

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

In the Matter of)	
)	
EMBARQ CORPORATION,)	
Transferor,)	
)	
and)	
)	WC Docket No. 08-238
CENTURYTEL, INC.)	
Transferee.)	DA 08-2681
)	
Application for Transfer of Control of)	
Domestic Authorizations Under Section 214)	
of the Communications Act, as Amended)	

**JOINT COMMENTS IN OPPOSITION TO
MERGER OF EMBARQ CORPORATION AND CENTURYTEL, INC.**

**NuVox
Socket Telecom, LLC**

January 8, 2009

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Pursuant to the Public Notice issued by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceeding on December 9, 2008,¹ NuVox² and Socket Telecom, LLC (“Socket”) (collectively, the “Joint Commenters”), by their attorneys, hereby file these comments in opposition to the Application for Consent to Transfer of Control filed by CenturyTel, Inc. (“CenturyTel”) and Embarq Corporation (“Embarq”) (jointly, the “Applicants”).

¹ *Applications Filed for the Transfer of Embarq Corporation to CenturyTel, Inc.*, Public Notice, DA 08-238 (rel. Dec. 9, 2008). Specific file numbers related to the proposed transaction are hereby incorporated by reference.

² For purposes of this filing and participation in this docket, “NuVox” includes NuVox Communications, Inc. and NuVox Communications of Missouri, Inc.

I. INTRODUCTION

CenturyTel and Embarq's transaction may be approved by the Commission only if it is found on balance to serve the public interest. This standard requires an assessment of verifiable benefits associated with the transaction and likely harms. On the whole, the Commission must find that the benefits outweigh the harms and that approval of the transaction will bolster competition and consumer welfare rather than diminish it over time after the transaction is consummated. In nearly all cases involving large incumbent local exchange carrier ("LEC") mergers, the Commission has found it necessary to meet the standard by imposing conditions in order to produce benefits to consumers and to safeguard competition from harms that otherwise would result from the merger.

The Applicants, who bear the burden of proof with respect to this standard, fail to demonstrate that they meet it. The public interest statement offered by the Applicants includes little more than a press release quality overview ticking-off buzzwords like "efficiencies" and popular ideas like improving service to rural areas. Hoped-for synergies, good intentions and nice ideas do not equate to tangible benefits.

Even more paltry is the Applicants' review of the proposed harms associated with the proposed transaction. Applicants' claims that the merger poses "no danger of anticompetitive harm" and that it "will not harm competition" simply ignore Commission precedent finding to the contrary with respect to incumbent LEC mergers. These claims also cannot be squared with the Applicants' disclosure of overlapping and adjacent exchanges, and affiliated competitive LEC fiber-based operations and an affiliate competitive fiber transport subsidiary – each providing actual and potential competition between the Applicants. More significantly, the claims ignore the likely competitive impacts on unaffiliated competitors and new entrants.

CenturyTel lacks the wholesale support infrastructure, commitment and experience necessary to serve wholesale customers as required and as is necessary to ensure robust competition and the consumer benefits that flow from it. The attached declarations submitted on behalf of NuVox and Socket provide ample evidence to support this assertion, including evidence of excessively long provisioning intervals, non-standard and largely manual Operations Support Systems (“OSS”), neglectful maintenance and repair practices, unreliable or nonexistent information regarding customer service records and serving areas, obstructive section 251(i) interconnection agreement opt-in processes, manual and error-prone directory listings and 911 records processes, error-prone billing, and a history of anticompetitive conduct with respect to number porting and wholesale ADSL transmission services in particular.

With CenturyTel being the acquiring company in the proposed transaction and with CenturyTel’s management poised to take control, there is good reason to believe that comparatively better practices and capabilities in place at Embarq will be replaced with those CenturyTel uses to stymie competition in its service areas. In this case, for example, that would mean 5-business day Embarq unbundled network element (“UNE”) and enhanced extended link (“EEL”) provisioning intervals giving way to 15-business day CenturyTel intervals. It also would mean competent and mechanized Embarq OSS giving way to the woefully inadequate and largely manual OSS employed by CenturyTel. Deficient provisioning and inadequate OSS are significant barriers to competition and there are numerous other examples of CenturyTel’s poor wholesale support. The attached declarations provide ample evidence that additional harms are likely, including the spread of anticompetitive porting practices, the elimination of dedicated wholesale support, and more.

The Applicants fail to meet their burden of demonstrating that potential harms resulting from the merger will be more than offset by any tangible benefits created. Thus, the Commission must deny the transaction or heavily condition its approval. For this purpose, NuVox and Socket propose a set of conditions that draws heavily from Commission precedent and the Joint Commenters' operating experience with the Applicants. These conditions include:

Conditions to Reduce Transaction Costs Associated with Interconnection Agreements

(Extension of Interconnection Agreements; Interconnection Agreement Portability; Negotiation of Interconnection Agreements; Opting-Into Existing Interconnection Agreements); **Conditions**

Related to Unbundled Network Elements (UNE Rate Rationalization and Discount; UNE Availability Freeze; Use of Embarq OSS; Order Intervals; Dedicated Interoffice Facilities; UNE Performance Plan); **Conditions Related to Special Access and Other Wholesale Services**

(Affiliate Transactions; Special Access Rate Cap; Special Access Circuit and Plan Portability; Special Access Service Performance Plan); and **Other Conditions** (Number Portability; Single Point of Interconnection; Cap on Transit Service Rates; ADSL Transmission Service).

In adopting conditions, the Commission should make clear that state commissions, in addition to the Commission itself, have the authority to enforce and ensure proper implementation of conditions through the section 252 interconnection agreement process and standard regulatory and adjudicatory processes.

II. THE PROPOSED MERGER MAY BE APPROVED ONLY IF IT SERVES THE PUBLIC INTEREST, CONVENIENCE AND NECESSITY

The Commission may approve the proposed transfer of control of Embarq to CenturyTel only if it concludes that it will advance the public interest, convenience and necessity, and is fully consistent with the pro-competitive objectives of the Communications Act

of 1934, as amended,³ and the Commission's rules. Specifically, under sections 214(a) and 310(d) of the Act, the Commission must conclude that the proposed transfer of control "serves the public interest, convenience and necessity" before the proposed transaction may be approved.⁴ Moreover, the Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction "will not violate or interfere with the objectives of the Act or the Commission's rules," and that "the predominant effect of the transfer will be to advance the public interest."⁵ In reviewing the Application, the Commission must "weigh[] the potential public interest harms of the proposed transaction against the potential public interest benefits to ensure that the Applicants have shown that, on balance, the merger serves the public interest, convenience and necessity."⁶

Consistent with its prior orders, the Commission must consider several overriding factors in making its public interest determination.⁷ First, the Commission must conclude that the proposed transaction would not violate the Act.⁸ Second, the Commission must conclude that the proposed transaction would not violate the Commission's rules.⁹ Third, the Commission must conclude that the proposed transaction would not substantially frustrate or impair the Commission's implementation or enforcement of the Act, or interfere with the objectives of that

³ Communications Act of 1934, as amended, 47 U.S.C. 151 *et seq.*

⁴ *In re Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, 14 FCC Rcd 14712, ¶ 47 (1999) ("SBC/Ameritech Merger Order"); *see also*, 47 U.S.C. § 310(d).

⁵ *Id.*, ¶ 48.

⁶ *Id.*

⁷ *Id.*; *see also In re: SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18290, ¶ 16 (2005) ("AT&T/SBC Merger Order").

⁸ *SBC/Ameritech Merger Order*, ¶ 48.

⁹ *Id.*

and other statutes.¹⁰ Fourth, the Commission must conclude that the proposed transaction “promises to yield affirmative public interest benefits.”¹¹

The public interest analysis undertaken by the Commission must be informed by, but is not limited to, traditional antitrust principles.¹² Under the Act, the Commission is charged with making an “independent public interest determination” that necessarily includes evaluating the public interest benefits and harms of proposed transactions that likely will impact future competition.¹³ In this regard, the Commission has concluded that telecommunications competition “is shaped not only by antitrust rules, but also by regulatory policies that govern the actions of industry players.”¹⁴ Thus, in reviewing proposed transactions, the Commission must be guided by the broad aims of the Act, including but not limited to implementing the pro-competitive national policy framework envisioned by Congress to open all telecommunications markets to competition.¹⁵ Such regulatory policy objectives must be considered in light of the nature, complexity and speed of technological and market changes and trends in the communications industry,¹⁶ as well as factors that influenced Congress to enact specific provisions of the Act.¹⁷

¹⁰ *Id.*

¹¹ *Id.*

¹² *AT&T/SBC Merger Order*, ¶ 18; *SBC/Ameritech Merger Order*, ¶ 49.

¹³ *SBC/Ameritech Merger Order*, ¶ 49; see also, 47 U.S.C. § 310(d); *In the Applications of NYNEX Corporation Transferor, and Bell Atlantic Corporation Transferee For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, 12 FCC Rcd 19985, ¶ 2 (1997) (“Bell Atlantic/NYNEX Merger Order”); *In re Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, 13 FCC Rcd 18025, ¶ 12 (1998) (“MCI/WorldCom Merger Order”).

¹⁴ *AT&T/SBC Merger Order*, ¶ 18.

¹⁵ *Id.* ¶ 17; *SBC/Ameritech Merger Order*, ¶ 50.

¹⁶ *AT&T/SBC Merger Order*, ¶ 17.

¹⁷ *SBC/Ameritech Merger Order*, ¶ 50.

