Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Petition of Feature Group IP for Forbearance from Section 251(g) of the Communications Act and Sections 51.701(b)(1) and 69.5(b) of the Commission's Rules	)	WC Docket No. 07-256
Petition of Embarq Local Operating Companies for Limited Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Rule 69.5(a), 47 U.S.C. §251(b), and the Commission Orders on the ESP Exemption,	)	WC Docket No. 08-08

COMMENTS OF CENTURYTEL, INC.

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SUMMARY

IP telephony uses the public switched network ("PSTN") in the same way as other telecommunications traffic does. Every reason exists, therefore, to charge IP telephony the same rates for IP telephony traffic as are applicable to other traffic, such as access charges for interexchange traffic. Telephone companies have spent billions of dollars in constructing and maintaining the PSTN for which they must receive adequate compensation. Feature Group IP's Petition for forbearance at its base seeks to use the PSTN without paying its fair share of the costs. Such a result is discriminatory, disserves the customers who are on the PSTN, and is an uneconomic way to promote new services. Arguments about the costs various providers pay for use of the PSTN should instead be addressed in the context of the *Intercarrier Compensation* proceeding. Although CenturyTel does not agree with all of the proposals made in that proceeding, it does believe that a holistic solution which produces reasonable rates and properly recognizes consumer interests is a far better approach than addressing piecemeal issues related to one provider's platform. Therefore, Feature Group IP's Petition should be denied.

Feature Group IP does not meet the statutory forbearance criteria. First, grant of the Petition would disserve the public interest because it fails to holistically address intercarrier compensation. Second, forbearance would produce unjust and unreasonable results because it would skew intercarrier compensation in favor of one platform at the expense of others. Finally, grant of the Petition does not serve consumer interests because it displaces network costs on current users, to those consumer's disadvantage.

On the other hand, Embarq seeks forbearance from extending the ESP exemption to IP telephony, to the extent that the FCC believes the exemption applies to IP telephony in the first place. First, grant of Embarq's Petition would ensure that all similar users of the PSTN pay for

its use, ensuring that there would be just and reasonable compensation for traffic carried over the PSTN. Second, forbearance from application of the ESP exemption is not necessary to protect consumer interests because the FCC will continue to be able to review access charges to ensure that those rates are just and reasonable. In fact, a grant would promote fair and nondiscriminatory rates for all consumers and ensure a level competitive playing field. Finally, grant of the Petition would be in the public interest because it would ensure that similar uses of the PSTN pay similar rates. The FCC can and should review on a holistic basis rates for intercarrier compensation that ensure that the results fairly compensate network providers for their costs and ensures that consumer interests are protected. The Embarq Petition should therefore be granted.

The Embarq Petition does bring into sharp focus the fundamental flaw in Feature Group IP's Petition: Feature Group IP is asking that the FCC forbear from access charge rules based on the same rationale as the antiquated ESP exemption, that has not and should not be applied to IP telephony in the first place. It is high time that the FCC clarify that access charges apply to IP telephony.

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COMMENTS OF CENTURYTEL, INC.

CenturyTel, Inc. ("CenturyTel"), on behalf of its incumbent local exchange carrier ("ILEC") subsidiaries, hereby files comments in response to the Federal Communications Commission's ("Commission's" or "FCC's") Public Notice in the above-captioned proceedings.[1] CenturyTel in an integrated communications carrier providing voice, broadband data, and video services in 25 states to rural and small urban markets. CenturyTel is the ILEC in 72 study areas with close to 2.2 million access lines and also provides competitive LEC services in a number of

[1] *Pleading Cycle Established for Feature Group IP Petition for Forbearance from Section 251(g) of the Communications Act and Sections 51.701(b)(1) and 69.5(b) of the Commission's Rules*, Public Notice, WC Docket No. 07-256, DA No. 07-5029 (rel. Dec. 18, 2008)("*Feature Group IP Petition*"). *Pleading Cycle Established for Petition of the Embarq Local Operating Companies for Forbearance from Enforcement of Section 69.5(A) of the Commission's Rules, Section 251(b) of the Communications Act and Commission Orders on the ESP Exemption*, Public Notice, WC Docket No. 08-08, DA 08-94 (rel. Jan. 14, 2008)("*Embarq Petition*").

