

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

Socket Telecom, LLC,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. TC-2020-0333
	)	
CenturyTel of Missouri, LLC,	)	
d/b/a CenturyLink,	)	
	)	
Respondent.	)	

**CENTURYTEL OF MISSOURI, LLC d/b/a CENTURYLINK’S  
STATEMENT OF POSITION**

CenturyTel of Missouri, LLC, d/b/a CenturyLink (“CenturyLink”) submits the following Statement of Position to the Missouri Public Service Commission (“Commission”).

**I. Issues**

**A. Entrance Facilities**

1. When is it appropriate for CenturyLink to charge Socket for entrance facilities pursuant to the Interconnection Agreement (ICA) between the parties?

CENTURYLINK POSITION: It is appropriate for CenturyLink to charge Socket for Entrance Facilities pursuant to the ICA when Socket orders network services from CenturyLink that allow Socket to connect its network with CenturyLink’s network and exchange local traffic. The FCC, in its Triennial Review Remand Order (TRRO)<sup>1</sup>, specifically found that an Entrance Facility is a necessary network element that Competitive Local Exchange Carriers (CLECs) require in order to interconnect and exchange local traffic with an Incumbent Local Exchange Carrier (ILEC). Without this network element, the FCC determined that CLECs are impaired in their ability to compete in the provision of local exchange services. The FCC further directed that ILECs must provide this network element to CLECs at cost-based rates. The ICA between Socket and CenturyLink specifically refers to the FCC’s TRRO and acknowledges that Entrance Facilities will be provided to Socket at cost-based rates (Article V, Section 1.3). The rates for the service are set forth in the Price Schedule in Article VII.A of the ICA.

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<sup>1</sup> In re Unbundled Access, 20 FCC Rcd 2533 (F.C.C. December 15, 2004) (Released February 4, 2005, Adopted December 15, 2004, Order on Remand).

Significantly, there are three other CLECs in Missouri that operate under the same ICA as Socket and are interconnected with CenturyLink in the same way as Socket. All of these CLECs are being billed for Entrance Facilities and none have raised a question or dispute with this charge.

Finally, when the ICA was first implemented, CenturyLink neglected to charge Socket for these Entrance Facilities. It was not until CenturyLink acquired and merged with Qwest Corporation and a review of all of the CenturyLink billing processes was undertaken that CenturyLink became aware of this oversight in its billing. Accordingly, in November of 2017, CenturyLink began invoicing Socket for these facilities, as well as back-billed for one year, which is permitted under the ICA (Article III, Section 9.4). The fact that CenturyLink did not bill for this facility for approximately eleven (11) years is not a waiver of its right to do so as provided by Article III, Section 45.0, of the ICA.

CenturyLink witnesses J. Nielsen, Rebuttal Testimony, all; A. Lubeck, Rebuttal Testimony, all.

## **B. Performance Measures**

2. Is CenturyLink liable for performance measure misses between November 2017 and October 2018?

CENTURYLINK POSITION: No. CenturyLink is not liable for performance measure misses between November 2017 and October 2018 because Socket did not bill CenturyLink for those misses on a timely basis in accordance with the terms of the ICA. Article XV, Section 4.5.5, of the ICA provides as follows:

“Socket shall submit its bill requesting payment of any amount(s) due from CenturyTel for ‘missed’ performance no later than sixty (60) days following the end of the month in which the last non-excluded observation of CenturyTel’s performance was made part of the calculation.”

Socket did not issue a bill to CenturyLink for performance measure misses for the period November 2017 through October 2018 until March 2019, well beyond the 60-day time period in which to submit a bill as required by the ICA.

CenturyLink witness Boudhaouia, Rebuttal Testimony, pp. 9-23.

3. Is CenturyLink liable for performance measure misses claimed by Socket that were not discussed by the Implementation Team or that were not the subject of prior notice to CenturyLink to implement a Gap Closure Plan?