The public interest standard imposed by the Act requires the Commission to evaluate the potential impact of proposed transactions on future conditions within local telecommunications markets.¹⁸ Indeed, the Commission has observed that a proposed merger “may have predictable yet dramatic consequences for competition over time even if the immediate effect is more modest.”¹⁹ Thus, the Act directs the Commission “to rely on its specialized judgment and expertise to render informed predictions about future market conditions and the likelihood of success of individual market participants.”²⁰

Critically, the Commission may conclude that the proposed transfer of control of licenses from Embarq to CenturyTel serves the public interest only if it is persuaded that the transaction would enhance competition.²¹ Consequently, the Applicants must demonstrate that the transfer of control would have the effect of “affirmatively advancing competition throughout the region.”²² As the Commission has recognized, “the same consequences of a proposed merger that are beneficial in one sense may be harmful in another.”²³ Specifically, “combining assets may allow the merged entity to reduce transaction costs and offer products, but it also may create market power, create or enhance barriers to entry by potential competitors, and create opportunities to disadvantage rivals in anticompetitive ways.”²⁴ Thus, a showing by the Applicants that the potential anticompetitive impacts of the proposed transaction may be offset,

¹⁸ *Id.* ¶ 51.

¹⁹ *SBC/Ameritech Merger Order*, ¶ 51.

²⁰ *Id.*

²¹ *Id.* ¶ 49.

²² *NYNEX/Bell Atlantic Merger Order*, ¶ 11.

²³ *AT&T/SBC Merger Order*, ¶ 18.

²⁴ *Id.*

in part, by other benefits does not satisfy the public interest standard imposed by the Act, and therefore must be rejected by the Commission.

Under the Act, the Commission may impose and enforce conditions on a transaction in order to “tip the balance and result in a merger yielding overall positive public interest benefits.”²⁵ In approving a merger, the Act permits the Commission to impose any condition that “the public convenience and necessity may require.”²⁶ Importantly, the Commission has conditioned its approval of nearly every merger involving large incumbent LECs in the past, concluding that conditions were necessary to remedy the unlawful, anticompetitive effects likely to result from the proposed transaction.²⁷

III. THE PROPOSED MERGER WILL HARM THE PUBLIC INTEREST

The Applicants fail to meet their “burden of demonstrating that the proposed merger will create *verifiable* merger-specific public interest benefits that offset the merger’s *likely* public interest harms.”²⁸ While the Applicants’ public interest statement includes the claim that the transaction “will provide benefits to consumers of both companies without any countervailing harms,”²⁹ it includes no promises of tangible benefits³⁰ and ignores completely the harms consumers will face as a result of reduced actual and potential competition for local

²⁵ *SBC/Ameritech Merger Order*, ¶ 52.

²⁶ *Id.*

²⁷ *NYNEX/Bell Atlantic Merger Order*, ¶ 12; *SBC/Ameritech Merger Order*, ¶¶ 55-62; *In re Application of GTE Corporation Transferor, and Bell Atlantic Corporation Transferee For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, 15 FCC Rcd 14032, ¶¶ 354-362 (2000) (“GTE/Bell Atlantic Merger Order”).

²⁸ *GTE/Bell Atlantic Merger Order*, ¶ 213 (emphasis added).

²⁹ Application for Consent to Transfer Control, at 5 (“Application”).

³⁰ The Commission previously has found vague claims of operational efficiencies to be “difficult to evaluate” and “unpersuasive.” *GTE/Bell Atlantic Merger Order*, ¶ 242.

telecommunications services, including broadband and other advanced services. Notably, the Applicants' public interest statement barely addresses the merger's potential impact on the Applicants' wholesale customers. As though an afterthought, Applicants' devote only a single sentence to the transaction's impact on wholesale customers which contains only a vague assertion that the merger "will have no impact on the terms of any existing interconnection agreements or obligations under state and federal laws regarding interconnection."³¹ All other aspects of wholesale customers' relationships with the merging entities are left unaddressed.

Applicants' claims that the merger poses "no danger of anticompetitive harm"³² and that it "will not harm competition"³³ ignore Commission precedent finding to the contrary with respect to incumbent LEC mergers.³⁴ These claims also cannot be squared with the Applicants' disclosure of overlapping and adjacent exchanges and the unknown impact of the consolidation of CenturyTel's competitive transport and fiber subsidiary LightCore which is not even discussed.³⁵ In short, and as is explained in more detail in this section and in the accompanying declarations submitted on behalf of NuVox and Socket in support of these comments,³⁶ Applicants fail to meet their burden of demonstrating that potential harms resulting from the merger will be more than offset by any tangible benefits created.

³¹ Application, at 12.

³² *Id.*, at 17.

³³ *Id.*, at 13.

³⁴ See, e.g., *In re: AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, 22 FCC Rcd 5662, ¶¶ 3, 47-49 (2007) ("AT&T/BellSouth Merger Order"); *Verizon/MCI Merger Order*, ¶¶ 3, 32; *SBC/Ameritech Merger Order*, ¶¶ 3, 5, 186-254; *GTE/Bell Atlantic Merger Order*, ¶¶ 3, 173-208; *NYNEX/Bell Atlantic Merger Order*, ¶¶ 95-144.

³⁵ Application, at 13-17.

³⁶ See Declaration of Anthony Walsh and Edward Cadieux on Behalf of NuVox ("Walsh/Cadieux Declaration"), attached hereto as **Attachment A**, and Declaration of R. Matthew Kohly on Behalf of Socket Telecom, LLC, ("Kohly Declaration") attached hereto as **Attachment B**.

A. The Proposed Merger Will Decrease Competition in the Markets Served by CenturyTel and Embarq

In conducting its public interest assessment, the Commission must consider the effects of the proposed merger on existing and potential competition levels in the relevant markets.³⁷ Obviously, competition – both existing and potential – between the merging entities, their competitive LEC affiliates and CenturyTel’s fiber-rich competitive transport provider, LightCore will be eliminated. The Applicants’ operations map depicts CenturyTel competitive LEC metro fiber rings in Embarq markets in Kansas, Minnesota and Texas, and LightCore lit fiber in Embarq markets in Florida, Indiana, Kansas, Minnesota, Missouri, Texas and Wisconsin.³⁸

What is less obvious but almost certainly much more significant and substantial is the impact the merger will have on non-affiliated wireline competitors, such as the Joint Commenters, that rely on the Applicants’ wholesale UNE and special access offerings to reach customers in the affected markets. As the Commission has recognized:

incumbent LECs, which are both competitors and suppliers to new entrants, have strong economic incentive to preserve their traditional monopolies over local telephone service and to resist the introduction of competition that is required by the 1996 Act. More specifically, an incumbent LEC has an incentive to: (1) delay interconnection negotiations and resolution of interconnection disputes; (2) limit both the methods and points of interconnection and the facilities and services to which entrants are provided access; (3) raise entrants’ costs by charging high prices for interconnection, network elements and services, and by delaying the provisioning of, and degrading the quality of, the interconnection, services, and elements it provides. An

³⁷ See, e.g., *AT&T/BellSouth Merger Order*, ¶ 21; *AT&T/SBC Merger Order*, ¶ 18.

³⁸ See Combined Coverage Map of CenturyTel and Embarq available at <http://www.centuryteleembarqmerger.com/aboutMerger.cfm> attached hereto as **Attachment C**.

incumbent LEC has similar, and probably greater, incentive to deny special accommodations required by competitive LECs seeking to offer innovative advanced services that the incumbent may not even offer. As noted at the outset, this view of the incumbent LECs' incentives and abilities is the fundamental postulate of the basic cornerstones of modern telecommunications law – the MFJ and the 1996 Act.³⁹

This statement is as true today as the day it was made – especially in the instant context. Embarq and CenturyTel serve some significant metropolitan areas, growing suburbs and exurbs, and many small and rural areas. In terms of wireline competitors, the choices for consumers and small-to-medium-sized businesses are relatively few in the serving areas of these two incumbent LECs. Indeed, in certain CenturyTel exchanges, Socket believes that it is the only wireline competitor. Similarly, Embarq typically faces fewer wireline competitors in its serving territories than would be found in most comparable Bell operating Company (“BOC”) territories.

There are a number of reasons for the relatively slow growth of competition and limited availability of competitive voice, advanced and broadband service offerings in the markets served by the Applicants. Because they have not had to go through the process of demonstrating compliance with section 271 and have not drawn as much scrutiny by resource-strapped competitors and state commissions as the BOCs, the Applicants' UNE rates – and special access rates – are high – often excessively so.⁴⁰ In many respects, the Applicants are more difficult to deal with as wholesale suppliers and marketplace competitors than the BOCs, which makes it more difficult for competitive LECs to compete successfully in their serving

³⁹ *SBC/Ameritech Merger Order*, ¶ 107.

⁴⁰ Kohly Declaration, ¶¶ 19-21, 37.

areas.⁴¹ But, it is CenturyTel that by far is the less willing of the Applicants to be a reliable wholesale provider to competitive LECs.⁴²

Indeed, it is fair to say that, of the two Applicants, Embarq has done much more to open its markets to competition as required by that Act.⁴³ CenturyTel, in contrast, lacks the wholesale support infrastructure, commitment, experience and apparent willingness necessary to serve wholesale customers as is necessary to ensure robust competition and the consumer benefits that flow from it. The attached declarations provide ample evidence to support this assertion, including evidence of excessively long provisioning intervals,⁴⁴ non-standard and largely manual OSS,⁴⁵ neglectful maintenance and repair practices,⁴⁶ unreliable or nonexistent information regarding customer service records and serving areas,⁴⁷ obstructive section 251(i) interconnection agreement opt-in processes,⁴⁸ manual and error-prone directory listings processes,⁴⁹ error-prone billing,⁵⁰ and a history of anticompetitive conduct with respect to number porting in particular.⁵¹

⁴¹ Walsh/Cadieux Declaration, ¶¶ 4-8; Kohly Declaration, ¶¶ 10-11, 15-18, 22, 25-29.

⁴² *See, e.g.*, Walsh/Cadieux Declaration, ¶¶ 5- 8; Kohly Declaration, ¶¶ 10-11, 15-18, 22, 25-29.

⁴³ *See* Walsh/Cadieux Declaration, ¶ 7; Kohly Declaration, ¶¶ 7, 10-11, 15-18, 22, 25-29, 37.

⁴⁴ *See* Walsh/Cadieux Declaration, ¶ 7; Kohly Declaration, ¶¶ 10-11.

⁴⁵ *See, e.g.*, Walsh/Cadieux Declaration, ¶¶ 5-6; Kohly Declaration, ¶¶ 11-13.

