

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

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

**BRIEF OF SOCKET TELECOM, LLC ON DISPUTED ISSUES
REGARDING CONFORMING INTERCONNECTION AGREEMENT**

COMES NOW Socket Telecom, LLC (“Socket”) (“Socket”) and, pursuant to the Commission’s August 24, 2006 “Order Extending Time To File Interconnection Agreement” files its Brief on Disputed Issues Regarding Conforming Interconnection Agreement.

In the Final Commission Decision (“FCD”) in this proceeding, the Commission ordered that “[t]he parties shall form an interconnection agreement that is consistent with the findings and conclusions in this Decision.”¹ The process of “conforming” the interconnection to the Commission’s decision should not involve reconsideration or re-litigation of issues already resolved by negotiation or arbitration. At this stage of the proceeding, both Parties must accept the decisions they consider favorable or unfavorable, rather than seek to resurrect arguments that have been previously resolved.

Socket and CenturyTel have devoted many hours to developing conforming contract language since the issuance of the FCD, and, for the most part, have succeeded in negotiating mutually acceptable contract language. On the issues that remain in dispute, however,

¹ Final Commission Decision (“FCD”) at 80.

CenturyTel seeks to add or delete contract language in ways that flatly fail to qualify as being “consistent with the findings and conclusions” in the Commission’s FCD.² For example:

In addition, on OSS and Performance Measures issues, CenturyTel refuses to recognize the letter and spirit of the direction the Commission gave the Parties in the FCD. On those articles of the interconnection agreement, there are thus large issues that remain in dispute.

The proposed contract language presented by both Socket and CenturyTel has been extensively reviewed and negotiated by the Parties since the issuance of the FCD. Socket urges the Commission to approach the remaining disputes in true “baseball style,” and order the Parties to incorporate the proposed language offered by one party or the other into the interconnection agreement. Socket appreciates the Commission’s continued commitment to carefully considering and resolving the issues in this proceeding.

Article III: General Provisions – Section 24.1

The Parties’ sole dispute in conforming Article III – General Terms is whether the Article shall contain a provision proposed by Socket.³ In Case No. TO-2005-0336, the Commission approved virtually identical language, stating that SBC “cannot be permitted to pull the rug out from under a CLEC.”⁴ Therefore, during the negotiations phase, Socket proposed such a provision, even removing certain clauses at CenturyTel’s request. Believing such revised

² See discussion herein of disputes regarding Article III, Section 24.1; Article V, Section 17; and Article VII.A.

³ The disputed language provided: **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.**

⁴ Case No. TO-2005-0336, *Southwestern Bell Telephone, L.P., d/b/a SBC Missouri’s Petition for Compulsory Arbitration of Unresolved Issues for a Successor Interconnection Agreement to the Missouri 271 Agreement (“M2A”)*, Final Arbitrator’s Report (June 21, 2005) at §1(A), 64.

language to be agreed, Socket filed its Petition for Arbitration showing this Section 24.1 in normal type font and did not include this section as disputed in its Decision Point List (“DPL”).

CenturyTel did not identify this language as disputed in its Response to the Petition for Arbitration or in subsequent DPLs, and the Commission consequently did not have the opportunity to either affirm its prior holding in the M2A arbitration or to change its ruling based on any different circumstances that CenturyTel might have raised. Nevertheless, CenturyTel now wishes to strike Section 24.1, claiming it never agreed to the language. But it is not necessary for the Commission to determine the factual issue of whether CenturyTel agreed or not, as the resolution of this conforming dispute hinges instead on whether CenturyTel is allowed to raise a new disputed issue after the arbitration has already concluded.

The law is clear on the affirmative duty of parties to identify arbitrable issues. Section 252(b)(3) of the Telecommunications Act of 1996 (the “Act”) permits a non-petitioning party to respond to the petitioner with as much information concerning disputed and resolved issues as it wishes. The Commission’s rules track the Act’s requirements, but are more specific. In particular, 4 CSR 240-36.040(7) requires the respondent to restate each issue in the petition and provide a position statement, and also to “identify and present any additional issues for which the respondent seeks resolution.” Section 252(b)(4) of the Act requires a State commission to limit its consideration of any petition, and any response thereto, “to the issues set forth in the petition and in the response, if any.” If an issue was not raised in the petition or in the response, then a State commission does not have authority to decide the issue unless both parties addressed the issue at some stage in the proceeding and therefore put the issue into play.⁵

⁵ See, e.g., *MCI Telecommunications Corp. v. Illinois Bell Tel. Co.*, 1999 WL 1893197 (N.D. Ill. 1999) (ICC could not approve liability limitations at approval stage of arbitration, when issue was not arbitrated); *BellSouth Telecommunications, Inc. v. Cinergy Communications Co.*, 297 F.Supp.2d 946 (E.D. Ky 2003) (while issue was not

It was incumbent upon CenturyTel to notify this Commission and Socket that it did not agree with Socket's representations in the arbitration petition, which has been in CenturyTel's hands for more than eight months. CenturyTel had many opportunities to do so. Besides the statutory obligation and requirement under Commission rules to identify any additional issues in its Response to the petition filed on February 7, 2006, CenturyTel also could have raised the issue in the joint DPL filed on February 21, 2006. CenturyTel had another opportunity to raise the issue in the final offer DPLs filed on April 7, 2006. CenturyTel could even have addressed the issue in direct testimony (so that Socket would have the opportunity to rebut), or could have attempted to raise the issue at hearing. CenturyTel simply never pointed out that it disagreed with the above-referenced language. Consequently, Socket never had an opportunity to defend the language and the Commission never had the opportunity to rule on it.