CENTURYLINK POSITION: No. CenturyLink is not liable for performance measure misses claimed by Socket that were not discussed by the Implementation Team or that

were not the subject of a prior notice to CenturyLink to implement a Gap Closure Plan as required by the ICA. According to Article XV, Section 2 of the ICA, an Implementation Team, comprised of representatives of Socket and CenturyLink, shall, among other things, meet once a month to discuss the performance of the parties under the ICA. While an Implementation Team was formed in February 2016 and met regularly for a period of time, those meetings were either suspended or cancelled by Socket in approximately February 2017, long before Socket issued its first bill for performance measure misses in March 2019.

In addition, Article XV, Section III of the ICA, provides that if CenturyLink fails to meet the metrics set forth for a particular performance measure for three consecutive months, then, upon notice from Socket that such requirement has arisen, CenturyLink shall implement a Gap Closure Plan to improve performance. In this case, Socket did not issue a notice to CenturyLink to implement a Gap Closure Plan to improve its performance for those measures which Socket claims CenturyLink failed to meet. In other words, either the monthly implementation meetings or a formal notice by Socket to CenturyLink to implement a Gap Closure Plan is a necessary condition precedent prior to Socket issuing a bill for performance measure misses. Since neither of these condition precedents were met, CenturyLink is not liable for any performance measures misses under the ICA.

CenturyLink witness Boudhaouia, Rebuttal Testimony, pp. 9-23.

4. For those performance measure misses claimed by Socket, did CenturyLink miss the specific performance measure?

**CENTURYLINK POSITION:** CenturyLink disputes the manner in which Socket has calculated performance measure misses under the ICA. For example, Socket has erroneously counted certain occurrences as performance measure misses when, in fact, those misses were the result of events that were beyond the control of CenturyLink and, therefore, are excluded from any remedy payments under the ICA. In other instances, Socket has counted trouble tickets not worked within 30 days of installation that were the result of Socket choosing not to do cooperative or acceptance testing at the time it placed an order for the retail circuit. Cooperative testing is crucial to determine if the right service is being ordered to meet the needs of the customer to be served. CenturyLink should not be held responsible for trouble tickets where Socket failed to order the appropriate service to meet its customer's needs. Finally, as discussed in Issue No. 5 following, Socket erroneously counts all performance measure misses, not just those that exceed the benchmark.

CenturyLink witness Boudhaouia, Rebuttal Testimony, pp. 9-23.

5. Are remedy payments due for all misses once the benchmark is exceeded, or only for misses beyond the benchmark?

CENTURYLINK POSITION: Only performance measure misses that exceed the benchmark should be calculated for purposes of any remedy payment. For example, if the performance measure benchmark is 94%, that means CenturyLink must meet the performance measure at least 94 times out of 100. Stated another way, if CenturyLink fails to meet the performance measure 7 or more times out of 100, then it is liable for a remedy payment. In this example, if there are 8 misses in 100 occurrences, Socket counts all 8 misses and charges remedy payments for all 8 misses. It is inappropriate to charge for the misses up to the benchmark and CenturyLink should only be liable for remedy payments for those 2 misses that exceed the benchmark. Otherwise, Socket's interpretation renders the benchmark allowance meaningless and CenturyLink is being held to 100% compliance.

CenturyLink witness Boudhaouia, Rebuttal Testimony, pp. 9-23.

6. How much does CenturyLink owe Socket for performance measure misses?

CENTURYLINK POSITION: CenturyLink does not believe it owes any amount to Socket for performance measure misses for the period November 2017 through October 2018 as those amounts were not timely billed according to the terms of the ICA. For performance measure misses beginning in November 2018, CenturyLink does not believe it owes any amount for performance measure misses, as Socket did not pursue the necessary prerequisite steps of either pursuing an Implementation Team Meeting or issuing a notice of Gap Closure Plan as required by the ICA.

CenturyLink witness Boudhaouia, Rebuttal Testimony, pp. 9-23.