⁴⁶ *See* Kohly Declaration, ¶¶ 22-24.

⁴⁷ *See, e.g.*, Walsh/Cadieux Declaration, ¶5; Kohly Declaration, ¶¶ 11-14, 18.

⁴⁸ *See, e.g.*, Walsh/Cadieux Declaration, ¶ 8.

⁴⁹ *See* Kohly Declaration, ¶ 28.

⁵⁰ *See id.*, ¶ 29.

⁵¹ *See id.*, ¶¶ 33-34, 36.

Critically and worryingly, it is CenturyTel that is the acquiring company in the proposed transaction and it is CenturyTel's management that is poised to take control.⁵² As the Commission has recognized, when pre-merger companies have different practices, post-merger they usually eliminate practices that conflicted with the acquiring company.⁵³ In this case, that would mean 5-business day Embarq UNE and EEL provisioning intervals - giving way to 15-business day CenturyTel intervals (which are abysmal). It also would mean competent and mechanized Embarq OSS giving way to the woefully inadequate and largely manual OSS employed by CenturyTel. As the Commission has recognized, deficient provisioning and inadequate OSS are significant barriers to competition.⁵⁴ These are but two examples. The attached declarations provide ample evidence that additional harms are likely, including the spread of anticompetitive porting practices, the elimination of dedicated wholesale support, and others.

As proposed, the merger contains no safeguards to ensure that the deterioration of wholesale support in this manner which the Commission's own precedent indicates is probable.⁵⁵ Deterioration in wholesale support from Embarq to CenturyTel levels across a large footprint will diminish competition and harm consumers. Indeed, as the Commission has found,

⁵² See Form S-4, CenturyTel Inc.-CTL at 4 (filed Dec. 22, 2008); see also Heidi N. Moore, *Behind the Deal: Why CenturyTel Took Over Larger Rival Embarq*, Wall St. J., Oct. 27, 2008, available at <http://blogs.wsj.com/deals/2008/10/27/behind-the-deal-how-centurytel-took-over-larger-rival-embarq>.

⁵³ *SBC/Ameritech Merger Order*, ¶¶147- 155.

⁵⁴ See, e.g., *SBC/Ameritech Merger Order*, ¶ 107 (noting that incumbent LECs have a strong economic incentive to restrict competition by, *inter alia*, delaying the provisioning of interconnection, facilities and services to competitors) *Id.*, ¶¶ 381-383 (adopting conditions related to OSS after recognizing that the condition "will guard against discriminatory treatment by the merged entity to its rivals, as well as reducing the costs and uncertainty of providing competing services.").

⁵⁵ See n.52.

inadequate wholesale provisioning and support will deter entry and deny customers in affected markets the benefits of competition.⁵⁶

B. The Combined CenturyTel/Embarq Entity Will Have an Enhanced Incentive and Ability to Engage in Non-Price Discrimination Against Competitive Service Providers

As the Commission has found with respect to previous incumbent LEC mergers, such mergers increase both the incentive and ability of the “larger merged entity to discriminate against rivals in retail markets where [the merged entity] will be the dominant LEC.”⁵⁷ After a merger or similar transaction, the larger entity realizes more benefits from discrimination and thus has more incentive to discriminate.⁵⁸ The sheer increase in the number of local areas controlled by CenturyTel as a result of the merger will increase substantially its incentive and ability to discriminate against carriers competing in retail markets that depend on access to the combined entity’s wholesale inputs in order to provide services. The proposed transaction, for example, introduces the Applicants’ incentive and ability to reduce rivals’ ability to compete in Orlando and its suburbs by discriminating against rivals in the suburban areas of St. Louis, raising their overall costs in ways that hinder their ability to compete in markets across the combined entity’s enlarged footprint. Currently, the ability of CenturyTel and Embarq to engage in such behavior stops at the borders of their respective serving areas, whereas the proposed merger would expand the capability of CenturyTel in particular to discriminate across a much larger footprint.

⁵⁶ See *SBC/Ameritech Merger Order*, ¶ 107 (noting that incumbent LECs have a strong economic incentive to restrict competition by, *inter alia*, delaying the provisioning of interconnection, facilities and services to competitors).

⁵⁷ *SBC/Ameritech Merger Order*, ¶ 60.

⁵⁸ *Id.*, ¶¶ 193-245.

The Commission repeatedly has concluded that the increased incentive and ability of a merged incumbent LEC to discriminate against rivals “creates a public interest harm” because it may adversely affect “competitors’ provision of services, and may force consumers to pay more for retail services, with reduced quality and choice.”⁵⁹

IV. THE TRANSFER OF CONTROL SHOULD BE DENIED BUT IF IT IS GRANTED, MEANINGFUL AND ENFORCEABLE COMPETITIVE SAFEGUARDS MUST BE IMPOSED TO MITIGATE THE ANTICOMPETITIVE EFFECTS OF THE PROPOSED TRANSACTION

As set forth in the previous section of these joint comments, and as made plain by the evidence presented in the attached declarations, the harms of the proposed transaction are not offset by verifiable benefits. The detrimental effect the transaction is likely to have on competition within the combined entities’ footprint is both significant and substantial. The proposed transaction – which involves two of the four large regional incumbent LECs along with competitive LEC and fiber/transport subsidiaries) – eliminates both existing and potential competition and, more importantly, has the potential to create an entity with the ability and incentive to engage in anticompetitive actions which would only further limit the telecommunications service options for consumers and business customers in the Applicants’ combined 33-state service territory.

If the Commission nevertheless determines that the transfer of control should be approved, it is crucial that the Commission condition its approval to mitigate public interest harms that otherwise could be caused by the merger. As explained in more detail below, the Commission repeatedly and consistently has recognized the potential negative impact of mergers involving large incumbent LECs on the public interest and the levels of competition in relevant markets and has imposed stringent conditions on the merged companies as a means of mitigating

⁵⁹ See, e.g., *Bell Atlantic/GTE Merger Order*, ¶ 96.

those impacts. The imposition of such conditions on mergers involving incumbent LECs is so routine and expected that, in many cases, the merger applicants voluntarily propose conditions by which they agree to abide in exchange for having their merger applications approved.⁶⁰ Accordingly, the imposition of conditions on the CenturyTel/Embarq merger would not be an aberration, but instead would be consistent with past Commission practice and will ensure that competitive LECs will continue to be able to develop and provide competitive services, including advanced, new broadband services, to consumers and businesses within the combined entities' large footprint.

A. Prior Commission Merger Orders Have Highlighted the Benefits of Conditions on Mergers

Of the past seven major wireline service provider merger proceedings, the Commission adopted conditions in six of those proceedings.⁶¹ In most cases, the Commission explained that the conditions were necessary to alleviate or reduce the negative impacts of the mergers on the public interest.⁶² This pattern and practice by the Commission of imposing merger conditions to mitigate potential public interest harms supports the adoption of conditions on any approval of the CenturyTel/Embarq merger.

⁶⁰ See, e.g., *AT&T/BellSouth Merger Order*, ¶ 227 and Appendix F: Conditions. In response to a request by the Wireline Competition Bureau for additional information, AT&T and BellSouth voluntarily offered to comply with numerous conditions before the Commission even reviewed the merger application. See, *id.*, ¶ 17, nn.57-58.

⁶¹ See, e.g., *Bell Atlantic/NYNEX Merger Order*, ¶¶ 192-200 and Appendix C: Conditions; *SBC/Ameritech Merger Order*, ¶¶ 348-518 and Appendix C: Conditions; *Bell Atlantic/GTE Merger Order*, ¶¶ 246-372 and Appendix D: Conditions for Bell Atlantic/GTE Merger; *MCI/Verizon Merger Order*, ¶ 222 and Appendix G: Conditions; *AT&T/SBC Merger Order*, ¶ 213 and Appendix G: Conditions; and *AT&T/BellSouth Merger Order*, ¶ 226 and Appendix F: Conditions. The Commission did not adopt conditions in the merger of the Pacific Telesis Group and SBC.

⁶² See, e.g., *Bell Atlantic/NYNEX Merger Order*, ¶192; *SBC/Ameritech Merger Order*, ¶ 348; *Bell Atlantic/GTE Merger Order*, ¶245. In the MCI/Verizon and SBC/AT&T merger proceedings, the Commission found that the proposed mergers served the public interest but still chose to adopt the applicants' voluntary commitments as conditions of approval of the mergers. See, *MCI/Verizon Merger Order*, ¶2, *SBC/Ameritech Merger Order*, ¶ 2.

In its 1997 Order approving the Bell Atlantic/NYNEX merger, the Commission adopted the applicants' voluntarily offered commitments, because the conditions would "to some extent, mitigate the potential adverse competitive effects" and "[c]ompeting carriers [would] have a better opportunity to compete, by obtaining better quality service, UNEs, and interconnection, which [would] assist them in developing a brand reputation in Bell Atlantic-NYNEX's local market."⁶³ The Commission further noted that imposing the conditions on approval of the merger would "increase the threat of potential entry, and the likelihood of actual entry, as a discipline to any market power exercised by Bell Atlantic-NYNEX" and found anticompetitive harms to be "mitigated to some extent by the fact that entry barriers throughout the Bell Atlantic and NYNEX regions will be reduced as a result of the conditions."⁶⁴

The Commission's 1999 Order approving the SBC/Ameritech merger devoted a whopping *seventy pages* to a discussion of the need for, and benefits of, conditions on the merger.⁶⁵ The Commission found that the conditions – which were proposed voluntarily by SBC – would directly address the Commission's concerns regarding the merger's harms to the public interest.⁶⁶ The conditions were described as having numerous benefits for competition and the public interest, including, but not limited to: "reducing the risk and costs associated with entry into SBC and Ameritech territories,"⁶⁷ "requir[ing] the spread of best practices throughout the merged firm's service areas,"⁶⁸ "facilitat[ing] comparative practices analysis by providing additional data for [the] Commission and state commissions in carrying out their statutory

⁶³ *Bell Atlantic/NYNEX Merger Order*, ¶192.