CenturyTel may argue that the (un)disputed language was subsumed in the Commission's decision on Article III, Issue 6, wherein the Parties presented in the Article III DPL disputed language for Sections 24.0 and 54.5 and the Commission ruled on these identified provisions related to notice of changes. That Commission decision, however, only addressed the form of notification (*i.e.*, email or posting on a website) and whether Socket could request assignment of a project team for implementation of a change.⁶ The ruling was not a sweeping decision concerning notification provisions in general. In fact, the ruling acknowledged that the Parties had agreed to the bulk of the terms governing changes in standard practices and simply did not address whether CenturyTel could unilaterally make, in effect, a change to the bilateral

included in petition, ruling was permitted but only because issue was debated by parties at conferences, at hearing, and in briefs).

⁶ FCD at 8.

interconnection agreement without Socket's review and approval merely by CenturyTel changing its policies.

The resolution of this conforming dispute is simple. There is no ability or necessity for the Commission to clarify its ruling because the Commission did not rule. And that is because CenturyTel failed to state, at any time in the arbitration proceeding, that it disagreed with the language of Section 24.1. Whether this was a function of CenturyTel's failure to read Socket's Petition until the conforming stage, or CenturyTel's second thoughts about its failure to challenge in this case a provision approved in Case No. TO-2005-0336, is irrelevant. The issue was not raised and it was not arbitrated. To "rule" for CenturyTel now, by deleting the provision, would be contrary to the Telecommunications Act and the Commission's rules.

Article V: Interconnection – Section 17

The Parties have not reached agreement regarding the Commission's resolution of Article V, Issue 31.⁷ This issue involves inclusion in the ICA of contract language regarding reciprocal compensation for IP-PSTN traffic that was previously approved by the Commission in Case No. TO-2005-0336 (regarding issues raised by MCI in that proceeding that were designated as "MCI RC 15" and "MCI RC 17"). Socket proposes to follow the directive in the FCD that the "exact language" approved in Case No. TO-2005-0336 be incorporated into the Socket-CenturyTel ICA and that previously proposed implementing language be removed.

In the FCD, the Commission noted that:

Socket is correct that the Commission's order in Case No. TO-2005-0336 reversed the Arbitrator's decision on MCI RC Issue 15, specifically addressing traffic that "falls squarely within the 'net-protocol change' portion of the FCC's multi-part enhanced service definition and is therefore appropriately charged at reciprocal compensation rates instead of switched access rates."⁸

⁷ See FCD at 43: "Issue 31 – Should Socket's proposed language regarding the exchange of enhanced/information service traffic be included in the agreement?"

⁸ FCD at 43.

The Commission went on to find that the language to implement the Commission's determination was not the same as the language used to implement the decision on MCI RC 15 in Case No. TO-2005-0336. The Commission concluded that the proposed language "should either be removed in its entirety or the exact MCI RC 15 language should be incorporated in this interconnection agreement."⁹

The "exact MCI RC 15 language" that was approved by the Commission is as follows:

16 IP-PSTN TRAFFIC

16.1 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 contract language was approved by the Commission on August 8, 2005, in the proceeding in which the Commission finally approved the MCI-SBC Missouri ICA conforming to the decisions in Case No. TO-2005-0336.¹⁰ The Commission approved this language in its "Order Approving Arbitrated Interconnection Agreement" (the "MCI Order") in Case No. TK-2006-0050, one of the "nine spin-off dockets" the Commission opened to "serve as the vehicle for further proceedings regarding one of the interconnection agreements arbitrated in Case No. TO-2005-0336."¹¹

⁹ *Id.*

¹⁰ Case No. TK-2006-0050, *In the Matter of the Interconnection Agreement between Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, and the MCI Group, including MCI WorldCom Communications, Inc., and MCImetro Access Transmission Services, L.L.C., Arbitrated as a Successor Interconnection Agreement to the Missouri 271 Agreement ("M2A")*, Order Approving Arbitrated Interconnection Agreement, at 5-7 (August 8, 2005).

¹¹ *Id.* at 2.

As noted in the MCI Order, MCI and SBC Missouri did not agree on contract language implementing the Commission's TO-2005-0336 decisions related to issues designated as MCI RC 15, MCI RC 17, MCI NIM 28, SBC MO 15(a), and SBC MO 15(b). In the MCI Order, the Commission treated these issues as one, and discussed the merits of the competing contract language. The Commission concluded: "It appears that there is no real confusion as to what language the Commission's Order requires, but rather that SBC is arguing that the Commission erred. This is not the place for that contention; SBC may instead raise it in another forum, or appeal. The parties will use the language proposed by MCI in their agreement."¹² The "language proposed by MCI" was included in the "Master List of Conformance Issues -- SBC Missouri and MCI" filed in Case No. TK-2006-0050 on August 4, 2005.¹³ The contract language quoted in full above appears on page 6 of the "Master List of Conformance Issues."