markets. Feature Group IP's Petition is repetitious of arguments made by other parties, which have previously been denied by the Commission. In essence, Feature Group IP is attempting to gain intercarrier compensation reform for itself, rather than waiting for a more comprehensive solution applicable to all carriers that is being sought in pending rulemaking proceedings. Embarq's Petition is seeking forbearance, to the extent it is applicable, from applying the ESP exemption to IP telephony. The FCC should address all of these interrelated and complex issues only in the context of those pending proceedings. Feature Group IP's forbearance Petition should be denied because it will not afford the relief requested, it will disadvantage consumers, and because it does not meet the statutory criteria for granting forbearance petitions. However, Embarq's Petition should be granted pending the outcome of the more comprehensive *Intercarrier Compensation* proceeding to avoid unwarranted extension of the ESP exemption to IP telephony.

I. THE PETITION IS REDUNDANT TO A NUMBER OF PREVIOUS PETITIONS AND FILINGS THAT ESEENTIALLY ARE ASKING FOR RULE CHANGES AFFECTING INTERCARRIER COMPENSATION.

Feature Group IP repeats, albeit in many more words and with over-the-top rhetoric, the same arguments that other interconnected Voice over Internet Protocol ("VoIP") carriers have previously made to the Commission: interconnected VoIP providers should not have to pay access charges for interexchange voice communications transmitted using VoIP.[2] The

[2] *See Petition of Core Communications, Inc. for Forbearance under 47 U.S.C. § 160(c) from Rate Regulation Pursuant to § 251(g) and for Forbearance from the Rate Averaging and Integration Regulation Pursuant to § 254(b)*, WC Docket No. 06-100 (filed Apr. 27, 2006, FCC); *Level 3 Communications LLC Petition for Forbearance under 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(b)(1), and Rule 69.5(b)*, WC Docket No. 03-266 (filed Dec. 23, 2003, FCC)("*Level 3 Petition*"). Feature Group IP's Petition ignores the fact that the FCC has not yet ruled on the issue of whether interconnected VoIP traffic is a "telecommunications service," although CenturyTel believes that the FCC's rules are clear that VoIP traffic, absent a showing that it is an information service, is a telecommunications service. The FCC should expeditiously resolve that issue in the appropriate ongoing rulemaking proceedings by finding that VoIP traffic is "telecommunications traffic" subject

Commission has stated that it intends to address intercarrier compensation holistically in the context of CC Docket No. 01-92, which is seeking ways to globally reform intercarrier compensation, including interconnected traffic using VoIP and covered by Feature Group IP's Petition.[3] The FCC should not attempt to address individual carrier rates and methodologies on a piecemeal, service platform, basis, as Feature Group IP suggests.

Feature Group IP goes on at some length about the potential services it wishes to offer and claims that the threat of imposition of access charges on interconnected VoIP traffic involving voice communications is stifling innovation. CenturyTel asserts that access charges, many of them well below one cent per minute of use, should be viewed as part of the cost of providing service in today's telecommunications marketplace. Through its language, Feature Group IP attempts to resurrect the arguments that access charges should not be applied to a nascent technology, an argument that was invoked in adopting the enhanced service exemption.[4] The verbose and highly emotional rhetoric[5] is simply a smoke-screen for the very simple

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to intercarrier compensation under the existing access charge or reciprocal compensation rules. *See, e.g., IP-Enabled Services*, Notice of Proposed Rulemaking, WC Docket No. 04-36, 19 FCC Rcd 4863 (2004) ("*IP-Enabled Services NPRM*").

[3] *Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, CC Docket No. 01-92, 20 FCC Rcd 4685 (2005)("*Intercarrier Compensation FNPRM*"). Although CenturyTel has raised substantial concerns regarding the consumer impacts and arbitrarily low access rates in many of the proposals that have been made in that docket, such as the Missoula Plan, we do believe that a reasonable plan would be a better method of reform than using piecemeal approaches.