⁶⁴ *Id.*

⁶⁵ *SBC/Ameritech Merger Order*, ¶¶ 348-518.

⁶⁶ *Id.*, ¶247.

⁶⁷ *Id.*, ¶422.

⁶⁸ *Id.*, ¶423.

responsibilities and in detecting potential violations of the Communications Act,”⁶⁹ and “reducing the costs and uncertainty of providing advanced services in SBC/Ameritech’s region, and thereby remedy[ing] to a certain extent any effects of increased discrimination.”⁷⁰ The Commission also remarked on the benefits of requiring SBC and Ameritech to comply with the conditions throughout their combined operating territory and of having the conditions apply for a period of thirty-six months from when the benefit was first provided – not from the merger effective date.⁷¹

The 2000 *GTE/Bell Atlantic Merger Order* provides another prime example of the Commission’s recognition of the need for and use of merger conditions to alleviate the harmful, anticompetitive effects of a proposed incumbent LEC merger. After finding that, “absent the conditions proposed by the Applicants” the proposed merger posed “significant public interest harms”⁷² the Commission adopted 26 conditions which closely followed the SBC/Ameritech conditions and were voluntarily offered by GTE and Bell Atlantic.⁷³ The Commission explained that the conditions would help eliminate the public interest harms of the merger and accomplish five primary public interest goals: (i) promote the deployment of advanced services; (ii) ensure open local markets; (iii) encourage out-of-territory development; (iv) improve residential phone service; and (v) ensure enforcement of and compliance with the merger conditions.⁷⁴ As in the

⁶⁹ *Id.*, ¶428.

⁷⁰ *Id.*, ¶431.

⁷¹ *Id.*, ¶¶ 437-438.

⁷² *Bell Atlantic/GTE Merger Order*, ¶245.

⁷³ *Id.*, ¶248.

⁷⁴ *Id.*, ¶ 251.

SBC/Ameritech Merger Order, the Commission’s order contained a robust discussion of the benefits of imposing merger conditions.⁷⁵

Importantly, the Commission noted that the conditions it imposed were a “floor” not a ceiling and that the Commission could adopt additional requirements, even as part of other proceedings, with which Bell Atlantic and GTE would be required to comply.⁷⁶ The Commission also emphasized that compliance with the merger conditions was mandatory and that the Commission would “utilize every available enforcement mechanism, including, if necessary revocation of the merged firm’s section 214 authority.”⁷⁷ This willingness to impose additional conditions and the lengths to which the Commission will go to enforce the conditions, illustrates the importance the Commission places on the need to alleviate any public interest harms, such as those identified above in Section III, resulting from a merger.

In the 2007 Order approving the AT&T/BellSouth merger, the Commission also chose to impose conditions on its approval of that merger. The Commission found that the merger presented public interest and competition harms such as reducing the number of competitive LECs that have direct connections to buildings⁷⁸ and potentially increasing the wholesale costs of special access services⁷⁹ and chose to adopt the companies’ voluntary commitments.⁸⁰

In the Commission’s companion 2005 Orders in the Verizon/MCI and SBC/AT&T merger proceedings, the respective pairs of applicants voluntarily offered

⁷⁵ *Id.*, ¶¶ 349-372.

⁷⁶ *Id.*, ¶ 252.

⁷⁷ *Id.*, ¶ 256.

⁷⁸ *AT&T/BellSouth Merger Order*, ¶ 27.

⁷⁹ *Id.*, ¶ 48.

⁸⁰ *Id.*, ¶ 227.

commitments by which they would abide and, despite finding that the proposed mergers generally were in the public interest, the Commission adopted those commitments as a condition of approving the mergers.⁸¹ The Commission’s decision to adopt merger conditions, even where the Commission found that the merger was “not likely to result in anticompetitive effects in relevant markets” and that the “public interest benefits of the merger outweigh any potential public interest harms”⁸² demonstrates the Commission’s dedication to preventing any harm to the public interest or to competition in the relevant markets. This focus and commitment is even more important in the proposed CenturyTel/Embarq merger where significant and substantial harms to competition and the public interest are evident. The Commission either should deny the proposed merger or impose and enforce stringent conditions on any approval of the proposed merger.

B. Basis for Conditions

In evaluating merger applications, the Commission evaluates whether a merger will serve the “broad aims of the Communications Act,” which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, ensuring a diversity of license holdings, and generally managing the spectrum in the public interest.”⁸³ The Commission also considers “whether the merger will affect the quality of communications services or will result in the provision of new or additional services to consumers.”⁸⁴

⁸¹ *MCI/Verizon Merger Order*, ¶ 2; *SBC/AT&T Merger Order*, ¶ 2.

⁸² *MCI/Verizon Merger Order*, ¶¶ 2-3; *SBC/AT&T Merger Order*, ¶¶ 2-3.

⁸³ *See, e.g., MCI/Verizon Merger Order*, ¶ 17.

⁸⁴ *Id.*

In attempting to meet these goals, the Commission repeatedly has concluded that it is authorized to impose conditions on grants of merger applications as a means of ensuring the mergers benefit the public interest.⁸⁵ Specifically, the Commission often has stated that its “public interest authority enables us to impose and enforce conditions based upon our extensive regulatory and enforcement experience to ensure that the merger will, overall, serve the public interest.”⁸⁶

As explained above, the proposed CenturyTel/Embarq merger likely will reduce the levels of competition in the relevant markets and enhance the Appellants’ incentive and ability to engage in anticompetitive and discriminatory behavior. This, in turn, will negatively impact the quality of communications services and limit the development and deployment of new services to consumers and businesses with the combined company’s footprint. As competitive carriers relying on needed wholesale inputs from Applicants to serve our customers, the Joint Commenters seek to eliminate these negative effects of the merger and urge the Commission to utilize its authority to impose stringent conditions on any grant of the merger.

C. Conditions Proposed to Mitigate Public Interest Harms

The set of conditions proposed here draws heavily from Commission precedent and operating experience with the Applicants. In adopting conditions, the Commission should make clear that state commissions, in addition to the Commission itself, have the authority to enforce and ensure proper implementation of conditions through the section 252 interconnection agreement process and standard regulatory and adjudicatory processes.

1. Conditions to Reduce Transaction Costs Associated with Interconnection Agreements

⁸⁵ See, e.g., *MCI/Verizon Merger Order*, ¶ 19.

⁸⁶ *MCI/Verizon Merger Order*, ¶19. See also, *AT&T/BellSouth Merger Order*, ¶ 22.

Extension of Interconnection Agreements – Effective as of the Merger Closing

Date, carriers that are parties to interconnection agreements with any of the CenturyTel or Embarq entities or subsidiaries may extend their agreements, regardless of whether the initial term has expired, for a period of up to thirty-six (36) months. During this period, the interconnection agreements may be terminated only via the competitive LEC's request.

Rationale: Permitting competitive LECs to extend their interconnection agreements will provide the competitive LECs with a period of stability and prevent the merged CenturyTel/Embarq entity from taking advantage of its new market power by immediately seeking to renegotiate the rates, terms and conditions of those agreements. The Commission adopted a similar condition in the AT&T/BellSouth Merger proceeding as a means of reducing transaction costs associated with interconnection agreements.⁸⁷ Any reduction in transaction costs will benefit the competitive LECs that are attempting to compete with the combined CenturyTel/Embarq entity and, accordingly, the proposed condition is appropriate here.

Interconnection Agreement Portability – Effective as of the Merger Closing

Date, and for a period of thirty-six (36) months, the merged CenturyTel/Embarq entities will permit any requesting entity to port an entire interconnection agreement (with the exception of state-specific rates) from one state to any other state within the CenturyTel/Embarq operating territory and from any CenturyTel/Embarq incumbent LEC to any other CenturyTel/Embarq incumbent LEC.

Rationale: The Commission repeatedly has recognized that competitive LECs incur significant transaction costs – in both time and money – when negotiating interconnection

⁸⁷ *AT&T/BellSouth Merger Order*, Appendix F: Conditions at 150.

agreements⁸⁸ and adopted conditions, similar to the condition proposed above, in the AT&T/BellSouth, Bell Atlantic/GTE and SBC/Ameritech merger proceedings.⁸⁹ Permitting requesting entities to port entire interconnection agreements to different states within the combined CenturyTel/Embarq operating territory will promote market entry by reducing the ability and incentive of the merged entity to impose these costs on entities seeking to enter the market.

Negotiation of Interconnection Agreements – Effective as of the Merger Closing Date, CenturyTel and Embarq will permit carriers to utilize existing interconnection agreements as the basis for negotiating new or successor interconnection agreements.

Rationale: As noted above, carriers incur significant costs when negotiating or entering into interconnection agreements. Permitting carriers to utilize their current existing interconnection agreements as a starting point for negotiating new or successor agreements will eliminate or drastically reduce these transaction costs. The Commission adopted a similar condition in the AT&T/BellSouth merger proceeding and a similar condition is appropriate here.⁹⁰

Opting-Into Existing Interconnection Agreements – Effective as of the Merger Closing Date, carriers will be permitted to opt into existing interconnection agreements and CenturyTel and Embarq will not be permitted to deny those opt-ins on the grounds that the agreement has not been amended to reflect current changes of law. A carrier opting-into an interconnection agreement must agree to negotiate in good faith, immediately after entering into

⁸⁸ *SBC/Ameritech Merger Order*, ¶389; *Bell Atlantic/GTE Merger Order*, ¶306.

⁸⁹ *AT&T/BellSouth Merger Order*, Appendix F: Conditions at 149-150; *SBC/Ameritech Merger Order*, Appendix C: Conditions, ¶43; *Bell Atlantic/GTE Merger Order*, Appendix D: Market Opening Conditions, ¶31.

⁹⁰ *See AT&T/BellSouth Merger Order*, Appendix F: Conditions.

the agreement, an amendment to reflect the change of law. Opt Ins shall be effective no later than thirty (30) after receipt by the merged Embarq/CenturyTel entity of a formal notice of opt in by any competitive LEC certified to do business in the relevant state.

