

**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 BRIEF IN SUPPORT OF PROPOSED CONFORMING LANGUAGE

SPECTRA COMMUNICATIONS GROUP, LLC AND CENTURYTEL OF MISSOURI, LLC (collectively, “CenturyTel”) file their Brief in Support of Proposed Conforming Language:

I. INTRODUCTION

CenturyTel and Socket Telecom, LLC (“Socket”) have worked diligently to prepare an interconnection agreement that conforms to the Missouri Public Service Commission’s (“Commission’s”) Final Commission Decision (“FCD”). While the Parties have been able to jointly develop conforming language on the majority of issues, several issues remain in dispute where the Parties were unable to develop and agree on contract language conforming to the FCD. The Parties, therefore, present the Commission with competing contract language for those issues. For the reasons set forth below, CenturyTel requests that the Commission direct the Parties to include CenturyTel’s proposed conforming language in the Parties’ interconnection agreement, as that language best conforms to the FCD.

A. Rather Than “Conform” the Agreement, Socket Re-advances Issues It Lost

The Parties disagree on the language necessary to implement the FCD in certain places. The most substantial discord arises out of Socket’s selective reluctance to proceed with “conforming” the contract. In places, Socket has produced language that is much less about “conforming” and much more about its hope to resurrect what it lost in the FCD. In these

instances, Socket seeks to prevail through difficult and complex negotiations or a further order of the Commission on conforming language. In other places, Socket clings to strained interpretations of the FCD and Commission dicta in the hope of obtaining inconsistent, Commission-ordered language to promote its business plans. Briefly put, Socket refuses in places to recognize that this process, however difficult for a Party to invoke where it has lost on an issue, requires the Parties to write what the Commission intended—not what the Parties advocated.¹

In contrast, CenturyTel has attempted to adhere to the FCD and to produce *conforming* contract language, even where it may disagree with the Commission’s decision on the issue. CenturyTel can certainly commiserate with Socket with respect to places where the thrust of the FCD accepts CenturyTel’s position, albeit sometimes with modifications or added requirements. CenturyTel has taken little pleasure in simply conforming language to decisions with which it disagrees. Nevertheless, CenturyTel has proposed contract language that strictly conforms to the Commission’s FCD.² The Commission should adopt it.

B. Summary of Remaining Conforming Disputed Issues

The following summarizes the Parties’ principal disagreements:

Article III (General Provisions):

Socket attempts to incorporate Section 24.1 into the agreement, a provision that the Parties previously agreed to exclude and that, if incorporated, would conflict with another provision to which the Parties expressly agreed in order to settle an arbitrated issue.

Article V (Interconnection):

Having already lost the issue in arbitration, Socket incorporates new alternative language into the agreement regarding the treatment of “IP-PSTN Traffic” (or “VoIP”), even though the Commission determined that such language is not necessary and that the

¹ See 4 CSR 240-36.050(1).

² See, e.g., Article XV. The disputed language in Article XV is not as much a disagreement over what the Commission has required as it is a disagreement on the best mechanical way to effect the Commission’s requirements.

agreement should only address local traffic. Consistent with the FCD, CenturyTel proposes omitting such language.

Article VI (Resale); Article VIIA (Pricing):

In both of these Articles, Socket attempts to apply certain AT&T-Missouri NRCs that were developed to reflect AT&T's fully-electronic and/or fully-automated ordering and provisioning systems, systems that the Commission determined CenturyTel is not required to develop or replicate. These "electronic" NRCs should not apply to orders using CenturyTel's less-mechanized systems. CenturyTel proposes using AT&T NRCs that reflect less-mechanized ordering and provisioning systems and that better approximate CenturyTel's systems and costs.

Article IX (Maintenance):

Socket attempts to re-advance an issue it lost in this arbitration pertaining to Sections 5.1.1 and 7.1. Socket's proposed language fundamentally alters the meaning of the language expressly approved and adopted by the Commission. CenturyTel proposes conforming the language of those provisions only as expressly directed by the Commission.

Article XIII (Access to OSS):

Socket veers from the conforming process under which the Parties are operating and into advocacy of its position that it is entitled to an expensive, burdensome, RBOC-style, "Real-Time Electronic Interface" to CenturyTel's OSS, at least implicitly challenging the Commission's FCD. The CenturyTel Conforming Article XIII, on the other hand, provides a framework familiar to the parties and straightforward in its definitions and application. Despite Socket's decision to follow an uncharted path using newly-coined definitions and terms, CenturyTel has acknowledged Socket's concerns where legitimate, eliminated CenturyTel proposals where Socket has correctly objected, and incorporated Socket's proposed language where appropriate. At the same time, CenturyTel has rejected Socket proposals that implicate a level of access—and cost—inconsistent with the FCD.

Article XV (Performance Measures):

CenturyTel has offered a mechanism that is unquestionably fairer and more in the spirit of the terms of the FCD, particularly when applied to the "perfection" or near-perfection benchmarks that Socket demanded and won. Socket, for example, proposes a statistically unsound 30-non-excluded-observation³ "sample" gathered over whatever number of months it takes to gather them that effectively allocates as much as 3.33% potential error per observation (*i.e.*, up to 1/30) and would penalize CenturyTel for as few as one or two "misses." Indeed, CenturyTel could be penalized for those one or two "misses" even if they occur early in the collection of observations and are not repeated, because the

³ When CenturyTel uses the term "observations," it means—consistently with both Parties' language—"non-excluded observations. Certain measures exclude observations from the count and from evaluation because they are not within CenturyTel's control, such as outages caused by faulty customer owned equipment.

collection of the “sample” could be completed months or even years later—even if the miss is followed by months or years of perfect performance.

These outcomes are not consistent with industry standards or fundamental fairness. The Commission should reject Socket’s language and accept CenturyTel’s.