Socket's proposed language therefore follows the Commission's directive in the FCD to implement its decision by (a) using the "exact MCI RC 15 language" approved by the Commission, and (b) removing "in its entirety" the previously proposed language that does not track the exact MCI RC 15 language.¹⁴

By contrast, CenturyTel would have the Commission include no language whatsoever on this disputed issue. CenturyTel's position flies in the face of the Commission's recognition in the FCD that IP-PSTN traffic that undergoes a "net-protocol change" is "appropriately charged

¹² *Id.* at 7.

¹³ The "Master List of Conformance Issues" is in the form of a "decision point list" and includes the contract language supported by MCI and Southwestern Bell on each of the disputed issues. In the EFIS system, the contract language matrix is filed under Item No. 3, labeled in EFIS as a "Brief" filed by MCI. The joint contract language matrix apparently was filed by MCI on August 4, 2005, at the same time as its "Brief In Support" of its proposed contract language.

¹⁴ *See* FCD at 43 ("The language should either be removed in its entirety or the exact MCI RC 15 language should be incorporated in this interconnection agreement.").

at reciprocal compensation rates instead of switched access rates.”¹⁵ The language Socket proposes memorializes that conclusion in the ICA, using the very same language that the Commission approved for inclusion in the MCI-Southwestern Bell ICA.

This “conforming” phase of the proceeding is not the place for arguments about the merits of the Commission’s decisions in the FCD. Thus, any attempt by CenturyTel to again urge rejection of the Commission’s previously approved contract language should be rejected. Moreover, as Socket has noted in previous pleadings, the Commission is already on record in federal court defending its approval of the contract language proposed by Socket.¹⁶

The Commission was correct to incorporate the disputed language in the MCI-SBC Missouri ICA, and the rationale supporting the language is no different in this case. Socket’s proposed language precisely follows the Commission’s directive on this issue in the FCD, and Socket urges the Commission to approve it.

Article VI: Resale – Pricing Appendix

The Parties’ sole conforming dispute in Article VI – Resale concerns the price for a resale customer record search. CenturyTel contends the charge should be \$6.28 per record, while Socket contends the charge should be \$0.

This issue was subsumed in the Commission’s decision on non-recurring charges that was presented in the Article VIIA DPL concerning non-recurring charges generally. There, the Commission stated that the non-recurring rates should be those approved for SBC Missouri in Case No. TO-2005-0336.¹⁷ A review of the price schedule approved in that case shows that

¹⁵ *Id.*

¹⁶ See Defendant Missouri Public Service Commission’s Memorandum In Opposition To Motions for Summary Judgment of SBC Missouri and Charter Fiberlink-Missouri LLC, *Southwestern Bell Telephone, L.P. d/b/a SBC Missouri v. The Missouri Public Service Commission*, Case No. 4:05-CV-01264CAS (pending in the federal district court for the Eastern District of Missouri)(filed Nov. 30, 2005).

¹⁷ FCD at 52-53.

there is *no* non-recurring charge under either the Resale section or the UNE section, manual or electronic, for a customer service record. This is consistent with Socket's experience that SBC does not charge Socket for providing customer records - with the reason being that SBC has recognized that it requires such records *from the CLEC* when it is winning back customers. Consequently, it is in both Parties' interest not to charge the other for this information.

CenturyTel has chosen a different method of dealing with this issue. CenturyTel assumes a standard service order charge is appropriate for a customer service record search. Consequently, in conforming this issue, CenturyTel reviewed the service order charges in the price schedule approved in Case No. TO-2005-0336, and arbitrarily picked the manual service order charge for a "Record Simple" or a "Record Complex." That service order charge, however, is for a manual change to an existing CLEC customer's record (such as an address change) - it is not a charge for the pre-ordering function of obtaining a customer service record.

The Commission ordered the Parties to incorporate the non-recurring charges ordered in Case No. TO-2005-0336. There was no non-recurring charge for a customer service record search ordered in that case, because SBC Missouri and Socket do not charge each for such records. Consequently, Socket urges the Commission to affirm that Article VI - Resale should reflect a non-recurring charge of \$0 for customer record searches.

Article VIIA: UNE - Pricing Appendix - Service Order NRCs

The Parties have resolved all but one issue related to pricing of unbundled network elements ("UNEs"). The sole remaining dispute relates to non-recurring charges ("NRCs"), specifically the charges for "Electronic - UNE Service Order Type Charges." In the FCD, the Commission ruled as follows on NRCs: "[I]t is clear from the record that CenturyTel is not sure what non-recurring rates would apply (Transcript 0351-0355) to what situations. The

Commission reviewed and approved the rates in Case No. TO-2005-0336 as TELRIC-compliant rates. The Commission finds in favor of Socket and directs the parties to incorporate those rates into this interconnection agreement.”¹⁸

For the most part, CenturyTel has agreed to follow the Commission’s directive to incorporate the NRCs approved in Case No. TO-2005-0336 into the interconnection agreement. On the disputed issue, however, CenturyTel has refused to incorporate the NRCs approved by the Commission in the FCD. CenturyTel’s position is nothing more than an attempt to re-litigate issues already settled by the Commission’s decision. Moreover, adoption of CenturyTel’s position would have extremely negative consequences for Socket that could not have been intended by the Commission’s decision.