Rationale: Permitting carriers to opt-into existing interconnection agreements is an easy and efficient means of reducing the transaction costs associated with entering into interconnection agreements. This condition is intended to ensure that the purpose of section 252(i) is not frustrated. If CenturyTel and Embarq are permitted to refuse or delay such opt-ins the result will be to hinder the development and continued growth of competition in the relevant market. This condition was adopted in the AT&T/BellSouth merger proceeding⁹¹ and again is appropriate for inclusion in the instant merger proceeding. The importance of this condition is reflected in NuVox's experience in attempting to adopt an existing interconnection agreement between Socket and CenturyTel in Missouri. NuVox states that it provided CenturyTel with a "signature-ready" one page agreement.⁹² CenturyTel waited several weeks before responding then provided NuVox with an extensive - and one-sided - agreement for adoption.⁹³ CenturyTel's proposal would have permitted it to revoke the adoption – after the fact – if CenturyTel unilaterally decided that its costs of serving NuVox exceeded the cost of serving Socket or that any terms of the agreement would be technically infeasible with respect to NuVox.⁹⁴ These types of tactics impose unnecessary transaction costs on competitive LECs and must be prohibited.

⁹¹ See *AT&T/BellSouth Merger Order*, Appendix F: Conditions.

⁹² See Walsh and Cadieux Affidavit, ¶ 9.

⁹³ *Id.*

⁹⁴ *Id.*

2. Conditions Related to Unbundled Network Elements

UNE Rate Rationalization and Discount – Within thirty (30) days of the Merger

Closing Date, the merged CenturyTel/Embarq entity(ies) shall file with each state in its incumbent LEC operating territory a tariff to offer section 251 network elements at a twenty-five percent (25%) discount from lowest UNE rate offered by any CenturyTel/Embarq incumbent LEC as of January 1, 2009. Non industry-standard Rate elements such as loop conditioning for DS1 circuits shall be waived or eliminated without any increase to standard nonrecurring charges. The discounted UNE rates will be available to competitive LECs serving any of the Applicants' markets in a state and shall stay in effect for a period of thirty-six (36) months from the date such rates become effective. Interconnection agreement amendments, to the extent required by change-of-law provisions, or otherwise, will be deemed effective as of the effective date of the tariff and the parties will true-up accordingly.

Rationale: The proposed remedy requiring the combined CenturyTel/Embarq entity(ies) to provide a single discounted rate per UNE per state is necessary to ensure the continued availability of competitive service alternatives in the combined operating territory. CenturyTel and Embarq have highlighted the fact that they serve predominantly rural areas.⁹⁵ The Commission has recognized in prior merger proceedings that the availability of UNEs at discounted rates is crucial to encouraging the development and deployment of services, especially in less densely populated areas. For example, in the Bell Atlantic/GTE merger, the commission required the companies to offer UNEs at a 25% discount to “encourage rapid development of local competition in residential and less dense areas.”⁹⁶ The Commission

⁹⁵ Application at 2.

⁹⁶ *Bell Atlantic/GTE Merger Order*, ¶307.

adopted a similar condition in the SBC/Ameritech merger proceeding⁹⁷ and the same rationale underlying these previous Commission decisions applies equally here. Indeed, Embarq's Florida UNE rates are so high that most competitive carriers providing service in Embarq's Florida service territory are forced to order special access services to serve their customers at lower cost than they could with UNEs. Embarq's Missouri UNE rates also are extremely high. Notably, Socket states that the UNE rates charged by Embarq in Missouri tend to be much higher than CenturyTel's rates for the same services.⁹⁸ According to Socket, Embarq charges a non-recurring charge of \$330.83 for the installation of a DS1 loop and cross connect while CenturyTel charges only \$102.47 and \$42.47, for the loop and cross connect, respectively.⁹⁹ In addition, Embarq almost always requires non-industry standard line conditioning charges, ranging from \$100 to \$350 per loop, on Socket's DS1 loop orders.¹⁰⁰ These non-industry standard charges, which apply in addition to standard nonrecurring charges, impose unnecessary delays and expenses on Socket and hinder its efforts to serve its customers.

UNE Availability Freeze - For a period of forty-eight (48) months, beginning on the Merger Closing Date, the merged CenturyTel/Embarq entities shall not seek a ruling, including through the filing of a forbearance petition under section 10 of the Act or any other petition, altering the status of any facility currently offered as a loop or transport UNE under section 251(c)(3) of the Act.

Rationale: Competitive LECs often rely on loop and transport UNEs to complete their networks and reach customers located within the combined CenturyTel/Embarq footprint.

⁹⁷ *SBC/Ameritech Merger Order*, ¶¶390, 393.

⁹⁸ *See* Kohly Declaration, ¶ 20.

⁹⁹ *See id.*

¹⁰⁰ *See id.*, ¶ 19.

In fact, Socket notes that it relies heavily on UNEs leased from incumbent LECs in order to reach its customers.¹⁰¹ Because there are few, if any, competitive alternatives it is imperative that these facilities remain available as UNEs to competitive LECs so that they are able to bring advanced competitive service offerings to consumers and businesses in the combined CenturyTel/Embarq footprint. Freezing the ability of the merged CenturyTel/Embarq entity to “delist” UNEs will ensure that competitive LECs continue to have access to the UNEs they need and will allow for the development of market conditions that may make alternative or self-supply both practical and economically rational.

Use of Embarq OSS - Within one hundred and twenty (120) days after the Merger Closing Date, the merged CenturyTel/Embarq entity will utilize the Embarq OSS and Embarq’s platforms/systems, methods and procedures for Maintenance and Repair, Directory Listing, 911 Records, and Billing throughout the merged entity.

Rationale: In general, Embarq has developed a reasonable OSS, maintenance and repair methods and procedures, and other systems and procedures that are far superior to those of CenturyTel. Competitive LEC experience with CenturyTel’s OSS and related systems reveals systems that are ill-equipped to handle the demands and needs of competitive LECs requiring wholesale services. In Socket’s experience with both the Embarq and CenturyTel OSS, it has noticed that CenturyTel has the most anticompetitive practices and least automated OSS.¹⁰² For example, Socket identifies numerous problems with CenturyTel’s OSS including the inability quickly to provide information regarding whether a specific customer can be served from a particular end office.¹⁰³ Instead, Socket has to enter an order then wait, in some cases several

¹⁰¹ See *id.*, ¶ 4.

¹⁰² See *id.*, ¶ 7.

¹⁰³ See *id.*

days, to see if the order is accepted.¹⁰⁴ In some cases, the order is rejected because the customer address is wrong or cannot be served from the particular end office and Socket must then contact the customer to try another address.¹⁰⁵ In contrast, the Embarq OSS can provide “near-instant” feedback regarding customer address information including whether the specific customer office can be served from a particular office.¹⁰⁶

NuVox reports similar problems with CenturyTel’s OSS, including its decision to abandon the use of certain of CenturyTel’s OSS because of issues such as significant problems with the address validation mechanism.¹⁰⁷ NuVox also serious shortcomings in CenturyTel’s OSS related to the processing of local service requests and customer service record requests such as the need to type the same information into every order instead of the information being autopopulated.¹⁰⁸

Socket also experiences serious problems with CenturyTel’s maintenance and repair processes and practices. In particular, when Socket wants to place a trouble ticket, it is required to contact CenturyTel’s Service Bureau at the same telephone number used by CenturyTel’s retail customers for reporting retail problems.¹⁰⁹ Once Socket does reach a CenturyTel representative, the repair center operator has no ability to test Socket’s lines and thus can only take down Socket’s information and open a trouble ticket.¹¹⁰ Socket’s difficulties are further compounded by the fact that the operator often is unable to locate Socket’s wholesale

¹⁰⁴ *See id.*

¹⁰⁵ *See id.*

¹⁰⁶ *See id.*

¹⁰⁷ *See* Walsh and Cadieux Declaration, ¶ 6.

¹⁰⁸ *See id.*, ¶ 7.

¹⁰⁹ Kohly Declaration, ¶ 22.

¹¹⁰ *Id.*

circuit ID, forcing Socket to open a “Miscellaneous” ticket which is then assigned to technicians who are also processing retail trouble tickets.¹¹¹ Even more troubling is CenturyTel’s treatment of trouble tickets for DS1 service provisioned using HDSL over xDSL-capable loops. In Socket’s experience, despite Socket clearly identifying the issue as relating to DS1 service, these trouble tickets often are categorized as business DSL service – which is given a lower service priority – and assigned to technicians that are often unfamiliar with HDSL service.¹¹² In some cases, the technician actually has contacted Socket to ask what should be done or has taken the line down because it lacks a dial tone unnecessarily.¹¹³ Finally, CenturyTel has a practice of closing trouble tickets within 24 hours which often results in CenturyTel being unwilling to keep a trouble ticket open for the time necessary to monitor a circuit to isolate the trouble or ensure the trouble has been resolved.¹¹⁴

CenturyTel’s directory listing methods and procedures are also inadequate and result in numerous errors that require multiple resubmissions by Socket before being corrected and sometimes erroneous listings still are published and the erroneous information is distributed to other directory publishers.¹¹⁵ Socket also has endured problems with CenturyTel’s 911 records including numbers not being unlocked after being ported which delays the update of 911 database records to reflect Socket as the new service provider.¹¹⁶ Finally, in Socket’s experience, CenturyTel’s wholesale bills generally include many errors, such as incorrect rates, resale discounts, and rate elements, resulting in Socket having to spend undue time reviewing

¹¹¹ *Id.*

¹¹² *Id.*, ¶ 23.

¹¹³ *Id.*

¹¹⁴ *Id.*, ¶ 24.

¹¹⁵ Kohly Declaration, ¶¶ 25-26.

¹¹⁶ *Id.*, ¶ 28.

and disputing bills.¹¹⁷ These experiences highlight the inefficiencies and faults of CenturyTel's OSS which hinder competitive LECs' ability to compete and underscore the need for the merged entities to utilize the Embarq OSS post-merger.