II. DISCUSSION

A. Article III (General Provisions)

The Parties’ only conforming language dispute in Article III pertains to whether Section 24.1 should be included in the agreement. CenturyTel proposes omitting Section 24.1, consistent with the Parties’ prior agreement; Socket incorrectly asserts that the Parties agreed to incorporate the following provision into Article III:

24.1 CenturyTel shall make no change in any policy, process, method or procedure used or required to perform its obligations under this Agreement, that, in whole or in part, has the effect of diminishing the value of any right of Socket granted herein or term or condition included herein, or that could cause an inefficiency or expense for Socket hereunder that did not exist at the Effective Date of this Agreement, without the prior review and written approval of Socket, which consent may be withheld by Socket in its sole discretion. In addition, CenturyTel shall not be permitted to circumvent this obligation by posting on its CLEC web-site.

Socket errs in asserting that the Parties agreed to this language. They did not. Instead, the Parties actually settled the language of Section 24 in its entirety during the course of the arbitration and, in that agreed language, Section 24.1 was intentionally excluded by the Parties. Therefore, it should be excluded from the final conformed agreement, especially since the FCD does not support its imposition on CenturyTel here.

The history of the Parties’ negotiations belies Socket’s assertion of agreement to its proposed language. Sections 24.0 and 54.5 of Article III both address how CenturyTel will provide notice of and implement changes to “standard practices” (*e.g.*, changes to standard practices, process and operating procedures relevant to the Parties’ performance under the agreement). Accordingly, the Parties agreed early in negotiations to attempt to resolve Section 24 in conjunction with Section 53.0, specifically Section 53.5, as the substance of those

provisions was clearly linked.⁴ Section 24.1 was marked as disputed in the draft of Article III exchanged between the Parties on December 16, 2005, the last exchange of this article prior to Socket filing its Petition for arbitration. Thereafter, the Parties discussed Section 24.1 specifically during the month of January, but did not resolve their dispute over its language. Consistent with their course of negotiating Section 24 in conjunction with Section 53, CenturyTel's lead negotiator sent Socket a proposal on February 2, 2006, to resolve the language of both sections. Notably, the disputed Section 24.1 was *excluded* from that proposal, which then formed the basis of the Parties' ongoing negotiations through the conclusion of the arbitration hearing. Over the course of several months, the issue of "changes in standard practices" was heavily contested and negotiated, culminating first in a settlement of the language in Section 24.0 and, on the last day of the arbitration hearing, the language in Section 54.5.⁵ At no time did CenturyTel ever agree to include Section 24.1 in the agreement.

Given Socket's assertion that CenturyTel agreed to include Section 24.1 in the agreement, CenturyTel has asked Socket to produce a document, email or any other material demonstrating CenturyTel's agreement. Consistent with CenturyTel's argument, Socket has produced nothing to that effect. Indeed, the documented negotiation history, as described above, demonstrates that the Parties reached a resolution of the language in Sections 24.0 and 54.5, and the inclusion of Section 24.1 was not part of that resolution.

Socket's assertion that CenturyTel agreed to Section 24.1 also is belied by two other critical factors. First, the very language of Section 24.1 is inconsistent with the language to which the Parties agreed in order to settle Section 54.5. Specifically, Section 24.1 purports to

⁴ See, e.g., Article III, Section 24.0 (acknowledging that CenturyTel's need to adopt and/or establish standard practices to fulfill the requirements of the Agreement, and providing that "notices of changes to standard practices will be provided as set forth in Section 54.").

⁵ This settlement effectively settled arbitration Issue No. 6 in Article III, which related to the notification issue addressed in Section 54.5.

allow Socket, at its sole discretion, to prevent the implementation of any change in a CenturyTel standard practice that adversely impacts Socket and/or its business. In contrast, Section 54.5, which the Parties do not dispute is agreed-upon language, provides: “Socket reserves the right to request changes [in standard practices] to be delayed or otherwise modified where there is an adverse business impact on Socket, with escalation through the dispute resolution process.”⁶ Clearly, Socket would not have agreed to such language if the Parties had already agreed to Section 24.1. As Socket has presented it, Socket’s Section 24.1 purports to provide it an unfettered right to block the implementation of any such change at Socket’s sole discretion. In reality, the Parties never agreed to Section 24.1, and through the puts and takes of negotiation, Socket agreed to the more reasonable “reservation of rights” language contained in Section 54.5.

Second, while Socket has omitted the term in its proposed conforming language, the language of Section 24.1 that Socket asserts CenturyTel actually accepted included a reference to “Accessible Letter.” The term “Accessible Letter” is an AT&T-specific term that CenturyTel systematically disputed throughout the course of negotiations and the arbitration as inconsistent with CenturyTel’s internal practices.⁷ In preparation for filing the Parties’ August 30th joint filing of disputed terms, Socket revised its proposed Section 24.1 as follows:

24.1 CenturyTel shall make no change in any policy, process, method or procedure used or required to perform its obligations under this Agreement, that, in whole or in part, has the effect of diminishing the value of any right of Socket granted herein or term or condition included herein, or that could cause an inefficiency or expense for Socket hereunder that did not exist at the Effective Date of this

⁶ Article III, Section 54.5 reads in its entirety:

54.5 Except as otherwise specified elsewhere in this Agreement, all changes to standard practices will be posted on the CenturyTel website prior to implementation, with email notification of such postings. The email notification directing Socket to CenturyTel’s website will contain, at a minimum, the subject of the change posted to the website and a website link to the posting. In addition, the website itself will contain a “change log.” Posting will include CenturyTel personnel who may be contacted by Socket to provide clarification of the scope of the change and timeline for implementation. Socket reserves its right to request changes to be delayed or otherwise modified where there is an adverse business impact on Socket, with escalation through the dispute resolution process. (emphasis added)

⁷ “Accessible Letter” refers to SBC-originated method of communicating information to the CLEC-industry at large. However, CenturyTel does not utilize this same “Accessible Letter” method to communicate with CLECs.

Agreement, without the prior review and written approval of Socket, which consent may be withheld by Socket in its sole discretion. In addition, CenturyTel shall not be permitted to circumvent this obligation by ~~the issuance of an Accessible Letter or~~ posting on its CLEC web-site.⁸

However, Socket's late revision is merely an attempt to sweep away the untidy reference to "Accessible Letter," as its presence demonstrates that CenturyTel *never agreed* to the language of Section 24.1. That term was marked as "disputed" *globally* throughout Socket's proposed interconnection agreement. It strains credulity for Socket to assert that CenturyTel agreed to the language of Section 24.1 when it contained that term, but contested it everywhere else.

