BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

CenturyTel of Missouri, LLC, Complainant, v. Socket Telecom, LLC, Respondent.	)))))))))	Case No. IC-2008-0068
Spectra Communications Group, LLC, d/b/a CenturyTel, Complainant, v. Socket Telecom, LLC, Respondent.	)))))))))))	consolidated with Case No. IC-2008-0127

STAFF'S PROPOSED REPORT AND ORDER
GRANTING CENTURYTEL'S MOTION FOR SUMMARY DETERMINATION
AND DENYING SOCKET'S MOTION FOR SUMMARY DETERMINATION

In this Report and Order, the Commission determines that the parties' Interconnection Agreement provides for bill and keep to apply to the exchange of Local Traffic.

Findings of Fact

1. Complainant CenturyTel of Missouri, LLC, is an incumbent local exchange telecommunications carrier. Complainant Spectra Communications Group, LLC, is also an incumbent local exchange telecommunications carrier. The Complainants will be referred to collectively as the CenturyTel companies or as CenturyTel.

2. Respondent Socket Telecom, LLC, is a competitive local exchange carrier.

3. CenturyTel of Missouri and Spectra each have a substantially identical Interconnection Agreement with Socket. The Interconnection Agreement was arbitrated and approved by the Commission in Case No. TO-2006-0299.

4. Socket has submitted invoices to the CenturyTel companies charging reciprocal compensation for the exchange of Local Traffic. The CenturyTel companies dispute that the charges are owed.

5. The CenturyTel companies filed these consolidated Complaints seeking a determination that the parties' Interconnection Agreement applies either an express or a de facto bill and keep arrangement to the exchange of Local Traffic.

6. Socket's Answer and Counterclaim seek a determination that the parties' Interconnection Agreement provides for reciprocal compensation to apply to the parties' exchange of Local Traffic.

7. The CenturyTel companies and Socket filed their respective motions for summary determination.

8. The Commission heard oral argument on April 9, 2008.

9. "Bill-and-Keep" is defined by Section 9.4.2 of Article V of the Interconnection Agreement as "refer[ring] to an arrangement in which neither of two interconnecting Parties charges the other for terminating traffic that originates on the other Party's network." (List of Documents Attached to Socket Telecom's Response, Item 6, p. 63.)

10. The Commission finds from the parol evidence that the Interconnection Agreement applies bill and keep to Local Traffic.

The Commission takes administrative notice of its Final Commission Decision in the arbitration, Case No. TO-2006-0299. The Decision ordered the parties to file an interconnection agreement that is consistent with the findings and conclusions in the Decision. (*Id*. at 80) The Commission takes administrative notice of Socket's letter dated September 15, 2006 filed in Case No. TO-2006-0299. The Commission takes administrative notice of CenturyTel's two Notices of Filing of Conformed Agreements filed in Case No. TO-2006-0299. In their respective filings, both Socket and CenturyTel stated that the Interconnection Agreement conformed to the Decision. Therefore, the Commission looks to its arbitration Decision to determine if the Interconnection Agreement applies reciprocal compensation or bill and keep to Local Traffic.

Arbitration Issue 10 asked: "What language should the interconnection agreement include regarding intercarrier compensation for transport and termination of traffic?" (List of Documents Attached to Socket Telecom's Response, Item 13, p. 24) Socket and CenturyTel did not ask the Commission to decide between reciprocal compensation and bill and keep. Each party asked the Commission to adopt its version of bill and keep.

As discussed at Section 9.2.2 of the Decision, CenturyTel had proposed bill and keep for Local Traffic, but moving to compensation rates set forth in Appendix A if either party is terminating more than 60% of the total Local Traffic, excluding Information Access Traffic. (*Id*. at 27.) Concerning this proposal, the Decision states, "CenturyTel's language addresses bill and keep generally, which corresponds more closely with Socket's language at Section 9.4.1 and 9.4.2. The Commission cannot make a ruling on CenturyTel's language since it refers to a compensation arrangement contained in appendix A which does not appear to be in the record." (*Id*.)

As discussed at Section 9.4.1 of the Decision, Socket had proposed bill and keep for non-MCA traffic, including Section 251(b)(5) traffic, ISP traffic, and FX Traffic, including VNXX traffic. (*Id*. at 29). Concerning this proposal, the Decision begins, "CenturyTel's language at

Section 9.2.3, addressing the appropriate application of bill and keep, is appropriate." (*Id*. at 28.) In Section 9.2.3 of the Decision, the Commission had decided that VNXX traffic shall not be deemed Local Traffic but shall be at bill and keep. (*Id*. at 28.) The Decision at Section 9.4.1 continues with the statement, "Other traffic included in this section has been deemed non-local through other determinations."[1] (*Id*. at 29.)

As discussed at Section 9.4.2 of the Decision, Socket had proposed to define bill and keep to refer to an arrangement in which neither of two interconnecting parties charges the other for terminating FX traffic that originates on the other party's network. The Commission decided that this language with the removal of the reference to terminating FX traffic was acceptable and consistent with the federal rule. (*Id*. at 29-30.)