[4] The enhanced services exemption prohibited ILECs from imposing traffic-sensitive switched access charges on enhanced service providers, now termed information service providers. *See Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, CC Docket 87-215, Order, 3 FCC Rcd 2631, 2631, ¶ 2 (1988)("*ESP Exemption Order*"). Feature Group IP also appears to allege that the enhanced services exemption applies to it and that it should not be charged access charges. Feature Group IP Petition at 12. A forbearance petition is an inappropriate vehicle for determining a declaratory ruling with respect to a particular fact situation, particularly here where Feature Group IP has not included enough facts to even address such a factual question.

[5] For instance, its allegations that local exchange carriers "with market power" have exercised a "stranglehold" on communications that seek to "block" traffic except through terms "they dictate" has prevented the FCC from eliminating access charges is manipulative and simply

proposition that interconnected VoIP should be subject to the reciprocal compensation regime of Section 251(b)(5), rather than access charges. The FCC should not extend principles in the enhanced services exemption to VoIP traffic. The Internet is simply no longer a nascent technology but rather a global phenomenon. Internet use is exploding. Application and service providers continue to expand the way in which the Internet can be used on a daily basis. In addition, none of Feature Group IP's rhetoric addresses the crucial fact that carriers that use a telecommunications network like CenturyTel's must pay their fair share for what they use, and must not attempt to shift the costs they generate onto the carriers' other existing telecommunications customers. Therefore, although CenturyTel applauds technological advances, it vehemently disagrees with Feature Group IP that it should be able avoid paying the costs of the network it uses—especially at the expense of others.

II. THE PETITION SHOULD BE REJECTED BECAUSE IT DOES NOT ACHIEVE THE PURPOSE FOR WHICH IT WAS FILED.

Feature Group IP asks for forbearance of a number of specific rules, arguing that forbearance would leave in place Section 251(b)(5) reciprocal compensation rules. Although Feature Group IP is fairly precise as to what rules it is seeking forbearance from, it essentially is making the same unsuccessful argument that Core Communications, Inc. made in one of its previous forbearance petitions. In that *Core Forbearance Denial Order*, the FCC rejected the Core Petition in question because forbearing from applying access charges to interconnected

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does not reflect reality. Feature Group IP Petition at iii. A number of carriers have proposed various methods of reforming intercarrier compensation, which proposals are pending before the Commission in CC Docket No. 01-92. Many VoIP providers, *including Feature Group IP itself*, are opposing those proposals. *See, e.g.*, Comments of Feature Group IP, CC Docket No. 01-92 (filed Dec. 7, 2006). It thus is apparent that Feature Group IP is itself delaying intercarrier compensation reform. Further, the Commission should be mindful that various carriers are discussing intercarrier compensation reform at the state level with VoIP providers in an attempt to achieve workable reform outcomes. Although CenturyTel does not agree with all the proposals made, Feature Group IP is simply dead wrong that ILECs are stalling reform.

VoIP calls would leave no rate regulation in place at all, not reciprocal compensation.[6] Therefore, for the same reasoning adopted in the *Core Forbearance Denial Order*, the FCC should reject Feature Group IP's Petition because forbearance would leave a complete void in compensation requirements, create greater instability, would disadvantage consumers, and therefore would not accomplish the aims which petitioner claims that it seeks.

III. THE PETITION FAILS UNDER THE SECTION 10 FORBEARANCE TEST.

Section 10(a) of the Act provides that the Commission shall forbear from applying any provision of the Act or regulation implementing the Act if the Commission determines:

> (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
>
> (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
>
> (3) forbearance from applying such provision or regulation is consistent with the public interest.[7]

Feature Group IP has failed to meet its burden to demonstrate with specificity why it meets each of the above-stated three criteria.[8]

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[6] *Petition of Core Communications, Inc. for Forbearance from Sections 251(g) and 254(g) of the Communications Act and Implementing Rules*, WC Docket No. 06-100, 22 FCC Rcd 14118, 14126, ¶ 14 (2007)("*Core Forbearance Denial Order*"), *petition for review pending, Core Communications Inc. v. FCC*, No. 07-1381 (D.C. Cir., filed Sept. 20, 2007).