To support its proposed language, Socket will likely resort to the same tack it took in conforming negotiations—namely, asserting that it included Section 24.1 as undisputed language in its Petition for arbitration. Thus, Socket argues, CenturyTel's failure to find Socket's error inures to Socket's benefit. However, whether Socket included Section 24.1 as undisputed language in its Petition as the result of a miscommunication between the Parties or otherwise, Socket clearly continued to negotiate the substance of Section 24.1 long after the filing of its Petition, and, subsequently, agreed to the language of Section 54.5. Those two provisions cannot be read consistently. Both provisions cannot co-exist in the agreement. While the Parties do not dispute the inclusion of Section 54.5 in the agreement, the foregoing demonstrates that they never mutually agreed to the inclusion of Section 24.1. Thus, the Commission should order the Parties to include in Article III only Section 54.5 and not Section 24.1.

B. Article V (Interconnection)

A single dispute remains with respect to the Parties' effort to develop an Article V that conforms to the FCD. Socket proposes VoIP-related contract language that does not strictly

⁸ This language reflects Article III, Section 24.1 as recently provided to CenturyTel by Socket on August 24, 2006.

conform to the Commission's determination and intent. With respect to the treatment of VoIP traffic, Socket proffers the following:

17.0 IP-PSTN TRAFFIC Anything to the contrary in this Agreement notwithstanding, any traffic originated by an end user of either Party in Internet Protocol format that subsequently undergoes a net protocol change, as defined by the FCC, prior to its termination to an end user of another Party ("IP-PSTN Traffic") shall be treated as 251(b)(5)/ISP-bound local traffic for compensation purposes and shall be compensated at the rates for such 251(b)(5)/ISP-bound local traffic set forth in this Agreement or any amendment to this Agreement.

This is not the language Socket originally proposed and which was subject to the underlying arbitration.⁹ Instead, Socket purports to include language post-arbitration from an issue arbitrated between AT&T and MCI in the M2A successor proceeding, erroneously asserting that the Commission unequivocally mandated its inclusion. The Commission did not.¹⁰

The course of the instant proceeding and underlying decisional rationale dictate rejecting Socket's demands here. It is worth observing, initially, that the Arbitrator rejected the inclusion of any language in Section 17.0, concluding that it "is not necessary."¹¹ The Arbitrator ruled that "[t]his issue has been addressed in previous sections of this Article. Socket's language will not be accepted by the Arbitrator as it conflicts with these previous determinations and previously offered language."¹² Reviewing that conclusion, "the Commission finds that the Arbitrator's Report is consistent with the previous Commission decision."¹³ The starting point is the understanding that no language should be included here. Then, almost as an aside, the Commission disjunctively comments that "[t]he language should either be removed in its entirety or the exact MCI RC 15 language should be incorporated in this interconnection agreement."¹⁴

⁹ This, of course, raises a separate question relating to the propriety of, once a Party's language is unequivocally rejected, *post hoc* imposing wholly new language that was never offered during the arbitration.

¹⁰ See FCD at 43.

¹¹ See Arbitrator's Final Report, P.S.C. Case No. TO-2006-0299 at 41 (May 18, 2006).

¹² *Id.* at 41-42.

¹³ *Id.* at 43.

¹⁴ *Id.*

The Commission should reject Socket's effort to include this VoIP-related intercarrier compensation provision in the Parties' agreement. Socket erroneously clings to the latter element of the disjunctive, posturing it as a mandate to include language. It is not; nor can it be. The Arbitrator rejected Socket's proposed language and concluded it was inconsistent with other aspects of the agreement, and the Commission affirmed the Arbitrator. Moreover, the Commission repeatedly refused to include language referring to non-local traffic in the agreement.¹⁵ Indeed, in a number of cases the Commission specifically determined that "Socket's language references non-local traffic not subject to an interconnection agreement, so this reference and language is not necessary."¹⁶ Now, ignoring these determinations, Socket attempts to foist on CenturyTel language referring to non-local traffic that was not arbitrated at all. Socket never filed testimony in support of this language nor argued that it is consistent either with the current state of the law or the remainder of the Parties' agreement. The Commission cannot adopt such language and remain consistent with the FTA and existing FCC regulations (*e.g.*, Socket would transform interexchange VoIP traffic into local traffic, contrary to well-established distinctions between the two) or with its exclusion of non-local traffic from the agreement.¹⁷ Therefore, following the Arbitrator's Final Report and the FCD, the Commission should exclude Socket's proposed Section 17.0 from Article V of the Parties' agreement.

¹⁵ *See, e.g.*, FCD at 23-24, 30-32 (rejecting language that "references non-local traffic").

¹⁶ *See* FCD at 30-32.

¹⁷ Because the FCC has not yet determined the appropriate treatment of VOIP traffic for intercarrier compensation purposes and because Socket's proposed contract language is problematic, the Commission should not include Socket's proposed section 17.0 in the Parties' agreement. *See* Exhibit C (Miller Direct) at 64-65; Exhibit D (Miller Rebuttal) at 76-80. First, Socket's proposal would have non-local traffic exchanged over the same facilities as local traffic, giving rise to concerns about possible phantom traffic and access charge avoidance. Second, Socket's proposed language improperly exempts traffic from access charges that may otherwise apply. In other words, the provision creates substantial arbitrage opportunities allowing carriers to completely circumvent applicable access charges by creative re-characterization of traffic. Exhibit C (Miller Direct) at 64-65. Third, the FCC has preempted the VOIP issue and is still deciding under what circumstances VOIP traffic is considered telecommunications and when it is subject to access charges. This is not an issue for Socket to decide unilaterally. Because of pending FCC proceedings addressing this critical issue, it is premature to include VOIP terms in the Parties' interconnection agreement. *Id.*; Exhibit D (Miller Rebuttal) at 76-80.

