenturyTel-originated Local Traffic. Since its initial invoice, Socket has submitted reciprocal compensation invoices to CenturyTel for amounts totaling more than \$100,000.00.

11. When Socket submitted its first two invoices, covering the three-month period from October 2006 to December 2006 - Invoice No. 129 dated December 7, 2006, and Invoice No. 131 dated January 11, 2007 - CenturyTel paid them. Invoice No. 129 was paid in the amount of \$7,232.33, and Invoice No. 131 was paid in the amount of \$3,619.08. Socket has regularly and periodically sent CenturyTel invoices for reciprocal compensation for 2007.

⁵ Applicable Local Switching rate is \$0.0033912 per minute.

12. All of the traffic billed under Socket's invoices constitutes "Local Traffic" as defined in the parties' Interconnection Agreement that is subject to reciprocal compensation charges for termination by Socket.

13. Pursuant to 4 CSR 240-2.070(3) and the Commission's authority to interpret and enforce interconnection agreements, Socket seeks a determination and order from this Commission interpreting and enforcing the Interconnection Agreement and the parties' rights and liabilities there under pertaining to intercarrier compensation for Local Traffic. There exists a real, substantial, and presently-existing controversy between Socket and CenturyTel as to whether their Interconnection Agreement applies charges for reciprocal compensation to the Local Traffic they exchange. Socket has a legally protectable, pecuniary interest at stake, insofar as it is owed sums for reciprocal compensation as required by the Agreement, and Socket continues to assert entitlement to additional sums for reciprocal compensation. This controversy is ripe for adjudication.

14. Specifically, Socket seeks a determination and order that:

(a) the Interconnection Agreement at issues applies reciprocal compensation charges to the parties' exchange of Local Traffic (including Section 251(b)(5) Traffic and local ISP Traffic), and that Socket is entitled to receive reciprocal compensation payments from CenturyTel for terminating Local Traffic, Section 251(b)(6) Traffic and local ISP Traffic originated by CenturyTel's customers; and

(b) CenturyTel's payments on Invoice No. 129 dated December 7, 2006 and Invoice No. 131, dated January 11, 2007, were not in error, and Socket is entitled to such payments under the Agreement.

WHEREFORE, based on the foregoing, Socket respectfully requests that the Commission:

(a) issue an Order determining that the parties' Interconnection Agreement applies reciprocal compensation charges to the parties' exchange of Local Traffic (including Section 251(b)(5) Traffic and local ISP Traffic);

(b) issue an Order that CenturyTel's payments on Invoice No. 129 dated December 7, 2006, and Invoice No. 131 dated January 11, 2006, were not in error, and Socket is entitled to such payments under the Agreement;

(c) promptly set a pre-hearing conference for the purpose of establishing a procedural schedule in this case; and

(d) grant such other and further relief to which Socket is justly entitled.

Respectfully submitted,

CURTIS, HEINZ,
GARRETT & O'KEEFE, P.C.

/s/ Carl J. Lumley

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Certificate of Service

A true and correct copy of the foregoing was served upon the parties identified on the attached service list on this 12th day of October, 2007, by email and by placing same in the U.S. Mail, postage paid.

/s/ Carl J. Lumley

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