CenturyTel objects to the incorporation of the TO-2005-0336 NRCs under the category of “Electronic – UNE Service Order Type Charges.” These charges apply when Socket orders various UNEs from CenturyTel. CenturyTel’s argument for deleting these approved NRCs harkens back to its ongoing confusion about, as the Commission put it in the FCD, “what non-recurring rates would apply ... to what situations.”¹⁹ CenturyTel has variously argued that its “web-based” service ordering interface is a manual system, but also that it meets CenturyTel’s commitments to provide an enhanced electronic interface for CLEC UNE ordering.²⁰ Now that the Commission has approved NRCs for electronic service orders, CenturyTel seeks to characterize the web-based ordering system as purely manual, and thus always subject to manual as opposed to electronic service ordering charges. Socket does not propose that charges for

¹⁸ FCD at 52-53.

¹⁹ *Id.* at 52.

²⁰ Compare CenturyTel’s Post-Hearing Brief on Certain Disputed Arbitration Issues (May 5, 2006) page 112 (the web-based interface satisfies CenturyTel’s commitment to provide an “Internet-based e-mail service ordering system” for CLECs in Missouri) with page 66 of the same Brief (orders received via the web-based ordering system must be “handled manually.”)

orders submitted by methods such as fax, mail, or hand-delivery in paper format be charged as electronic service orders. Socket agrees that those methods are manual, but contends that web-based or other electronic methods should be recognized in the price schedule.

The reason CenturyTel seeks this change from the approved NRC list is readily apparent, and will significantly harm Socket. If CenturyTel prevails on this issue, when Socket orders a DS-1 loop (or many other types of commonly provisioned UNEs), CenturyTel will charge Socket the “manual service order” NRC approved in Case No. TO-2005-0336. That NRC is \$74.90 per order.²¹ Currently, under the existing Socket-CenturyTel ICA, CenturyTel is entitled to charge a per-customer NRC for UNE orders of \$3.92.²² The electronic UNE service order charge approved in TO-2005-0336 is one dollar less than the amount currently charged: \$2.92. Thus, if CenturyTel succeeds in deleting the electronic service order NRCs, it will be able to charge \$74.90 per order for many UNEs for which the current NRC is \$3.92, and for which the approved TELRIC rate in TO-2005-0336 is \$2.92.

CenturyTel protests that the \$2.92 or \$3.92 service order NRCs do not recover the costs associated with its sort of manual, kind of electronic, ordering system. CenturyTel thus urges that it should be permitted to charge the \$74.90 NRC instead. As the Commission will recall, however, CenturyTel *already made those arguments* during the arbitration. CenturyTel has taken the position throughout the proceeding that the existing \$3.92 UNE NRC approved in Case

²¹ Socket does not contest that \$74.90 is the manual service order NRC approved in TO-2005-0336 and thus appropriately included in this interconnection agreement.

²² The UNE per-customer NRC of \$3.92 was approved in 1997 by the Commission in Case No. TO-97-63, the AT&T-GTE arbitration that resulted in the interconnection agreement adopted by CenturyTel and Socket. *See* Case No. TO-97-63, *In the Matter of AT&T Communications of the Southwest Inc.’s Petition for Arbitration Pursuant To Section 252(b) of the Telecommunications Act of 1996 To Establish An Interconnection Agreement Between AT&T Communications of the Southwest, Inc. and GTE Midwest Incorporated*, Final Arbitration Order, Attachment B: Unbundled Network Elements – Permanent Rates for Case No. TO-97-63 (July 31, 1997).

No. TO-97-63 is insufficient.²³ When the Commission adopted the TO-2005-0336 NRCs, it resolved the issue by choosing to implement UNE NRCs that were not advocated by CenturyTel.

CenturyTel's effort to remove those approved NRCs from the interconnection agreement is simply another attempt to re-litigate the outcome of the arbitration proceeding. As the Commission held in the MCI Order discussed above, the conforming process is not the forum for arguments that the Commission erred in its decision. When, as here, there is "no real confusion as to what language the Commission's Order requires," there is no justification for failure to incorporate the approved language.²⁴ Including the electronic service order NRCs in the interconnection agreement is the only consistent way of meeting the Commission's directive to "incorporate those [TO-2005-0336 NRC] rates in the interconnection agreement."²⁵

Article IX: Maintenance – Sections 5.1.1 and 7.1

The Parties' sole conforming dispute in Article IX - Maintenance concerns language (identical for both Sections 5.1.1 and 7.1) addressing the single point of contact (SPOC) for calls from Socket to CenturyTel on repair issues and emergency restoration.²⁶

In ruling for CenturyTel on Maintenance Issue 1, the Arbitrator made the following statement: "The record establishes that CenturyTel has provided Socket with a means of contacting CenturyTel for service-related questions without sitting in a queue with retail

²³ See, e.g., CenturyTel's Post-Hearing Brief on Certain Disputed Arbitration Issues, at 66 (May 5, 2006) ("The Commission should reject Socket's proposed Section 2.18.4, by which it attempts to apply a nominal \$3.92 'electronic service order' charge to UNE conversion orders, despite acknowledging that CenturyTel handles such orders through a manual process. ... CenturyTel is entitled to recover its cost of providing this manual service, and a \$3.92 *electronic* service order charge—or any other service charge developed for a fully automated ordering process—will not permit CenturyTel's justified cost recovery.")