C. Article VI (Resale)

The only dispute remaining in Article VI appears in the “Appendix: Resale Pricing” pertaining to the appropriate NRC when Socket orders a customer service record (“CSR”). The Commission ordered the Parties to incorporate the AT&T-Missouri UNE NRCs into their agreement, and the Parties agreed to use the applicable UNE service order charge for Socket’s CSR orders under the Resale Article. Socket argues that no NRC at all applies to a CSR because AT&T apparently does not currently charge Socket for such a record. Socket’s argument, however, is flawed. The \$0.00 rate espoused by Socket applies only to CLECs using AT&T-Missouri’s fully-electronic OSS system, a system that CenturyTel does not use. Rather, CenturyTel must necessarily search and retrieve such CSRs using its own systems and processes, which are less-mechanized than those of AT&T. In discussions with AT&T-Missouri, CenturyTel has confirmed that AT&T would apply the “Record Simple/Record Complex” NRC of \$6.28 to any CLEC record order—CSR or otherwise—submitted not using its fully-electronic OSS system. That same \$6.28 record charge should apply to Socket’s CSR orders using CenturyTel’s less-mechanized OSS systems.

D. Article VIIA (Price Schedule)

A single dispute remains with respect to preparing a conforming Article VIIA. Ignoring the intrinsic nature of the CenturyTel systems and operations at issue, the Commission’s directive that “extensive system overhauls” are not required, and CenturyTel’s statutory entitlement to cost recovery, Socket proposes non-recurring UNE service order charges (“Electronic-UNE Service Order Type Charges”) that neither conform to the FCD nor permit CenturyTel to recover its costs associated with fulfilling UNE service orders. The starting point is the simple and straightforward recognition that CenturyTel’s systems and processes are far different from those of AT&T; it is beyond dispute that CenturyTel’s systems are less-

mechanized and less-automated, and will remain so under the agreement.¹⁸ Under its less-mechanized systems and processes, CenturyTel UNE service order processing may require intervention.¹⁹ But Socket demands inclusion of AT&T-based non-recurring UNE service order charges that presume the existence of an AT&T-like fully-automated, fully-mechanized and fully-integrated ordering and provisioning system with a significant volume of orders processed. On this record, that demand must fail.

Because Socket's proposed UNE service order NRCs are not consistent with the FCD and preclude CenturyTel cost recovery, the Commission should reject them in their entirety. First, by proposing AT&T UNE service order NRCs, Socket necessarily assumes CenturyTel's operations mirror those of AT&T and that the costs are identical. That, however, is not the case and, instructively, was not ordered by the Commission. The Commission, after all, specifically noted that "CenturyTel is not required to provide 'real-time' updates or extensive system overhauls" and recognized that the "process could be as simple as a 'cut and paste' function."²⁰ Socket's proposal, however, fails to reflect costs for a system or function envisioned by the FCD. Those Socket-proposed UNE service order NRCs, for example, make no room for a process "as simple as a 'cut and paste' function." Instead, contrary to the FCD, Socket would impose charges related to its proposed, fully-automated, "real-time" process on the less-automated process the Commission has ordered for CenturyTel, disregarding substantial cost differences.

Second, Socket's proposal that AT&T UNE service order NRCs for fully-automated processes be applied to CenturyTel's less-mechanized processes is unlawful because it would preclude cost recovery. The Commission must be governed by the statutory mandate that UNE rates, both recurring and non-recurring, must be based on "the cost . . . of providing the . . .

¹⁸ See, e.g., Exhibit N (P. Hankins Direct) at 24-30; Exhibit O (Moreau Direct) at 4-15.

¹⁹ Indeed, unlike AT&T's systems, CenturyTel's systems do not always interface with each other.

²⁰ See FCD at 58-59.

network element,” which “may include a reasonable profit.”²¹ Likewise, the FCC’s governing UNE pricing methodology (TELRIC), similarly mandates that state commissions base UNE rates on the ILEC’s costs.²² Socket’s proposed UNE service order NRCs fail those statutory and regulatory mandates, precluding CenturyTel cost recovery, much less a reasonable profit, by failing to compensate CenturyTel for the intrinsic nature of its less-mechanized system, instead applying NRCs based on AT&T’s fully-automated treatment of UNE service orders and much higher order volume. Therefore, the Commission should reject Socket’s unlawful proposal.

CenturyTel, on the other hand, proposes including in the agreement only the “Service Order Charges – Unbundled Elements” from the AT&T-Missouri agreement that apply to “simple” and “complex” orders processed by AT&T through means other than its fully-automated OSS system. Those service order charges apply to ordering processes that more closely resemble CenturyTel’s less-automated ordering systems and, therefore, comply with the Commission’s FCD.

E. Article IX (Maintenance)

The Parties have been unable to jointly develop conforming language with respect to two provisions in Article IX, Sections 5.1.1 and 7.1. However, the disputed language in both provisions is identical and relates to same issue.

Confronted with Socket’s attempt to re-argue a position it lost in the underlying arbitration, CenturyTel proposes the following language, which is consistent with the Commission’s mandate in the FCD:

5.1.1 CenturyTel will establish a single point of contact (SPOC) to provide Socket with information relating to the status of restoration efforts and problem resolution during any restoration process. This SPOC shall be a special option contained on CenturyTel’s 800 number(s) used by retail customers. Calls placed to this SPOC

²¹ 47 U.S.C. § 252(d)(1).

²² See, e.g., *First Report and Order* ¶¶ 679, 685.

shall be answered twenty-four (24) hours per day, seven (7) days per week. CenturyTel will have a knowledgeable person available to respond to Socket's questions.

- 7.1 CenturyTel will provide a single point of contact (SPOC) for all of Socket's maintenance requirements under this Article (via an 800 number) that will be answered twenty-four (24) hours per day, seven (7) days per week. This SPOC shall be a special option contained on CenturyTel's 800 number(s) used by retail customers. Competent personnel with knowledge of CenturyTel's repair and maintenance processes and procedures shall answer the number provided to Socket. These personnel shall have access to the systems or information to enable them to receive trouble tickets and provide updates on repair status.