In the SBC/Ameritech merger proceeding, the Commission recognized that when pre-merger companies have different practices, post-merger they typically adopt the practices of the acquiring company.¹¹⁸ This exact scenario appears to have occurred when CenturyTel acquired its Missouri properties from Verizon. Socket Internet, a Socket affiliate, was negatively impacted after the acquisition when automated databases were eliminated and established repair processes were replaced with less efficient and effective ones.¹¹⁹ The Commission required the merged SBC/Ameritech entity to deploy a uniform OSS and adopt the "best practices" of the combined companies.¹²⁰ A similar requirement is necessary here where competitive LEC experience illustrates alarming deficiencies in CenturyTel's OSS and maintenance and repair methods and procedures. Because CenturyTel is acquiring Embarq – and will assume management control over the combined entity¹²¹ – it is likely that the merged entity will adopt the CenturyTel OSS and maintenance and repair methods and procedures. As in the SBC/Ameritech merger, the Commission should require that the merged entity adopt "best practices" by adopting Embarq's OSS and maintenance and repair methods and procedures throughout the merged entity and its service areas.

¹¹⁷ Kohly Declaration, ¶ 29.

¹¹⁸ *SBC/Ameritech Merger Order*, ¶147.

¹¹⁹ *See* Kohly Declaration, ¶ 8.

¹²⁰ *SBC/Ameritech Merger Order*, ¶381.

¹²¹ *See* Form S-4, CenturyTel Inc.-CTL at 4 (filed Dec. 22, 2008); *see also* Heidi N. Moore, *Behind the Deal: Why CenturyTel Took Over Larger Rival Embarq*, Wall St. J., Oct. 27, 2008, available at <http://blogs.wsj.com/deals/2008/10/27/behind-the-deal-how-centurytel-took-over-larger-rival-embarq/>.

Order Intervals – Within sixty (60) days after the Merger Closing Date, and for a period of forty-eight (48) months, the merged CenturyTel/Embarq entity will adhere to Embarq ordering and provisioning intervals for all wholesale service orders in place as of January 1, 2009.

Rationale: Competitive LEC experience indicates that Embarq currently has significantly better intervals for ordering and provisioning wholesale service orders. For example, Socket relates that Embarq has a five-business day interval for DS1 loop and EEL orders while CenturyTel’s interval is fifteen-business days for the same services.¹²²

Requiring the merged entity to adhere to the Embarq intervals for four years after the merger will ensure that competitive LECs are able to receive the services and facilities they need in a timely manner so as to preserve and ensure in the future the ability of competitors to provide competitive service offerings in the combined CenturyTel/Embarq footprint. Embarq has demonstrated a seriousness of purpose in providing wholesale service that has not been experienced on the wholesale side with CenturyTel. If competition is to continue in current Embarq territory and progress in current CenturyTel territory, the Embarq intervals should be the standard for the merged entity in all markets.

Dedicated Interoffice Facilities – Beginning thirty (30) days after the Merger Closing Date, and for a period of forty-eight (48) months, the merged CenturyTel/Embarq entities will make available as UNEs dedicated DS1 and DS3 interoffice facilities connecting end offices/switches of CenturyTel/Embarq entities with adjacent operating territories within the same local access transport area (“LATA”) or subtending end offices/switches.

¹²² See Kohly Declaration, ¶ 10.

Rationale: CenturyTel often operates as separate incumbent LECs within the same state and it appears that it is likely to retain the separate legal status of the Embarq incumbent LEC entities.¹²³ Thus, while reaping the benefits of operating as a single LEC, CenturyTel avoids unbundling obligations by continuing to operate as separate incumbent LECs within a particular state. Thus, where one CenturyTel incumbent LEC end office subtends another CenturyTel incumbent LEC's tandem, CenturyTel refuses to provide dedicated transport between the two offices as a UNE. Socket states in its declaration that, because CenturyTel's two entities in Missouri are maintained as separate legal entities, Socket is forced to maintain separate interconnection agreements with each company.¹²⁴ This situation prevents Socket from leasing dedicated interoffice transport between one CenturyTel entity's tandems and the other entity's end offices that subtend them; preventing Socket from competing effectively in these exchanges.¹²⁵ This condition requires CenturyTel to abandon that practice and to instead offer dedicated transport at UNE rates between the switch cites/offices of any of the CenturyTel/Embarq incumbent LECs operating in the same LATA. This condition applies in addition to other section 251(c)(3) dedicated transport unbundling requirements.

UNE Performance Plan - Beginning within forty-five (45) days and continuing for a period of forty-eight (48) months, the combined CenturyTel/Embarq will prepare and file quarterly performance metrics related to their provision of unbundled network elements.

Rationale: As discussed above, regarding the filing and reporting of performance plans for special access services, competitive LECs rely on the ability to obtain UNEs from incumbent LECs in order to serve the competitive LEC's customers. In order to ensure that the

¹²³ See Kohly Declaration, ¶ 5.

¹²⁴ See *id.*, ¶ 29.

¹²⁵ See *id.*

merged CenturyTel/Embarq entity from abusing its combined market power, the Commission should require the merged entity to report on its provision of UNEs to competitive LECs. The Commission adopted a similar condition, in the form of a Carrier-to-Carrier performance plan in the SBC/Ameritech merger.¹²⁶ As part of that condition, the merged companies agreed to report, for its combined operating territory, on its “pre-ordering, ordering, provisioning, maintenance and repair associated with UNEs, interconnection, and resold services.”¹²⁷ The Commission explained that the condition was necessary to “ensur[e] that SBC/Ameritech's service to telecommunications carriers will not deteriorate as a result of the merger and the larger firm's increased incentive and ability to discriminate and to stimulate the merged entity to adopt "best practices" that clearly favor public rather than private interests.”¹²⁸ The same concern is applicable to the CenturyTel/Embarq merger and a similar condition should be imposed.

3. **Conditions Related to Special Access and Other Wholesale Services**

Affiliate Transactions – Affiliate Transactions – With regard to the provision of special access services, and for a period of forty-eight (48) months from the Merger Closing Date, no CenturyTel/Embarq entity or affiliate shall (i) provide any of its affiliates with rates, terms and conditions that are not available to other entities; (ii) favor itself or its affiliates in the provisioning, maintenance, customer care, OSS functionalities and grooming of special access circuits.

Rationale: To compete effectively, competitive LECs operating in the combined CenturyTel/Embarq operating territory, must be able to obtain facilities and services at rates, terms and conditions equal to those offered to other carriers, including CenturyTel or Embarq or

¹²⁶ *SBC/Ameritech Merger Order*, ¶¶ 377-380.

¹²⁷ *Id.*, ¶ 377.

¹²⁸ *Id.*

their affiliates. Any discriminatory treatment which favors CenturyTel, Embarq or any of their affiliates will put competitive LECs at a disadvantage as they will be unable to offer the same range of services and/or comparable rates as could be offered by CenturyTel, Embarq or any of their affiliates. The Commission recognized the potential negative impact such discriminatory treatment would have on competing carriers and noted that the public interest would be served by adopting a similar condition offered by SBC and AT&T in their merger proceeding.¹²⁹ In its Declaration, Socket raises concerns regarding transactions between CenturyTel and its LightCore affiliate.¹³⁰

Special Access Rate Cap - For a period of forty-eight (48) months after the Merger Closing Date, the merged CenturyTel/Embarq entities shall not increase the rates in their interstate tariffs, including contract tariffs for special access services that the merged CenturyTel/Embarq entities provides and that are set forth in tariffs on file at the Commission as of January 1, 2009.

Rationale: The proposed merger of CenturyTel and Embarq has the potential to limit the ability of competitive LECs to obtain special access services – either at competitive rates or at all. A cap on special access rates will provide competitive LECs with a period of stability and should aid in the development of that market so that alternative providers of wholesale special access will begin to enter the market. In the SBC/AT&T merger proceeding, the Commission recognized that a merger could result in increased wholesale special access rates.¹³¹ The Commission then adopted and noted that it took comfort in a commitment,

¹²⁹ *AT&T/SBC Merger Order*, at 123, Appendix F: Conditions.

¹³⁰ Kohly Declaration, ¶ 31.

¹³¹ *See, e.g., SBC/AT&T Merger Order*, ¶¶ 32-33, 36.

proposed by SBC/AT&T, to not seek any increases in its tariffed special access rates.¹³²

Similarly, the Commission found in the AT&T/BellSouth merger that the merger would have an anticompetitive effect on the market for certain special access services and adopted, as a condition of the merger, a requirement that neither BellSouth nor AT&T could seek a rate increase for special access services provided in the combined operating territory.¹³³

Special Access Circuit and Plan Portability - The merged CenturyTel/Embarq entities shall permit a requesting telecommunications provider to port the entirety of an existing special access plan or commercial agreement (except for state specific rates) from one CenturyTel/Embarq incumbent LEC to another and from a state where it currently is effective to another state in its territory. Parties with these plans should be able to move or port circuits within and between plans and CenturyTel/Embarq incumbent LECs without penalty or additional cost.

Rationale: Competitive LECs often rely on special access to complete their networks and reach customers located within the combined CenturyTel/Embarq footprint.¹³⁴ Because there are few, if any, competitive sources of these facilities, it is imperative that they remain available and are made more useful to competitive LECs so that they are able to bring advanced competitive service offerings to consumers and businesses in the combined CenturyTel/Embarq footprint. Requiring the merged CenturyTel/Embarq entity to allow “portability” in special access discount plans will encourage the development of market conditions that may make alternative or self-supply both practical and economically rational.

Special Access Service Performance Plan – Beginning within forty-five (45) days and continuing for a period of forty-eight (48) months, the combined CenturyTel/Embarq

¹³² *Id.*, ¶ 51. *See also, e.g., SBC/AT&T Merger Order*, Statement of Commissioner Michael J. Copps, Concurring.

¹³³ *AT&T/BellSouth Merger Order*, Appendix F: Conditions at 151.

¹³⁴ *See Walsh/Cadieux Declaration*, ¶ 4.

will prepare and file quarterly performance metrics related to their provision of special access services.