²⁴ MCI Order, at 7.

²⁵ FCD at 53.

²⁶ The disputed language is as follows: 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.

customers.”²⁷ Similarly, in approving CenturyTel’s language on Maintenance Issue 2, the Commission’s FCD included the following statement: “As the Arbitrator’s decision notes, the record establishes that CenturyTel has provided Socket with a means of contacting CenturyTel for service-related questions without sitting in a queue with retail customers. This includes an option to by-pass the retail options.”²⁸ Socket therefore requests that language memorializing the basis of the Commission’s decision, and the Commission’s expectation as to the level and type of service Socket will receive, be included in the interconnection agreement, and Socket’s proposal for such language is lifted directly from the FCD.

If the Commission’s language is not included in the Interconnection Agreement, then CenturyTel can continue to require Socket to sit in queue with CenturyTel’s retail customers. Such a result is contrary to the Commission’s final decision and should not be permitted.

Article XIII: Operational Support Systems

The Parties’ disputes with respect to CenturyTel’s provision of access to the functionality of OSS extend to the majority of its terms and provisions. Fundamental to their disputes is the Parties’ disagreement on defined terms, a disagreement that permeates the content of the Article because the salient portions of the Article setting out the Parties’ obligations hinge in large part on the definitions used.

Socket’s overriding objective in drafting Article XIII was to comply with the Commission’s rulings (1) rejecting both Parties’ original language, (2) rejecting Socket’s position that CenturyTel should be required to make automated OSS Systems available, (3) requiring CenturyTel to make certain upgrades to its existing systems available to Socket, and (4) specifying how certain OSS functions will be provided to Socket. Socket’s second objective

²⁷ Arbitrator’s Final Report at 51.

²⁸ FCD at 55.

was to address its purely practical need to create contract terms that state as clearly as possible what information Socket can obtain and how it will obtain that information from CenturyTel. Socket also sought to define the functionality of each component of OSS and how that functionality will be obtained. From an operational standpoint, both Parties need to know “how things will work.”

As a result, Socket’s proposed Article XIII is both direct and minimal in its requirements. Topics that need to be covered are covered, areas addressed elsewhere in the Agreement, *e.g.*, liability and indemnification, are not addressed again.²⁹ By contrast, CenturyTel’s proposed OSS Article not only is complex, but also contains provisions that in Socket’s view are inexplicable and utterly out of keeping with the rudimentary email, WebGUI and 800 telephone number method of communications that now constitute and will continue to constitute CenturyTel’s OSS systems.

Examples of critical differences between Socket’s and CenturyTel’s Article XIII

1. Definitions. Socket defines only the terms necessary to understand what CenturyTel will make available and to differentiate between the OSS contemplated by the FCC in its *TRO* and the OSS that will be provided at the time this Agreement becomes effective. CenturyTel’s definitions are confusing, complicated because they overlap and are interrelated, and unnecessary.

CenturyTel includes definitions for what it calls “OSS Services” and “OSS Information” Both definitions contain the phrase “includes but is not limited to,” but one definition is contained within the other (OSS Information is part of OSS Services) and the examples actually given in each definition imply an extremely narrow focus, *i.e.*, on Socket’s own usage and billing

²⁹ The only language that Socket understood must be inserted in this Article from other portions of the Agreement are the various notices, and the parties have reached complete agreement on this matter.

information, plus a reference to customer information. Thus, the difference between “OSS Services” and “OSS Information” is by no means clear, nor is there anything in the definition that indicates how access to an OSS functionality is a “service” being provided to Socket.

To further confuse matters, “OSS Information” is defined as Socket’s own usage and billing information, plus Customer Information which CenturyTel in turn defines as CPNI and other forms of non-public customer information for Socket’s own customers. No mention is made in OSS Information of CSRs and information to which Socket is entitled (when authorized) concerning CenturyTel’s customers. Furthermore, with respect to the definition of “Customer Information” that CenturyTel proposes, customer addresses are not usually thought of as non-public, and certainly are not confidential in all contexts, but these addresses are necessary to match up Socket’s ordering information to CenturyTel’s records. Where and how that type of customer information falls in the scheme of things or fits under these definitions, and how it will be treated in the OSS context, is unknown. The Parties were unable to reach agreement on these definitions of these and other terms. Socket considers these terms and their definitions inaccurate and irrelevant to OSS. In its Article, Socket uses a different term, “Customer Confidential Information,” to refer to CPNI and other non-public information which is entitled to special treatment under the law.

Finally, CenturyTel’s definition of “OSS Facilities” also is problematic because it focuses on the “services” CenturyTel is providing, not the access to information Socket is entitled to obtain through an ILEC’s OSS, and is deficient in that it is circular because it includes “systems” within “facilities” and is nonsensical in that it includes “manual” systems.