The Commission unequivocally adopted CenturyTel's Sections 5.1.1 and 7.1.²³ Not content with that determination, Socket now proposes to transform that provision, rather than to conform it to the FCD. Other than to incorporate CenturyTel's Section 5.1.1 into the agreement, *the only other directive of the Commission was to include language in the agreement acknowledging* "the Commission's directive that CenturyTel have a knowledgeable person available to respond to Socket's questions."²⁴ In response to that clear directive, and as set forth above, CenturyTel added the following as the last sentence of Section 5.1.1: "CenturyTel will have a knowledgeable person available to respond to Socket's questions." As CenturyTel's Section 7.1 already contained similar language, no further addition to that provision was necessary. Thus, CenturyTel's proposed conforming Sections 5.1.1 and 7.1 comply precisely with the Commission's directives, and they should be adopted.

Taking the conforming process as an opportunity to reargue an issue it lost in the arbitration, Socket proposes to substantially re-draft Sections 5.1.1 and 7.1 in a manner not directed by the Commission and in a manner that would alter the provisions' fundamental meanings. Socket proposes the following revisions to Sections 5.1.1 and 7.1:

²³ See FCD at 55 ("The Commission affirms the Arbitrator's decision and approves CenturyTel's language at sections 5.1.1 and 7.1.").

²⁴ See FCD at 55.

- 5.1.1 CenturyTel will establish a single point of contact (SPOC) to provide Socket with information relating to the status of restoration efforts and problem resolution during any restoration process. ~~This SPOC shall be a special option contained on CenturyTel's 800 number(s) used by retail customers.~~ **CenturyTel shall provide Socket with a means of contacting CenturyTel for service-related questions without sitting in a queue with retail customers, including an option to by-pass the retail options.** Calls placed to this SPOC shall be answered twenty-four (24) hours per day, seven (7) days per week. CenturyTel will have a knowledgeable person available to respond to Socket's questions.
- 7.1 CenturyTel will provide a single point of contact (SPOC) for all of Socket's maintenance requirements under this Article (via an 800 number) that will be answered twenty-four (24) hours per day, seven (7) days per week. ~~This SPOC shall be a special option contained on CenturyTel's 800 number(s) used by retail customers.~~ **CenturyTel shall provide Socket with a means of contacting CenturyTel for service-related questions without sitting in a queue with retail customers, including an option to by-pass the retail options.** Competent personnel with knowledge of CenturyTel's repair and maintenance processes and procedures shall answer the number provided to Socket. These personnel shall have access to the systems or information to enable them to receive trouble tickets and provide updates on repair status.

As Socket is well aware, and as testified to by CenturyTel's witnesses, the 1-800 number referenced in Sections 5.1.1 and 7.1 also is used by CenturyTel's retail customers and field technicians; thus, while a special dial-around option provides Socket with the ability to jump ahead of retail customers in the queue who must listen to recorded messaging when they dial in, those retail customers and Socket necessarily must still flow through to the CenturyTel representative "in the same queue." The dial-around option simply permits Socket to jump ahead in the queue. The very language of Sections 5.1.1 and 7.1 *that the Commission expressly adopted* clearly reads: "This SPOC shall be a special option contained on CenturyTel's 800 number(s) used by retail customers." (emphasis added). By its proposed language, Socket attempts to incorporate language into Sections 5.1.1 and 7.1 that appears to require that CenturyTel provide Socket with a completely different system than the one provided to CenturyTel's retail customers and own field technicians.

Socket's attempt now to change the meaning of these provisions is nothing more than an attempt to reargue an issue it lost in the arbitration. In its own filed testimony, Socket sought to require CenturyTel to provide it with a separate telephone number(s) for the purpose of being able to directly contact CenturyTel's Network Operations Center (NOC) in the case of restoration issues, and CenturyTel's repair center in the case of maintenance issues.²⁵ However, through written testimony and at the hearing, CenturyTel's witnesses clearly established that the 1-800 number at issue in this provision is the same telephone number CenturyTel's *own field technicians and retail customers* call to report outages and to check the status of maintenance issues and restoration efforts.²⁶ Thus, by offering that number to Socket, CenturyTel put Socket at parity with CenturyTel's own field technicians, even if the number also is used by its retail customers. Apparently wanting better treatment than CenturyTel's own field technicians, Socket then complained that it did not want to have to sit in queue with CenturyTel's retail customers who also call the 1-800 for maintenance issues—Socket's greatest criticism was having to listen to retail-oriented messages before being connected with a CenturyTel representative.²⁷ In response to the criticism, CenturyTel *created for Socket* a special dial-around option that allowed it to by-pass the retail-oriented messages and be placed quicker in queue to speak to a CenturyTel representative.²⁸ That CenturyTel had not even provided this dial-around option to its own field technicians demonstrates that CenturyTel already was willing to provide Socket with super-parity treatment in this instance. The Commission agreed with CenturyTel and expressly adopted CenturyTel's language in Sections 5.1.1 and 7.1, which requires Socket to use the same 1-800 number used by CenturyTel's retail customers and own field technicians.²⁹

²⁵ Exhibit 16 (Bruemmer Rebuttal) at 4:8-5:5.

²⁶ Exhibit BB (Scott Direct) at 11:1-22; Exhibit CC (Scott Rebuttal) at 10:13-11:13.

²⁷ Exhibit BB (Scott Direct) at 11:23-12:18; Exhibit CC (Scott Rebuttal) at 12:4-19.

²⁸ *Id.*

²⁹ See FCD at 55 ("The Commission affirms the Arbitrator's decision and approves CenturyTel's language at sections 5.1.1 and 7.1.").

It is worth pointing out that Socket's proposed "conforming" language derives from a selectively lifted sentence in the Commission's Final Decision in which the Commission explained its rationale. Socket seized upon this explanatory sentence and now attempts to turn it into contract language. However, the Commission never directed that Sections 5.1.1 and 7.1 be revised in the manner proposed by Socket, and Socket's proposed revision actually *contradicts* the very language in those provisions that the Commission unequivocally adopted. The Commission adopted CenturyTel's Section 5.1.1 and 7.1 and only directed that the Parties add a single sentence requiring CenturyTel to make a knowledgeable person available to respond to Socket's questions. CenturyTel's conforming language does precisely that. Socket's does not. Therefore, the Commission should reject Socket's proposed conforming language in Sections 5.1.1 and 7.1 and adopt CenturyTel's.