### **C. Dark Fiber Inquiries**

7. Does the ICA require Socket, when submitting a dark fiber inquiry, to already have collocation facilities or an application submitted to establish collocation facilities in the wire center where the dark fiber will originate and terminate?

CENTURYLINK POSITION: Yes. While the ICA allows for Socket to issue a dark fiber inquiry, it is clear that such an inquiry is a first step in the process of placing an Access Service Request (ASR) for dark fiber. Article V, Section 5.4.4.2 of the ICA, provides that "(i)f Socket wishes to request dark fiber, it must submit a dark fiber inquiry, providing Socket's specific point-to-point (A to Z) dark fiber requirements." Placing an inquiry for dark fiber indicates that Socket is serious about ordering dark fiber from CenturyLink. In other words, if dark fiber is available, CenturyLink expects that Socket will submit an ASR for the available dark fiber. The ICA is clear that in order to place an ASR for dark fiber, Socket must have collocation facilities (or have made application to

establish collocation facilities) in the wire centers where the dark fiber will originate and terminate (Article V, Section 5.3.1 and 5.4.6.1).

CenturyLink witness Boudhaouia, Rebuttal Testimony, pp. 3-8.

8. Does the ICA require Socket to submit a dark fiber ASR at the same time it submits a dark fiber inquiry?

CENTURYLINK POSITION: No. Socket is not required to submit a dark fiber ASR at the same time it submits a dark fiber inquiry. If, however, CenturyLink's response to the inquiry indicates that dark fiber is available between the two wire centers identified by Socket, then Socket should place an ASR at that time.

9. What information must be examined by CenturyLink prior to responding to a dark fiber inquiry?

CENTURYLINK POSITION: The ICA provides that CenturyLink must perform an inventory of dark fibers in response to an inquiry. Article VII, Section 5.4 entitled "Spare Fiber Inventory Availability and Condition" sets forth the steps that CenturyLink must follow to determine the availability of dark fibers. For example, maintenance spare fibers, defective fibers, CenturyLink growth fibers and fibers assigned to other carriers will not be counted in determining the availability of dark fibers.

CenturyLink witness Boudhaouia, Rebuttal Testimony, pp. 2-8.

10. What constitutes a wire center for purposes of Socket submitting dark fiber inquiries and orders pursuant to the ICA?

CENTURYLINK POSITION: A Wire Center is defined in the ICA as:

"A building or space within a building that serves as an aggregation point on a LECs' network where transmission facilities and circuits are connected or switched. Wire Center can also denote a building in which one or more Central Offices, used for the provision of exchange services and access services, are hosted."

All LEC Wire Centers, including CenturyLink's, are listed in a national database known as the Local Exchange Routing Guide (LERG). This database is available to all carriers, including CLECs. The LERG is the official database used to validate if a location/structure within a carrier's network is indeed a Wire Center/Central Office. The LERG is a dynamic database, in that it is continually being updated. Another possible source to identify a Wire Center is in the FCC's Business Data Services (BDS) Forbearance Order.<sup>2</sup> A carrier may be able to find in the BDS database the name and

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<sup>2</sup> In re Business Data Services in an Internet Protocol Env't, 32 FCC Rcd 3459 (F.C.C. April 20, 2017).

Common Language Location Identifier (CLLI) code of the serving Wire Centers where they are seeking to collocate. However, the BDS Wire Center list is not dynamic, as it only lists Wire Centers at the point in time when the FCC issued its Order. Nevertheless, CenturyLink has indicated to Socket that it will respond to a dark fiber inquiry between CenturyLink offices that are listed in the FCC's BDS database.

CenturyLink witness Boudhaouia, Rebuttal Testimony, pp. 2-8.

Respectfully submitted,

**Brydon, Swearingen & England, P.C.**

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail, electronic mail or hand delivery, on this 30<sup>th</sup> day of July, 2020, to the following parties:

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