Rationale – Competitive LECs often depend on special access services obtained from incumbent LECs in order to serve their end user customers. The combined CenturyTel/Embarq’s incumbent LEC entities will have an added incentive and ability to discriminate against competitive LECs seeking to obtain special access services. Socket’s experiences with CenturyTel’s provisioning performance highlights the importance of a performance measurement requirement.¹³⁵ The Socket /CenturyTel interconnection agreement requires Socket to measure CenturyTel’s performance and Socket has identified problems with CenturyTel’s installation performance. For example, CenturyTel often marked orders for xDSL-capable loops as complete, however, when Socket’s technicians would arrive at the customer’s premises for installation, they would find that no facilities had been provisioned. CenturyTel’s practices cause Socket to incur unnecessary costs and delays.¹³⁶ The proposed condition is similar to the voluntary AT&T special access service performance plan filings noted in the *AT&T/BellSouth Merger Order*¹³⁷ and is necessary for the same reasons.

4. **Other Conditions**

Number Portability – Beginning thirty (30) days after the Merger Closing Date and continuing for a period of forty-eight (48) months, the merged CenturyTel/Embarq entities

¹³⁵ See Kohly Declaration, ¶ 16.

¹³⁶ See *id.*, ¶ 16.

¹³⁷ *AT&T/BellSouth Merger Order*, n.170. SBC and AT&T voluntarily committed to a similar condition in their merger proceeding. *SBC/AT&T Merger Order*, ¶ 51.

shall comply with industry best practices regarding number portability, including the Local Number Portability Administration – Working Group’s Industry Best Practices.¹³⁸

Rationale: The ability of carriers to easily and quickly port customer telephone numbers is crucial to attracting and retaining customers. All carriers should comply with the industry’s best practices for number portability but it is particularly important here where the merged CenturyTel/Embarq entity will have a greater incentive and ability to delay port requests. Socket already has experienced problems with CenturyTel’s handling of socket’s port requests. For example, CenturyTel has refused port requests and began to verify –an anticompetitive practice - Socket’s port requests to ensure that they did not constitute location portability.¹³⁹ Socket reports CenturyTel has gone so far as to send its technicians to the customer premises to look for Socket’s facilities and contact customers under the guise of needing information.¹⁴⁰ CenturyTel also has imposed arbitrary limits on the number of numbers that Socket may port for a customer each day.¹⁴¹ This limitation is not based on the parties’ interconnection agreement nor is it an industry standard or best practice.¹⁴² Although Socket has not had similar problems with Embarq, there is a very legitimate concern that the merged entities will both resort to CenturyTel’s anticompetitive practices. The proposed condition is necessary to prevent any discrimination in processing number portability requests and the resulting negative impact on competition in the CenturyTel/Embarq merger.

¹³⁸ See Local Number Portability Administration – Working Group, Industry Best Practices Document *available at* www.npac.com/cmas/LNPA.

¹³⁹ See Kohly Declaration, ¶ 33.

¹⁴⁰ See *id.*

¹⁴¹ See *id.*, ¶ 35.

¹⁴² See Kohly Declaration, ¶ 35.

Single Point of Interconnection – Beginning thirty (30) days after the Merger Closing Date, and for a period of forty-eight (48) months from the Merger Closing Date, the merged CenturyTel/Embarq entities shall permit requesting entities to establish a single point of interconnection (“POI”) per LATA and that POI shall serve as the POI for all interconnection between the requesting entity and any CenturyTel/Embarq entities operating in the LATA.

Rationale: Competitive LECs incur significant costs for establishing POIs. Permitting competitive LECs to establish a single POI per LATA with the CenturyTel/Embarq entities will eliminate or reduce unnecessary interconnection and service costs, thereby enabling competitive LECs to compete more effectively. CenturyTel has a history of insisting on multiple POIs per LATA or taking the position that a competitive LEC may request a single point of interconnection but insisting it is not technically feasible for that single POI to serve as the POI for all interconnection between the requesting entity and any CenturyTel/Embarq entities operating in the LATA. This anticompetitive practice imposes unnecessary costs on competitors and serves as a barrier to entry.

Cap on Transit Service Rates – Beginning thirty (30) days after the merger, and continuing for a period of forty-eight (48) months from the Merger Closing Date, neither CenturyTel nor Embarq will increase the rates paid by competitive LECs as of January 1, 2009 for transit tandem services¹⁴³ provided by CenturyTel or Embarq in the combined CenturyTel/Embarq region.

¹⁴³ Commenters define “tandem transit service” as it was defined by the Commission in the *AT&T/BellSouth Merger Order* – “Tandem transit service means tandem-switched transport service provided to an originating carrier in order to indirectly send intraLATA traffic subject to § 251(b)(5) of the Communications Act of 1934, as amended, to a terminating carrier, and includes tandem switching functionality and tandem switched transport functionality between an AT&T/BellSouth tandem switch location and the terminating carrier” *AT&T/BellSouth Merger Order*, Appendix F: Conditions at 153, n.11.

Rationale: Competitive LECs rely on transit services obtained from incumbent LECs to provide a variety of services and to serve, in particular, multi-location enterprise customers. The combined CenturyTel/Embarq entity will have the means and incentive to exploit its combined market power to discriminate in the provision of transit services to competitive LECs. The Commission recognized the need to impose a similar cap on transit rates in the AT&T/BellSouth merger¹⁴⁴ and the same reasoning underlying that decision applies here.

ADSL Transmission Service –CenturyTel/Embarq will offer to Internet service providers (“ISPs”), for their provision of broadband Internet access service to ADSL-capable retail customer premises, ADSL transmission service in the combined CenturyTel/Embarq territory that is functionally the same as any retail ADSL service offered by CenturyTel/Embarq to the same retail customer premises. Such wholesale offering will be at a price not greater than the retail price in a state for ADSL service that is purchased by customers who also subscribe to CenturyTel/Embarq local telephone service whether purchased separately or in bundled service offerings.

Rationale: Competitive ISPs rely on wholesale ADSL transmission services obtained from incumbent LECs to provide competitive broadband Internet access to retail customers. The combined CenturyTel/Embarq entity will have the means and incentive to exploit its combined market power to discriminate in the provision of ADSL transmission services to ISPs. The Commission imposed a similar condition with respect to the provision of ADSL transmission services in the AT&T/BellSouth merger¹⁴⁵ and the same reasoning underlying that decision applies here. Notably, in many areas where Socket Internet provides ADSL service, Socket Internet is the only competitive alternative to the incumbent’s ADSL

¹⁴⁴ *AT&T/BellSouth Merger Order*, ¶¶ 127-128.

¹⁴⁵ *AT&T/BellSouth Merger Order*, Appendix F: Conditions at 153.

service and satellite service.¹⁴⁶ The pricing component of this condition is essential because ISPs like Socket Internet face a “price squeeze” between the wholesale rate that it pays to the incumbent and the retail rate charged by the incumbent in the Applicants’ territories.¹⁴⁷ For example, CenturyTel of Missouri, LLC’s wholesale rate for 1.5M/256K is \$37.50 while the retail rate for the same service in a bundle is \$19.99.¹⁴⁸ The functionality and scope aspects of this condition are necessary to curb anticompetitive CenturyTel practices which likely would prevail in a merged entity. For example, CenturyTel refuses to make available on a wholesale basis its extended reach ADSL services and CenturyTel also does not make available every retail speed package as a wholesale service to Socket Internet.¹⁴⁹ These practices are both anticompetitive and discriminatory. Unless they are addressed by a condition such as this, the merger threatens to limit the availability of broadband Internet access services in the Applicants’ service territories.

¹⁴⁶ Kohly Declaration, ¶ 38.

¹⁴⁷ *Id.*, ¶¶ 38-40.

¹⁴⁸ *Id.*, ¶ 38.

¹⁴⁹ *Id.*, ¶¶ 41-42.

V. CONCLUSION

For all of the foregoing reasons, the Commission should deny the applications seeking to transfer control over Embarq to CenturyTel. Commission approval of the proposed transaction could not be lawful absent the imposition of a robust set of conditions designed to mitigate public interest harms and to ensure that consumers and businesses realize fully the benefits of wireline competition, as intended by section 251 of the Act.

Respectfully submitted,

**NUVOX AND
SOCKET TELECOM, LLC**

By: 
John J. Heitmann
Denise N. Smith
KELLEY DRYE & WARREN LLP
WASHINGTON HARBOUR
3050 K STREET, NW, SUITE 400
WASHINGTON, DC 20007
202-342-8400 (PHONE)
202-342-8451 (FACSIMILE)
jheitmann@kelleydrye.com
dsmith@kelleydrye.com

Their Attorneys

January 8, 2009

**Attachment A: Declaration of Anthony Walsh and Edward Cadieux
on Behalf of NuVox**

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Application to)	
Transfer of Control of Domestic)	
Authorizations Held by Embarq)	WC Docket No. 08-238
Corporation to CenturyTel, Inc.)	DA 08-2681
Under Section 214 of the)	
Communications Act)	

DECLARATION OF ANTHONY WALSH AND
EDWARD CADIEUX ON BEHALF OF
NUVOX

DECLARATION OF ANTHONY WALSH AND EDWARD CADIEUX:

1. My name is Anthony Walsh and I am employed by NuVox as its Vice President, Network Engineering. My primary job responsibilities include Central Office Engineering, Capacity Management, Systems and IP Architecture, and Network Planning as well as carrier interconnection - trunking arrangements, circuit quantities and commitments, etc.
2. My name is Edward Cadieux and I am employed by NuVox as its Vice President, Senior Regulatory Counsel. My primary job responsibilities include covering federal and state regulatory and legislative matters of concern to NuVox as well as interconnection negotiations and arbitrations with other telecommunications carriers.
3. NuVox provides service primarily to small and medium-sized business customers in 16 states in the Southeastern and Midwestern United States. A privately held company headquartered in Greenville, South Carolina, NuVox serves over 90,000 business customers with a wide variety of communications services including

local and long distance voice service, data and high-speed Internet services, VoIP and MPLS.