The Commission interprets its Decision as rejecting only those parts of the two bill and keep proposals that were in dispute. In other words, the Commission's Decision rejected Socket's proposal to apply bill and keep to *all non-MCA traffic*. And similarly, the Commission rejected CenturyTel's proposal for bill and keep with an *out of balance* provision. The result is that the Interconnection Agreement provides for bill and keep to apply to the exchange of Local Traffic.

11. Section 9.7.2 of Article V of the Interconnection Agreement reads:

> Termination includes the tandem switching of Local Traffic at the carrier's end-office switch. Termination rates are set forth in Article VIIA. (List of Documents Attached to Socket Telecom's Response, Item 6, p. 64)

It is not possible for the Interconnection Agreement to apply both reciprocal compensation and bill and keep to the same traffic. Because the Commission finds that its Decision adopted bill

[1] This statement is not entirely correct. Section 251 (b)(5) traffic had not been deemed non-local elsewhere in the Decision. It is the federal statute at 47 USC Section 251 (b)(5) which imposes the duty of each local exchange carrier to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

and keep for Local Traffic, the Commission can find no reasonable purpose for Section 9.7.2 and finds this section is surplusage remaining from CenturyTel's out of balance proposal.

12. The Commission finds that summary determination is in the public interest because summary determination resolves this dispute in accordance with the parties' Interconnection Agreement, and because it resolves this dispute without the unnecessary delay of evidentiary hearings where the record shows there is no genuine issue as to any material fact.

Conclusions of Law

1. The Commission has jurisdiction over this controversy. Section 252 (e)(1) of the Act grants a state commission the authority to approve negotiated or arbitrated interconnection agreements. See 47 U.S.C. § 252 (e)(1). This grant of authority 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 (8^{th} Cir. 2000).

2. Commission rule 4 CSR 240-2.117 provides for the disposition of a contested case by summary determination. Subsection (1) specifically provides:

> (E) The commission may grant the motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that it is in the public interest. An order granting summary determination shall include findings of fact and conclusions of law.

3. The cardinal rule of contract interpretation is to ascertain the parties' intention and to give effect to that intention. The intent of the parties is to be based upon the terms of the contract alone and not on extrinsic evidence unless the contract language is ambiguous. An ambiguity arises only if the terms are reasonably open to more than one meaning, or the meaning of the language is uncertain. Mere disagreement between the parties does not render contractual

terms ambiguous. Rather, the test is whether the disputed language, in the context of the entire agreement, is reasonably susceptible to more than one construction when the words are given their plain and ordinary meaning. *Langdon v. United Restaurants, Inc*. 105 S.W. 3d 882, 887 (Mo. App. W.D. 2003)

4. The parol evidence rule bars extrinsic evidence in construing an integrated contract unless the contract is ambiguous. *Lee v. Bass,* 215 S.W. 3d 283, 288 (Mo. App. W.D. 2007)

5. Whether a contract is ambiguous is an issue of law. *Spiritas Company v. Division of Design and Construction,* 131 S.W. 3d 411, 416 (Mo. App. W.D. 2004)

6. The Commission finds that the Interconnection Agreement is ambiguous as to the compensation arrangement for the exchange of Local Traffic.

The Interconnection Agreement does not contain a definitive declaration that bill and keep applies to Local Traffic nor does it contain a definitive declaration that reciprocal compensation applies to Local Traffic. Section 9.7.2 of Article V of the Interconnection Agreement reads:

> Termination includes the tandem switching of Local Traffic at the carrier's end-office switch. Termination rates are set forth in Article VIIA. (List of Documents Attached to Socket Telecom's Response, Item 6, p. 64)

Because termination rates are appropriate for reciprocal compensation arrangements, Section 9.7.2 suggests that the agreement applies to reciprocal compensation for Local Traffic.

Subsection 9.8(ii) of Article V of the Interconnection Agreement provides, however:

> Nothing in this section shall be interpreted to allow either party to aggregate traffic other than Local Traffic for the purpose of compensation under the Bill-and-Keep arrangement described in this Section. (Id.)

This prohibition against aggregating traffic other than Local Traffic for the purpose of bill and keep compensation suggests that Local Traffic may be aggregated for the purpose of bill and keep, which further suggests that bill and keep applies to Local Traffic.

7. A precept of contract construction is that, if possible, a court will give effect to all parts of an instrument, and a construction that gives a reasonable meaning to all its provisions will be preferred to one that leaves portion of the writing useless or inexplicable. *Harris v. Union Electric Company*, 622 SW 2d 239 (Mo. App. 1981) No word or clause should be rejected as mere surplusage if the court can discover any reasonable purpose thereof which can be gathered from the whole instrument. AmJur 2d, Contracts, § 387.

8. The record shows there is no genuine issue as to any material fact. Based upon its determination that the parties' Interconnection Agreement applies bill and keep to the exchange of Local Traffic, the Commission holds that CenturyTel is entitled to relief as a matter of law.

IT IS ORDERED THAT:

1. CenturyTel's motion for summary determination is granted.
2. Socket's motion for summary determination is denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 20th day of August 2008.

/s/ William K. Haas
William K. Haas