2. Restrictions on Socket’s access to and use of CenturyTel’s OSS. Socket’s proposed Article contains straightforward provisions that address the obvious need for it and its

employees and agents to maintain the confidentiality of CPNI, control access to the OSS systems and facilities, comply with CenturyTel's practices and procedures, recognize CenturyTel's property rights in its OSS facilities, and not damage or alter those OSS facilities. Socket's Article also grants CenturyTel audit rights with respect to Socket's use of the OSS Systems, using the same language agreed to and contained in AT&T's interconnection agreement. Given that AT&T's OSS systems confer real-time electronic access on CLECs, the audit rights AT&T found sufficient for its sophisticated systems and facilities are reasonable for the email, WebGUI and 800 number communications contemplated here.

CenturyTel proposes to control Socket's access to and use of OSS in terms of a grant of "limited and non-exclusive license rights" to "OSS Information." Socket simply cannot fathom the basis under which CenturyTel would have a superior right to the items that CenturyTel has named in the definition of "OSS Information": (1) confidential information concerning Socket's customers; (2) Socket's usage information; and (3) Socket's billing information. CenturyTel describes this OSS Information as CenturyTel's property;³⁰ proposes to require Socket to treat it as CenturyTel's confidential information;³¹ establishes a right to monitor and audit Socket's access to and use of this OSS Information, but not of CenturyTel's OSS Systems;³² and states that Socket's right to the information may be suspended or terminated upon certain conditions or expiration of the Agreement.³³ Information on Socket's customers is rightfully Socket's. Information on Socket's billing and usage also is rightfully Socket's. Moreover, requiring

³⁰ CenturyTel Article XIII, Section 8.2.

³¹ CenturyTel Article XIII, Section 8.2.1.

³² CenturyTel Article XIII, Section 8.3.1 and 8.3.2.

³³ CenturyTel Article XIII, Sections 8.2.4 and 8.3.

Socket to return or destroy the information³⁴ on its own customers and its own usage and billing is contrary to the need to maintain records for a reasonable retention period.

3. Control over CenturyTel's OSS. Socket's Article recognizes that CenturyTel is entitled to determine the functionality of its OSS Systems so long as it complies with applicable law. Socket's has added an important caveat in its proposed language, however, namely that CenturyTel cannot make changes to its systems, or the functionality made available to Socket that have the "effect of reducing the efficiency or accuracy of the pre-ordering, ordering, provisioning, maintenance/repair or billing activities" performed through access to OSS.³⁵ CenturyTel's language would grant it far more discretion and control. For example, CenturyTel states that subject to applicable law, "the CenturyTel Pre-OSS Services that will be offered by CenturyTel shall be as determined by CenturyTel and CenturyTel shall have the right to change CenturyTel Pre-OSS Services, from time-to-time, with the consent of Socket."³⁶ Socket cannot agree to being at the mercy of changes which could be detrimental and instead proposes that changes, including enhancements made consistent with the FCD be made through the change management process specified in Article III.³⁷

4. CenturyTel's obligations to support its OSS and improve access to CSRs. Socket has included a provision to make clear CenturyTel's obligations to support its OSS systems and facilities, and to establish an exchange of information for an escalation process to resolve operational disputes.³⁸ Socket also has proposed language regarding CenturyTel's review of its OSS systems and facilities with respect to improving efficiencies in providing access to CSR that

³⁴ CenturyTel Article XIII, Section 8.2.5.

³⁵ Socket Article XIII, Section 3.3.

³⁶ CenturyTel Article XIII, Section 15.1. See also Section 9.3 in which CenturyTel asserts that the manner in which and the frequency with which it will provide Socket Usage Information will be determined solely by CenturyTel, subject to applicable law.

³⁷ Socket Article XIII, Section 9.0.

³⁸ Socket Article XIII, Section 3.2,

Socket believes complies with the FCD and the Commission's intent. Socket's proposed language in Section 4.2 states that CenturyTel will complete its review within 90 days of the effective date of the Agreement and at that time also will report on the results of that review and provide its plan for improving efficiency. CenturyTel's language states only that it will conduct the review and develop improvements within that 90-day time frame.³⁹ Nothing is said about a plan to implement them. Socket believes that the purpose of undertaking the review will be lost if there is no commitment from CenturyTel to report on its review and its plan. Socket's language requires this, but does not impose any unreasonable burden upon CenturyTel.

There are two other aspects of CenturyTel's proposed OSS Article that must be mentioned here as inappropriate and requiring rejection. First, CenturyTel's proposed Section 14 would require Socket to make its OSS, including systems for pre-ordering, ordering, provisioning, maintenance and repair, and billing available to CenturyTel upon request. CLECs have no OSS obligations, yet CenturyTel insists on imposing this obligation. Second, CenturyTel's proposed Section 3.2 requires Socket to agree that if CenturyTel performs consistently with various terms in this Agreement then CenturyTel is in compliance with applicable law; not only are the internal references vague, but this unreasonable language requires Socket to agree that CenturyTel is providing parity performance, including with respect to OSS.

Socket's proposed Article XIII is straightforward and clear; CenturyTel's is convoluted and confusing. Socket's proposed language implements the FCD in a manner that makes operational, practical sense and should be approved in total.

³⁹ CenturyTel Article XIII, Sections 15.2 and 15.2.2.