[7] 47 U.S.C. § 160(a).

[8] *Petition for Forbearance From E911 Accuracy Standards Imposed On Tier III Carriers For Locating Wireless Subscribers Under Rule Section 20.18(h)*, WT Docket No. 02-377, 18 FCC Rcd 24648, 24658, ¶ 24 (2003) ("[W]e reject the assertion that pursuing relief through the vehicle of forbearance relieves the Petitioner from the obligation to provide evidence demonstrating with specificity why each carrier should receive relief under the applicable substantive standards").

A. Grant of the Petition Would Disserve the Public Interest.

Feature Group IP claims that grant of its Petition would be in the public interest because forbearance would: (1) reduce regulatory uncertainty and avoid associated costs; (2) promote innovation in the industry; (3) create greater efficiencies for consumers; and (4) "preserve American preeminence in the field of Internet and telecommunications applications."[9] CenturyTel supports such aspirations, but disagrees that the Petition will achieve any of these goals. CenturyTel urges the Commission to expeditiously develop a workable, solution to the issues of intercarrier compensation, universal service and the regulatory classification of different IP technologies through existing rulemaking proceedings that properly balance consumer and industry interests. An industry-wide resolution could achieve each of Feature Group IP's stated goals, but grant of Feature Group IP's Petition in advance of such a holistic solution would lead to an irrational business environment and increased regulatory uncertainty where one technology is favored over others, and universal service is thereby undermined.

In its *IP-Enabled Services NPRM*, the Commission has sought comment on the very issue of "the extent to which access charges should apply to VoIP or other IP-enabled services."[10] In the NPRM, the Commission indicated the dubious implications of allowing certain service providers to avoid paying for their use of LEC facilities based on the technology platform employed:

> As a policy matter, we believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network. We maintain that

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[9] Feature Group IP Petition at 49-50.

[10] *IP-Enabled Services NPRM* at 4904, ¶ 61.

> the cost of the PSTN should be borne equitably among those that use it in similar ways.[11]

Feature Group IP has not adequately explained why the public interest would be served by granting the extraordinary relief requested in the Petition, while the rest of the telecommunications industry—including other providers of IP-enabled services—continue to work toward a comprehensive solution to the very complex issue of proper compensation for use of the PSTN. Although it focuses only on the benefits to its own customers of garnering relief, it completely ignores and devalues the detrimental effects its one-sided ruling would have on other carrier customers, such as CenturyTel's, and the PSTN as a whole.[12] Feature Group IP's Petition therefore fails to demonstrate that it meets the third prong of the Section 10(a) forbearance analysis.

B. Forbearance Would Lead to Unjust and Unreasonable Results.

Feature Group IP, itself, raises several potential unjust and unreasonable results that would flow from grant of its Petition. For example, Feature Group IP attempts to sweep under the rug the concern that granting the Petition will deny LECs just and reasonable compensation when Feature Group IP terminates a call to the LECs' network. Feature Group IP asserts, without support, that LECs have alternatives available to them that will ensure that they can recover such costs from their own end users.[13] However, Feature Group IP provides no evidence that this is either practical or that compensation to the LEC *would* be just and reasonable without appropriate compensation for terminating calls.

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[11] *Id*.

[12] For instance, Feature Group IP claims that applying access charges to its services stifles innovation. Although it fails to prove that assertion, it does not recognize the concomitant harm that failure to adequately pay for CenturyTel's network stifles innovation that would benefit CenturyTel's customers, an equal and countervailing public interest consideration.

[13] Feature Group IP Petition at 58.