F. Article XIII (Access to Operations Support Systems ("OSS"))

1. CenturyTel's Article XIII Language Is Conforming and Practical; Socket's Is Pretextual, Argumentative, Repetitive, and Fails to Conform

After the title of the article—"Article XIII, Access to Operations Support Systems," Socket has directly agreed to little of what CenturyTel has proposed in conforming the proposed ICA to the FCD. This is true in large part because Socket refuses—at least in the context of Article XIII—to acknowledge that this case is in the "conforming" stage under 4 CSR 240-36.050 of the Commission's Rules. Socket proposes in its draft Article XIII (the "Socket Draft") new language intended to re-advance its arguments about "the systems . . . providing Socket . . . the OSS functionality and information to which [it is] entitled under the [Act] and/or FCC rules."³⁰

The structure and language of the Socket Draft criticizes *sub rosa* the Commission's requirement that CenturyTel incrementally improve access to OSS. The Socket Draft is

³⁰ See Socket Proposed §2.1

premised upon Socket's continuing refusal to acknowledge that the Commission has determined that neither the Act nor the FCC's rules required it to order CenturyTel to implement the access to OSS that Socket requested—or to impose the costs on Socket and the CLEC industry that an RBOC-style or similar proposal would inflict. Under the terms of the FCD, the Commission has required CenturyTel, in some cases in cooperation with Socket, to develop processes to improve the automation of order entry, including such fixes as the use of “cut-and-paste” mechanisms, and to review its systems for low-cost systems that will improve efficiency and decrease error, particularly in the pre-ordering and ordering processes. The Socket Draft disregards the Commission's direction that CenturyTel provide a system that, together with the safeguards agreed to among the Parties—such as agreed Provisioning Intervals (contained in Article XV—Performance Measures, the vast majority of which is made up of Socket's preferred language) and other contract terms—will ensure that Socket obtains a high level of service, without causing the extraordinary costs that would result from the implementation of “Real-Time Electronic Interface” access to CenturyTel's OSS.

Whether or not Socket is correct legally about the Commission's decisions on access to OSS—and, of course, Socket is not—this is neither the place nor the time to argue about the lawfulness of the Commission's decisions. The Commission, should, therefore, adopt CenturyTel's proposed Article XIII as conforming language.

2. CenturyTel's Language Conforms and Is Operationally Clear

CenturyTel's proposed conforming Article XIII—Access to Operations Support Systems (the “CenturyTel Conforming Article XIII”) is, in fact, modeled on the proposal it made as its “final offer.” At bottom, the FCD made both Socket's arbitrated Article XIII, proposing a Real-Time Electronic Interface for access to CenturyTel's OSS, and any RBOC-style access-to-OSS document, such as the M2A2, unsuitable starting points. Because Socket had possessed and

litigated CenturyTel’s final offer Article XIII—and therefore, had a developed understanding of its terms—CenturyTel offered its conforming language based upon that platform. Using CenturyTel’s platform—modified to be extent consistent with the FCD—allowed the Parties to springboard their conforming language discussions off of their almost five months of exchanges about the CenturyTel format and terms.

Indeed, in response to CenturyTel’s offer of the CenturyTel Conforming Article XIII, Socket initially provided CenturyTel with detailed comments and questions, as well as proposed modifications. Socket has expressed no substantive objection to much of the CenturyTel Conforming Article XIII, but Socket has presented questions regarding certain provisions. However, after its initial mark-up of the CenturyTel Conforming Article XIII, Socket has chosen its own, uncharted path.

Despite the divergence in drafting paths, CenturyTel has attempted to bridge the gap by modifying its offer to include many of Socket’s proposals or to answer its questions, including:

- a. The inclusion of an introductory section providing for a global expression of the “Intention of the Parties.” Designed to effectuate the FCD, this new section expresses the overall goal of the Article in enabling Socket to obtain the access to OSS that it needs. (§1.0)³¹
- b. Clarifying definitions as Socket requested, either directly (*e.g.*, modifying the term “Socket Billing Information” (§2.9) to meet Socket’s wishes) or operationally (*e.g.*, illuminating the definition of “Customer Information” via provisions dealing with the handling of Customer Proprietary Network Information; *see* “Customer Information” (§2.7), and “CPNI,” §8.4; *see also* “CenturyTel OSS Information” (§2.4) and its use in §8.0, “CenturyTel OSS Information”).
- c. The elimination of provisions repeating, actually or substantially, the requirements of other articles (*e.g.*, §4.0 (and its many subparts) of CenturyTel’s earlier draft; §§3.2, 3.3, 5.3, 5.5, 5.7, 5.8, 11.2, etc., of Socket’s proposal).

³¹ CenturyTel included Section 1.0 only in an attempt to bridge a gap with Socket. In CenturyTel’s view, neither Party’s Section 1.0 is necessary, and CenturyTel would be willing to excise such language, if the Commission so directs.

- d. The elimination of “licensing”-style language for Socket’s use of CenturyTel facilities, software, or databases. (§§7.0, 8.0)³²

As Socket has continued to pose questions and ask for clarification, CenturyTel has responded (*e.g.*, further clarifications of the “right-to-use” provisions of the article; modifications to definitions; etc.).

While not attempting an effort at drafting from “whole-cloth,” CenturyTel’s framework, with appropriate, conforming modifications, is the best offer of conforming language available in this Section 4 CSR 240-36.050 process. CenturyTel’s language offers an efficient, already-understood basis for agreement upon or the imposition of conforming terms. The CenturyTel Conforming Article XIII should be adopted.

3. The Socket Draft Promises Continuing Disputes

The Socket Draft, first written as comments and competing language in response to the CenturyTel Conforming Article XIII (as modified as described herein and filed with this briefing), has now metamorphosed into an ambiguous article rife with heretofore unheard of and difficult to operationalize definitions and terms. Socket’s “from-scratch” approach might, as a general proposition, be an appropriate, out-of-the-box attack on the process of conforming the proposed agreement if its terms were simply an outgrowth of the FCD. They are not.