Article XV: Performance Measures – Sections 1.3.5.6, 4.1, 4.5.3, 4.5.4, 4.5.5

The Parties' dispute in this Article centers on implementation of the Commission's ruling regarding CenturyTel's assertion that, because Socket submits a relatively small number of orders, CenturyTel should not be held to performance standards that require payments or credits to be given to Socket for failure to meet those standards. In the FCD, ruling on the Parties' dispute concerning Section 4.5.2 of Article XV, the Commission concluded that:

CenturyTel's language is not appropriate. Its performance should be acceptable regardless of the number of orders received. CenturyTel claims that Socket only submits a small number of orders when it is to CenturyTel's advantage, but then claims Socket's position is not appropriate in other sections because the interconnection agreement is adoptable by other CLECs, thus expanding CenturyTel's obligations beyond its dealings with just Socket. Therefore, the Commission directs both parties to come up with 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.⁴⁰

The Parties have not been able to reach agreement on language implementing the Commission's directive.

Socket has proposed conforming language that addresses the "small" amount of orders it submits by specifying that a threshold number of the "activity" being measured must occur before CenturyTel's performance on a measure is compared to the benchmark standard. Because the performance measures are set up to track performance on a monthly basis, if the threshold is not reached in a single month, activity in each following month will be accumulated until the threshold is reached. The count begins anew the month following the month in which the threshold is reached and CenturyTel's performance is measured.

It is important to recognize that the "sample" Socket is using for each PM is not a "selection" but in fact is *all* of the activity observed (*i.e.*, the total population) related to that PM,

⁴⁰ FCD at 65.

excluding those instances where the definition of a Measure excludes specific circumstances in which a “miss” is beyond CenturyTel’s control. Therefore, all relevant observations are included in the sample. Because all relevant observations are included in the performance analysis, Socket’s proposal would remove any “sampling” error. The sample being analyzed represents exactly the performance that Socket received.

Socket proposes a minimum threshold of 30 samples (as that term is defined above); that is, at least 30 non-excluded observations of the activity must have occurred before the performance Socket has received is compared to the benchmark set out in a PM. Depending on the individual activity being tracked, *e.g.*, CSR requests, return of FOCs, or trouble reported, this threshold could be reached every month or it could be reached only after several months, but in no event would CenturyTel’s performance be calculated using less than 30 actual reported experiences.

For example, in Maintenance PM No. 2, “Percentage of Repair Commitment Met,” CenturyTel is required to meet the service restoral time it specifies more than 90% of the time.⁴¹ Under Socket’s proposed threshold language, Socket must have submitted at least 30 trouble tickets and CenturyTel must have failed to restore service on time on at least three occasions before Socket is entitled to a credit or payment.

CenturyTel does not agree that 30 is an appropriate threshold, nor does it agree that its record of performance should simply be accumulated until the threshold is reached. Instead CenturyTel proposes a threshold of 75 per month or 150 over a three-month period, and further

⁴¹ Maintenance PM No. 2 provides as follows: “Benchmark: The total number of Met Commitment divided by the total number of repair commitments made > 90% or at Parity. Rules and Definitions: Each time that Socket reports trouble on a resold service, UNE or combination of UNEs leased from CenturyTel, Socket will be given a repair Commitment of when service will be restored. Commitments not met because of customer caused delays and delays caused by declared natural disasters shall not be counted. The Cleared Time is the date and time that CenturyTel personnel clear the repair activity and completes the trouble report and notifies Socket that the trouble has been fixed. If the Cleared Time is before the Commitment, the report will be classified as a Met Commitment.”

proposes that the count always be restarted after three months have passed. The impact of the Parties' different proposals can be shown through the following example:

		Under Socket's <u>threshold</u>	Under CenturyTel's <u>threshold</u>
Oct	9 trouble tickets/all restored when promised	9	9
Nov	11 trouble tickets/2 restorals missed	20	20
Dec	8 trouble tickets/2 restorals missed	28	28
Jan	9 trouble tickets/all restored when promised	37/4 misses	start over

CenturyTel would in fact have failed to meet its commitment for service restoral more than 10% of the time between October and January, but no financial consequences for that failure would result.⁴² Indeed, by setting the threshold at 75 per month or 150 over three months, *and* requiring that the clock be restarted after every three-month period, CenturyTel's proposal is guaranteed to nullify the Commission's decision. CenturyTel's proposal turns to its advantage the fact that Socket's order volumes are low. This cannot be the result the Commission intended.

Socket selected 30 as the threshold because AT&T also faces the problem of having CLEC customers that submitted a small number of orders and having some measures for which the volume of activity in any single month would be low. The threshold of 30 observations is the number used by AT&T "where large sample parity tests are performed instead of small sample parity tests."⁴³ (See Attachment 17 Performance Measures, Appendix 1: Statistical Procedures, attached as Exhibit 1.)

As the Commission is aware, months of effort went into the development of the performance measures that became part of Southwestern Bell Telephone Company's standard

⁴² There also would be no consequences for CenturyTel missing more than 10% of its commitments in November and December, but Socket's proposed threshold of 30 intentionally excuses CenturyTel for these misses so as not to penalize CenturyTel for percentages being calculated on very small numbers.