Feature Group IP claims that LECs would not be harmed because they can simply raise prices to their end users. Even assuming LECs were permitted by state regulators to raise end-user rates, this argument presumes that it is a just and reasonable result for LEC end users to shoulder the cost burden of Feature Group IP's use of the LEC network—a conclusion that is inconsistent with current FCC rules. Its claims also fail to consider the increasing burden on network capacity that IP telephony and other services create, which mandate that ILECs be able to adequately recover costs for the benefit of all consumers. Even Feature Group IP anticipates that state commission limits on end user rates and federal limits on the level of subscriber line charges would impede such cost recovery. Feature Group IP suggests that such legal impediments would not render the results of its Petition unjust or unreasonable because LECs could seek a waiver of these limits and, if such waiver is not granted, to appeal the decision.[14] Feature Group IP's argument—*that its waiver Petition is justified because LECs can avoid unjust results by seeking their own waivers of the law*—is almost surreal. Grant of the Petition would cause a revenue shortfall for LECs without addressing in a comprehensive manner how LECs can make up this shortfall. In contrast to LECs, Feature Group IP's rates generally are unregulated, and Feature Group IP therefore is free of any regulatory restraints to pass through any access charges to the cost causer, its end users. The Petition thus fails to meet its burden with regard to the second prong of the Section 10(a) forbearance test.

C. Grant of the Petition Is Likely to Harm Consumers.

Feature Group IP claims that there would be "no tenable argument" demonstrating harm to consumers from a grant of its Petition and that there is no evidence that consumer rates would

[14] *Id*. at 58-59.

rise so high that rates would become unaffordable.[15] These are bald, unproven assertions and demonstrate an almost blatant disregard for any end user other than Feature Group IP's own and the long term viability for the underlying network on which Feature Group IP depends. In addition, grant of the Petition *will* likely harm LECs and their customers, and therefore should be denied.

Feature Group IP does not attempt to quantify the amount of traffic covered by its requested relief. However, Embarq in its Petition for forbearance has cited estimates that the VoIP market share is expected to grow to 25% of the market by 2010. This amount of traffic represents billions of dollars of revenues, revenues that are and will be used to construct and maintain the PSTN.

Especially for rural carriers, such as CenturyTel, these lost revenues would no longer be available for investment in affordable and advanced telecommunications services. The LEC may internalize this shortfall, which could result in reduced investment in infrastructure, or, as Feature Group IP suggested in its Petition, the LEC may seek to recover this shortfall from its customers or federal or state universal service funds. In the case of rural markets, the FCC should be mindful that the consumer base is small, which puts increased pressure on a smaller number of users to bear the cost of the network, including Feature Group IP's costs. Under any scenario, it is the LEC's customers that ultimately would be harmed by grant of the Feature Group IP Petition.[16] Therefore, Feature Group IP does not meet the first prong for the forbearance criteria.

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[15] *Id*. at 61.

[16] The FCC should outright reject Feature Group IP's assertion at page 61 of its Petition that consumers will receive expansive and unquantified benefits from wider availability of advanced services if the Petition were granted. Even if consumers could achieve these results, it would be irresponsible to credit as a public benefit that consumers could access new services from providers that do not shoulder their fair share of costs.

IV. THE FCC SHOULD GRANT THE EMBARQ PETITION FOR FORBEARANCE BECAUSE THE ESP EXEMPTION DOES NOT APPLY TO IP TELEPHONY.

Embarq filed a Petition asking that the FCC forbear from applying the ESP exemption to VoIP traffic that is transmitted through the public switched telephone network ("PSTN").[17] Embarq argues that the ESP exemption has never been applied to IP telephony and that it would be inappropriate to extend the exemption to this type of traffic. Embarq asks that, to the extent that the FCC believes the exemption does apply to such traffic, it forbear from applying the exemption to IP-originated phone-to-phone voice traffic that terminates on the PSTN.[18]

CenturyTel fully supports Embarq's Petition for the reasons stated in Embarq's Petition. The FCC has never applied the ESP exemption to voice telephony traffic provided by a VoIP provider sending calls to the PSTN. The exemption was adopted twenty years ago when the Internet was still in its infancy.[19] The exemption permitted the ESP to provide service to its customers interacting with the Internet through purchase of local service tariffs, rather than through tariffs offering federal switched access charges. It has never been applied to the more typical VoIP calling pattern where the provider's customers call customers on the PSTN, just like regular voice calling happens today.