Intrinsic to the terms of the Socket Draft is its rejection of the lawfulness of the access to OSS that the Commission required under the FCD—access that does not involve “‘real-time updates’ or extensive system overhauls.”³³ The Socket Draft rhetorically bypasses the Commission’s stated goal of “increas[ing] efficiencies and the accuracy of wholesale

³² Socket’s own, original Article XIII: Access to Operations Support Systems (OSS) (dated 01/13/06), as filed with its Petition, contained terms and conditions pertaining to systems use and users, software and data integrity, and the return of software or the termination of its use—terms that are comparable to those that CenturyTel offers in Sections 7.0 and 8.0. Nevertheless, even the word “license” has been excised from the proposed Article XIII, except for prohibitions on Socket’s “sublicensing” of access to the facilities (§7.3) or information (§8.2.2) to third Parties.

³³ FCD at 58.

transactions”³⁴ and disregards its determination that “the Commission did not order CenturyTel to implement the OSS system that Socket request[ed].”³⁵ Although it has accepted piecemeal a number of provisions drawn from the current version of the CenturyTel Conforming Article XIII, Socket still attempts to avoid the important decision the Commission made upon the factual record presented in this case not to impose the extraordinary costs of the access to OSS that Socket demanded, first upon CenturyTel, and then upon Socket and the CLEC industry.

The Socket Draft still contains newly-coined definitions and terms implying that the only lawful access to OSS is in effect the access Socket demanded in its Petition, requiring what could be interpreted to be a “Real-time Electronic Interface”³⁶; for instance:

- a. Socket’s definition of “CenturyTel OSS Systems” (Socket Draft §2.1), when juxtaposed with its definition of “CenturyTel Pre-OSS Systems” (Socket Draft §2.3) would contractualize an illegitimate dichotomy between that “to which CLECs are entitled under the Telecommunications Act and/or FCC rules” (Socket Draft §2.1) and the existing systems the Commission has determined sufficient with certain non-overhaul upgrades (*e.g.*, the Web-based graphical user interface (“Web GUI”), electronic mail, etc.) (Socket Draft §2.3).
- b. The Socket Draft provides access to “CenturyTel OSS Facilities” that is keyed not to what the Commission has ordered, but to that which Socket contends it is entitled. (Socket Draft §§ 2.2, 3.1; *see also* §§3.0, 4.2).
- c. The Socket Draft proposes “flow-through” of Socket’s orders from email and Web GUI systems of intake (*see, e.g.*, Socket Draft at §5.6.2), even though this concept as posed could be confused with the Real-Time Electronic Interface that the Commission rejected in lieu of less costly improvements to accuracy and efficiency through more moderate changes to the systems. These improvements, the Commission explicitly recognized, could include methods such as the replacement of fully re-typed service orders placed by email or Web GUI with the use of electronic forms, drop-down boxes, or a “cut-and-paste” function.³⁷

Despite the Commission’s explicit direction that it “did not order CenturyTel to implement the OSS system that Socket request[ed],” the Socket Draft offers a proposed Article XIII that is in many respects a thinly-veiled attempt to promote its “Real-time Electronic Interface.” The

³⁴ *Id.* at 59.

³⁵ *Id.* at 60.

³⁶ *See* Socket’s definition of “CenturyTel [Operations Support Systems] Systems.” (§2.1 of Socket’s Draft).

³⁷ *Id.* at 58-59.

Socket Draft does not conform to the Commission’s determinations in the FCD and should be rejected in lieu of the CenturyTel Conforming Article XIII.

G. Article XV (Performance Measures and Provisioning Intervals)

The process of conforming Article XV: Performance Measures and Provisioning Intervals has come down to only one remaining issue: the question of how to properly apply the ordered PMs and penalties in the context of Socket’s extraordinarily small volume of transactions. The Commission acknowledged that this issue merited further work and, in the FCD, directed the Parties to negotiate, regardless of the merits of the performance measures or penalties themselves, “language that will allow for a statistically significant sample to be determined over a period of months without referencing or considering the ‘small’ amount of orders currently processed.”³⁸

Initially, CenturyTel proposed conforming language pursuant to which the Parties would negotiate the question of the application of statistical sciences to the problem of low volumes separately from the conforming process. Specifically, CenturyTel proposed a post-conforming-process negotiation of an amendment to Article XV with provisions meeting the Commission’s “statistical significance” standard. Socket rejected this approach and offered its own language, the latest version of which is now found in bold in Sections 4.1 and 4.5 of the joint filing of conforming language (the “Joint Article XV—Conforming”). Socket’s language provides that an aggregate of thirty (30) “non-excluded” observations of a given measure must occur over an unlimited time before CenturyTel’s performance would be evaluated.³⁹ CenturyTel’s proposal for conforming language is that each measure would be aggregated on up to a three-month

³⁸ *Id.* at 65.

³⁹ Under Socket’s proposal, the 30 observations could occur in one month or even 30 or more months, one or two at a time. It is conceivable that, depending upon the Performance Measure in question, CenturyTel could be penalized for a “miss” that occurs months or even years following its occurrence, even if that miss was followed by months or years of perfect service. Moreover, Socket’s proposal applies these aggregated observation counts against mis-matched “monthly” measures and monthly-adjusted penalties it won in other sections of the Joint Article XV—Conforming.

rolling basis⁴⁰ and that CenturyTel's performance would be evaluated either on a monthly or aggregated basis, depending upon the number of non-excluded observations (an average of 50 observations if aggregated over three months; an average of as many as 75 observations if two or fewer months were to be evaluated).

While theoretically possible, neither Socket's nor CenturyTel's proposals are grounded in statistical theory. Neither proposal conforms to the sophisticated statistical procedures of other interconnection agreements' performance measures and accompanying liquidated damages provisions. This is true for many reasons, not the least of which is that these plans are administratively unsuitable both for a rural ILEC and for a company of extraordinarily low transaction volumes, such as Socket.⁴¹ However, CenturyTel's proposal represents significant compromise over the provisions that govern the implementation of the CenturyTel of Missouri/Socket performance-measures provisions under the GTE-form interconnection agreement currently in effect. (Under Socket's current contract, no performance remedy plan becomes active until Socket aggregates 150 orders *per month* for three consecutive months—potentially a much higher number than CenturyTel offers here.)