⁴³ The Performance Measures approved by the Commission in this proceeding that rely upon a benchmark comparison use the benchmark as a substitute for a parity comparison against CenturyTel's own performance and the performance accorded to Socket. CenturyTel has the opportunity to come forward and present its own performance data so that direct parity comparisons can be made.

interconnection agreement (the “T2A”) resulting from its 271 proceeding in Texas. Subject matter experts for Southwestern Bell, CLECs and the Texas Commission Staff invested significant resources in identifying the measures themselves and the statistical tests to be applied to data. The Missouri Commission monitored that effort and adopted the same set of measures for Southwestern Bell Telephone in the Missouri standard agreement (the “M2A”). A review of the record in Texas PUC Project No. 16251, *Investigation of Southwestern Bell Telephone Company’s Entry into the InterLATA Telecommunications Market*, reveals that Southwestern Bell considered 30 observations generally sufficient where a population was being sampled.

For example, at the work session on performance measures held on October 6, 1998, the parties discussed measures for which no data yet had been collected or the orders few. AT&T’s expert stated that “ten or so samples” would probably be valid.⁴⁴ Southwestern Bell Telephone Company’s expert, Mr. Randy Dysart disagreed, stating that “[t]hirty is typically what you would use for a valid sample.”⁴⁵ Subsequently, on October 19, 1998, Southwestern Bell filed a letter providing follow-up information prepared by Mr. Dysart related to certain of the Commission Staff’s Performance Measures Recommendation, specifically including Recommendation No. 2 which considered the appropriateness of monetary penalties or liquidated damages as a sanction for nonperformance. That follow-up information included Southwestern Bell’s recommendation on penalties and stated that “[a] valid measurement must include a minimum of 30 observations.”⁴⁶

It is obvious from the current AT&T performance measures Appendix 1: Statistical Procedures that a number of statistical tests and statistical formulae are applied to the

⁴⁴ Transcript of October 6, 1998, workshop at 1490, provided as Exhibit 2.

⁴⁵ *Id.* at 1491.

⁴⁶ Letter from Christian A. Bourgeacq to ALJ Katherine D. Farroba, Attachment 1. (The letter, the two pages of follow-up information, and Attachment 1 are provided as Exhibit 3).

performance data AT&T collects and reports, particularly where the issue is whether performance for the ILEC and for CLECs is in parity. It also is obvious that whether there are at least 30 observations for a PM is an essential factor in determining whether performance is compliant or not. Socket's proposal to use 30 as the threshold is not scientifically provable through a hard and fast rule, but it is reasonable in light of the performance standards applicable to AT&T and reasonable in its actual operation for Socket and for CenturyTel. By contrast, CenturyTel's proposed thresholds will result in CenturyTel avoiding any financial consequences for providing inadequate performance so long as Socket's order volumes remain small.

Two other disputes regarding contract language in Article XV exist. First, Socket observed that the Commission's approved language in Section 4.1 regarding the number of consecutive performance "misses" that trigger submission of the Gap Closure Plan should be revised to be consistent with accumulation of observations over several months. The Parties' language dispute, shown below, reflects their dispute regarding the threshold number of observations discussed above.

4.0 PERFORMANCE INCENTIVES

- 4.1 If CenturyTel fails to meet an applicable PM for three Contract Months in a six-month period CenturyTel must thereafter submit to Socket a Gap Closure Plan consistent with the requirements set forth in Section 3 above. For any PM for which the number of observations does not equal 75 or more non-excluded observations within a measured month, CenturyTel is required to submit a Gap Closure Plan only if Socket reports misses in accordance with the procedures set forth in Section 4.5 as compared to the measured benchmark or benchmarks for either (a) three consecutive months over a six-month period, or (b) three consecutive Rolling Frame Periods within a twelve-month period. **For any PM for which CenturyTel's performance is calculated over a time period greater than one month, pursuant to Section 4.5.4 below, CenturyTel is required to submit a Gap Closure Plan only if Socket reports three consecutive misses within a twelve-month period.**

Second, the Parties do not agree on the meaning of a performance “miss” as shown in the disputed language below:

- 4.5.5 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 calendar month in which **CenturyTel’s performance was calculated to have not met the standard set out in the applicable Performance Measure** the last non-excluded observation of CenturyTel’s performance that was made part of the calculation of CenturyTel’s alleged failure to meet the applicable Benchmark occurs. Any dispute regarding Socket’s calculation of the amount(s) due shall be resolved in accordance with the billing dispute provisions of Article III of this Agreement.

The Commission has already ruled that the calculation of whether CenturyTel’s performance meets the benchmark standard set out in the performance measures will be performed by Socket. When Socket completes that calculation it will submit a bill, not an “allegation,” that CenturyTel has missed the mark. CenturyTel’s terminology opens the door to a needless level of further dispute. If CenturyTel believes that Socket’s calculation is incorrect, it is up to CenturyTel to dispute Socket’s bill just as CenturyTel would dispute a bill submitted by Socket for anything else.

Socket’s proposed conforming language for Article XV is reasonable and should be adopted by the Commission.

Respectfully submitted,

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ATTORNEYS FOR SOCKET TELECOM, LLC

CERTIFICATE OF SERVICE

I hereby certify that the undersigned has caused a complete copy of the foregoing document to be electronically filed and served on the Commission's Office of General Counsel (at gencounsel@psc.mo.gov), the Office of Public Counsel (at opcservice@ded.mo.gov), counsel for CenturyTel of Missouri and Spectra Communications (at lwdority@sprintmail.com and at hartlef@hughesluce.com) on this 30th day of August, 2006.

/s/ Carl J. Lumley _____