IP telephony is not deserving of the ESP exemption. Voice calling has been around for over one hundred years and there is no public policy reason that justifies any voice provider avoiding payment of the same types of charges for interconnection to the PSTN. To adopt different compensation arrangements is not only discriminatory, but it also skews competition

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[17] *Petition of Embarq Local Operating Companies for Limited Forbearance under 47 U.S.C. § 160(c) from Enforcement of Rule 69.5(a), 47 U.S.C. § 251(b), and the Commission Orders on the ESP Exemption*, WC Docket No. 08-08 (filed Jan. 11, 2008).

[18] Embarq Petition for Forbearance at 17.

[19] *See, e.g., ESP Exemption Order* at 2631, ¶ 2 & 2633, ¶ 18 n.51.

for voice telephony and advantages one carrier, the VoIP provider, over every other. Applying the ESP exemption to IP telephony also sets up an additional opportunity to engage in unreasonable arbitrage, which the FCC has been moving to eliminate.[20]

Embarq's Petition for forbearance meets each of the three criteria contained in Section 10(a) of the Communications Act.[21] First, application of the ESP exemption to IP telephony is not necessary to ensure that rates for service are just and reasonable and not unreasonably discriminatory. VoIP providers should bear the same costs as other providers of voice telephony. Not recovering access charges from IP telephony will in fact set up a discriminatory cost structure that will exacerbate unreasonably pricing, not prevent it.[22]

Second, application of the ESP exemption to IP telephony is not necessary to protect consumers. Although one could argue that some customers benefit if their indirect prices are lower, there is no showing that customers are harmed by paying the same compensation, i.e., access charges, for all interstate voice telephony traffic.[23] And, as previously stated, allowing discriminatory application of underlying charges sets up the opportunity for unreasonable arbitrage that disadvantages those consumers who have to pay more for the same service.

Third, it is in the public interest to refuse to extend the ESP exemption to IP telephony. Requiring equal intercarrier compensation for all voice telephony would promote competition, reduce arbitrage, and ensure that all customers receive a fair, non-discriminatory price. There

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[20] *See Intercarrier Compensation FNPRM* at 4687, ¶ 3.

[21] 47 U.S.C. § 160(a).

[22] Although Feature Group IP argues that access charges are not cost-based, Feature Group IP Petition at 14, that argument is more properly raised in the FCC's intercarrier compensation docket within the context of the entire industry structure, not with respect to the Feature Group IP Petition applicable to only one type of intercarrier arrangement. Moreover, interstate access rates for ILECs have been reduced dramatically over the past few years.

[23] There, of course, is no proof that end user customers actually are benefited since it is not known whether the VoIP provider actually passes along any of its savings to its end user customers.

simply is no public interest served in ensuring that customers of one type of voice telephony pay less than others for the same use of the PSTN. And there is absolutely no public interest in establishing the anticompetitive situation where one type of voice provider receives a special deal on intercarrier compensation, to the disadvantage of all other providers. In sum, Embarq has clearly met all three prongs of the forbearance test, and its Petition should therefore be granted.

The Embarq Petition does bring into sharp focus the fundamental flaw in Feature Group IP's Petition: Feature Group IP is asking that the FCC forbear from access charge rules based on the same rationale as the antiquated ESP exemption, that has not and should not be applied to IP telephony in the first place. It is high time that the FCC clarify that access charges apply to IP telephony.

V. CONCLUSION

For the foregoing reasons, CenturyTel urges the Commission to deny Feature Group IP's Petition and to grant Embarq's Petition for Forbearance.

Respectfully submitted,

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February 19, 2008

Certificate of Service

I, Gregory J. Vogt, do hereby certify that I have on this 19th day of February 2008 caused a copy of the foregoing "Comments of CenturyTel, Inc." to be served by electronic mail upon the following:

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