Socket proposes, on the other hand, to amalgamate data from the events observed over time to reach an aggregate number of events to which its high-percentage (often requiring perfection) benchmark measures can be applied. Socket proposes to aggregate the count over whatever time it may take, and call it a "month" under the monthly benchmarks it won from the Commission. Socket calls this 30-event aggregation a "sample." Socket's justification for its 30-observation "sample" is simply misdirected.

⁴⁰ As CenturyTel has defined it, a "Rolling Frame Period."

⁴¹ Both Parties, it appears, are justifiably reluctant to undertake the extraordinary time, effort, or expense to design and implement an RBOC-style performance and measures plan. It could be done, but would require an extensive effort at evaluating historical performance and redesigning virtually the entire Article XV.

First, Socket confuses the statistical concept of “sample” with the statistical concept of “population.” Rather than draw a “sample” from a “population” of events and apply statistical probabilities to the question of whether the survey is representative of the whole (within a margin of error), Socket proposes to transform the “population” *into* the “sample.”⁴²

Second, Socket has pointed to no source that supports the idea that “30” is a legitimate starting point. CenturyTel requested that Socket provide it with a reference supporting Socket’s contention (paraphrased) that “statistics books say 30 is a valid sample size” or that its proposed methodology is otherwise statistically sound. In response, Socket cited to Appendix 1 to the Performance Remedy Plan of the AT&T 5-State Agreement (“AT&T Appendix 1”), suggesting that “it’s in there.” With all due respect to its effort in attempting to justify the position it has staked out, Socket’s problem is that the “support” it has offered its proposed mechanism for handling the statistical analysis of the small number of observations is simply inapposite.

The terms of AT&T Appendix 1 in fact confirm Socket’s confusion and *undermine* Socket’s proposal that a population of 30 be treated as a sample. True enough, in the context of certain tests of performance quality, AT&T Appendix 1 uses 30 as the breakpoint for a whether a “large sample” or a “small sample” test should be run, or where either test may be run, to moderate or regulate the margin of error for the “small sample” tests. This has a tendency to provide a greater margin of error when the small sample size test is used (*i.e.*, in a given population of potential observations, a larger sample size will yield a more reliable—but still not certain—analysis). At bottom, Socket cannot succeed by arguing that when AT&T Appendix 1 proposes to analyze a “sample” of a “population” of measured events that they really meant to analyze a small population *as* the sample.

⁴² Donald R. Cooper and C. William Emory, *Business Research Methods* (5th ed.) at 61-62.

What is particularly ironic about Socket's muddled use of statistics is that it evidently was nothing more than a straw man that Socket threw into testimony to defeat the CenturyTel performance measures proposal in the arbitration. Socket testified that "[Ms. Moreau's] observation that having only a small number of transactions per month can create this type of result is a legitimate concern"⁴³ Mr. Kohly also testified:

[T]he problems that result when working with a small number of observations (in this example service orders) are matters that statisticians regularly face and have developed methods to address. Because performance measures and remedy plans have been in existence for several years elsewhere, the Parties could look to these or consult statisticians to assist us in finding middle ground, a means of dealing with small numbers of observations while yet having a remedy plan that provided real incentives to CenturyTel to meet the performance objective that the measures embody. Another alternative might be quarterly calculations; essentially allowing sample numbers to accrue.⁴⁴

Yet, in the end, when asked to produce authority that this testimony was correct, Socket could produce none.⁴⁵ Unless Socket can present a statistical basis for its proposal to saddle CenturyTel with measures effective when each observation is worth 3.33% each over any length of time it takes to aggregate 30 occurrences, and it has not and cannot, the Commission should determine CenturyTel's language to be the most reasonable and closely conforming to the FCD. Socket has yet to offer anything that suggests that its offered number is anything but arbitrary.

The problem that any performance remedy plan is intended to police is poor performance. Socket's plan, which relies upon high percentage measures (*e.g.*, 100% in some measures, measures in the 90-97% range for most others), but has a small population of events to be observed, is untenable under any statistical theory Socket may posit. If Socket wants to apply percentages to CenturyTel's performance, the methodology must account for both *random*

⁴³ Exhibit 2 (Kohly Rebuttal) at 116.

⁴⁴ *Id.* at 118-19.

⁴⁵ And, when faced with the offer of a method of aggregation of observation consistent with its testimony, whether comporting with statistical theory or not, Socket rejected it. *See* the CenturyTel Conforming Article XIII and its three-month (equal to "quarterly") rolling window process.

*variations*⁴⁶ and incorporate a *margin of error* that is framed statistically by the size of the population and the sample. Socket's plan, and particularly its proposal for treating a population as a sample under the arbitrary benchmarks it has chosen, does literally *nothing* consistently with recognized statistical methods.

Whether or not the aggregation of isolated observations over time is a pragmatic approach to the extremely limited number of events to be analyzed in this case, no one should pretend that Socket's proposal has anything to do with statistical analysis. It simply does not. Socket's confusion of the statistical nomenclature—and its consequent failure to employ anything resembling legitimate statistical analysis—should be rejected because it is systematically divorced from the principle of policing poor performance. At the same time, because the Commission has ruled that there must be a point at which Socket's PMs must be applicable, CenturyTel respectfully requests that the Commission adopt its language in the Joint Article XV—Conforming.

II. CONCLUSION

For the reasons set forth above, the Commission should adopt CenturyTel's proposed language on the remaining disputes pertaining to language conforming to the Commission's FCD.

⁴⁶ Random variations in results “will always” occur, “even if [the] systems are tuned to perfect parity.” That is, “perfect parity” in performance is not perfection, because occasionally, events will occur where both Socket and CenturyTel experience service issues. These issues are not evidence of either poor performance or discrimination, but are in fact evidence of doing business at parity. See AT&T 5-State/CLEC, Appendix 1 to Performance Remedy Plan Agreement at 6.

Respectfully submitted,

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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 30th day of August 2006.

/s/ Larry W. Dority

Larry Dority