4. NuVox currently has one interconnection agreement (“ICA”) with CenturyTel, Inc. (“CenturyTel”) in the State of Missouri and four ICAs with Embarq Corporation (“Embarq”), one each in the States of Florida, North Carolina, South Carolina and Tennessee. Our company interconnects with both CenturyTel and Embarq and purchases special access from both companies as well as UNEs in some instances from Embarq in order to serve our customers.
5. One of the factors that deters additional CLECs from expanding into portions of CenturyTel’s territory is the fact that its Operations Support Systems (“OSS”) are non-standard and make it much more resource intensive and more costly per service order to do business with CenturyTel as compared to operations with Bell Operating Companies or Embarq. CenturyTel’s OSS are not only non-standard, in some instances, they do not work well or do not work as intended. For example, CenturyTel’s address validation mechanism is so poor that NuVox has abandoned its use.
6. Another notable shortcoming of CenturyTel’s OSS is its web application for Local Service Requests (“LSRs”) and Customer Service Record (“CSR”) Requests. CenturyTel’s system is cumbersome and time consuming to use. It does not contain an “auto-population” feature so every piece of information has to be typed into an order each and every time, creating increased costs and greater potential for order entry errors. Additionally, CenturyTel assesses a charge for each CSR ordered. In contrast, Embarq’s OSS for ordering CSRs and submitting LSRs -- called the “Integrated Request Entry System” or “IRES” -- is a decent system that is reasonably user-friendly. It provides auto-population and Embarq does not assess any charges for requesting CSRs. Embarq’s IRES is far superior to anything CenturyTel has in place for similar functions.
7. CenturyTel’s service delivery is markedly worse than that provided by Embarq. An example of the disparity in service experienced by NuVox is the interval to get an FCC (interstate) special access DS1 installed. From the time of order, it takes CenturyTel, on average, sixteen (16) days to install a DS1. From the time of

order it takes Embarq, on average, seven (7) days (averaging Embarq FCC special access DS1 provisioning intervals in Florida, North Carolina and Tennessee).

8. In March, 2007, NuVox made a formal request to opt into the Missouri ICA between Socket Telecom, LLC (“Socket”) and CenturyTel. NuVox sought to facilitate expedited processing of the opt-in by providing as part of its request a signature-ready simple one-paragraph ICA adoption agreement. Since the Missouri Public Service Commission allows ICA adoptions to become effective upon filing, NuVox anticipated having an effective Missouri ICA with CenturyTel within a month. After several weeks delay, CenturyTel responded with a significantly more extensive and heavily one-sided adoption agreement of its own creation. CenturyTel refused to negotiate from NuVox’s simplified adoption agreement and insisted that discussions be based solely on its one-sided proposal. Among other things, CenturyTel’s proposal would have given it a right to revoke NuVox’s adoption of the Socket ICA after-the-fact, in whole or in part, *based on a unilateral contention by CenturyTel* that either its costs of serving NuVox exceed those of serving Socket or that provision of any of the Socket ICA terms to NuVox might be alleged to be technically infeasible. Ultimately, NuVox was successful in obtaining negotiated revisions to the CenturyTel proposal that made the adoption agreement more even handed, including conformance of the opt-in revocation provision to the corresponding FCC rule (*i.e.*, by requiring that CenturyTel prove its higher cost or technical infeasibility contentions to the Missouri Public Service Commission expressed in Commission Findings of Fact and Conclusions of Law, rather than allowing CenturyTel to impose revocation simply based on its untested assertions). Nevertheless, a process that should have taken a couple of weeks ended up dragging on for eighty (80) days (the Adoption agreement was filed and became effective on May 31, 2007), which delayed NuVox’s competitive entry into Century Tel’s service area.

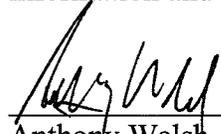
I assert under penalty of perjury that the foregoing is true and correct to the best of my information and belief. This concludes our declaration.

Handwritten signature of Edward Cadieux in cursive script.

Dated: January 7, 2009

Edward Cadieux

I assert under penalty of perjury that the foregoing is true and correct to the best of my information and belief. This concludes our declaration.



Anthony Walsh

Dated: January 7, 2009

**Attachment B: Declaration of R. Matthew Kohly
on Behalf of Socket Telecom, LLC**

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
)	
Application to)	
Transfer of Control of Domestic)	
Authorizations Held by Embarq)	WC Docket No. 08-238
Corporation to CenturyTel, Inc.)	DA 08-2681
Under Section 214 of the)	
Communications Act)	

**DECLARATION OF R. MATTHEW KOHLY
ON BEHALF OF SOCKET TELECOM, LLC**

1. My name is R. Matthew Kohly. I am the Director of Government and Carrier Relations for Socket Telecom, LLC (“Socket”). My business address is 2703 Clark Lane, Columbia, MO 65201. My primary job responsibilities include managing all matters that affect Socket before federal and state regulatory agencies and legislative bodies. I am responsible for federal regulatory and legislative matters, state regulatory proceedings and complaints, including interconnection negotiations and arbitrations. I am also responsible for negotiating and maintaining Socket’s interconnection agreements with incumbent local exchange carriers as well as contracts with other telecommunications carriers and service providers. I also perform other duties for Socket Holdings Inc. d/b/a Socket Internet as assigned.

2. Socket is a privately held company headquartered in Columbia, MO. Socket competes with two CenturyTel ILECs, CenturyTel of Missouri, LLC and Spectra Communications Group LLC, Embarq, as well as AT&T (formerly SBC) in the state of Missouri. Socket's parent corporation Socket Holdings, Inc. d/b/a Socket Internet operates as an Internet Service Provider providing both dial-up and broadband Internet access to both residential and business customers located in exchanges served by the two CenturyTel ILECs, Embarq, AT&T and Windstream. Socket Internet provides ADSL service primarily through commercial agreements with these carriers.
3. Socket provides facilities-based competitive local, long distance, internet and integrated communications services to business and residential customers in the state of Missouri. Socket also provides telecommunications services to Internet Service Providers, including its affiliate, Socket Holdings Inc d/b/a Socket Internet. In addition to these integrated services, Socket also provides stand-alone or naked DSL to both business and residential users. Socket competes primarily in the non-metro areas of Missouri. In many instances, Socket is the only competitive alternative available in these more rural areas. It is our belief that Socket is CenturyTel's largest UNE-based competitor in its entire service territory.
4. Socket's network is primarily loop and transport from collocations and, in order to reach most of its customers, Socket combines its own facilities with those leased from incumbent local exchange carriers ("ILECs"). In order to serve business customers, Socket relies upon Extended Enhanced Loops ("EELs"), unbundled network element ("UNE") loops such as DS3, DS1, and xDSL-capable loops, and Special Access Services. In limited circumstances, Socket also serves business customers through resale arrangements. Socket provides services to residential customers primarily through xDSL-capable loops.
5. CenturyTel acquired its Missouri properties in multiple transactions beginning in 1998 and ending in 2001 when it acquired the CenturyTel of Missouri, LLC properties from Verizon. CenturyTel maintains Spectra Communications Group, LLC and CenturyTel of Missouri, LLC as separate legal entities. The combined CenturyTel companies have over 400,000 access lines in Missouri and serve some of the fastest growing suburban markets in the St. Louis, MO area as well as Columbia, MO in the central part of the state and

Branson, MO in the southwest part of the state. Embarq serves nearly 200,000 access lines in MO. Likewise, Embarq serves some of the fastest growing suburban areas of Missouri around Kansas City, MO as well other exchanges in central Missouri.

6. This declaration is provided in support of the joint comments in opposition to the CenturyTel acquisition of Embarq proceeding and provides numerous examples of the often contrasting business practices and capabilities of CenturyTel and Embarq. It is critical that carriers and the Commission be able to review and compare ILEC business practices to identify those negative practices that are particularly outside the norm or the beneficial practices that should be the standard for other carriers in the market. It is also critical that carriers and the Commission be able to review and compare the ILEC systems to ensure existing capabilities are not eliminated or do not deteriorate as companies are combined.
7. In Socket's experience, the CenturyTel and Embarq business practices tend to directly contrast, with each party having a mix of anticompetitive and more favorable practices. Socket is concerned that a combined CenturyTel/Embarq entity will adopt all of the anticompetitive practices of each company as standard operating practices throughout the combined CenturyTel/Embarq operating region. Socket is also concerned that the existing ordering and provisioning systems that allow for automation will deteriorate or be replaced entirely by systems that are less efficient or rely upon more manual processes as the two entities combine and consolidate operations. CenturyTel generally has the most anticompetitive practices and least automated OSS. Given that they are the acquiring entity, Socket is especially concerned.
8. These concerns are heightened by CenturyTel's actions when it obtained its Missouri properties from Verizon. Based upon the retail experience of Socket's affiliate, Socket Internet, it appears that electronic databases such as circuit databases were eliminated. This became apparent when Socket Internet would place a trouble ticket. CenturyTel was unable to locate the circuit ID. As a result, CenturyTel had no circuit history or documentation and could only open a "Miscellaneous Ticket" and send the ticket to the central office where the trouble was being reported. In addition, staffing changes caused technicians to be assigned to troubleshoot and repair DS1 retail services and no longer was there any after-hours support for frame relay and ATM circuits. All of these changes hampered circuit repair and

negatively impacted Socket Internet's business services.

Summary of Concerns

9. Socket's concerns include operational concerns as well as an overall recognition of the wholesale obligations imposed by the Telecommunications Act of 1996. The operational concerns include ordering and provisioning performance as well as concerns about the ongoing maintenance of UNEs leased by Socket as a result of this acquisition. Socket also is concerned about the current UNE rates and the likelihood of UNE rate increases if the two entities are permitted to combine. Socket's operational concerns also include about the ongoing performance used for directory and 911 listings. While these are often viewed as minor, they are critical to a carrier being able to effectively compete in the local exchange market. Socket also is concerned about the treatment of affiliates under a combined entity and the likelihood, that like other CenturyTel ILECs, the Embarq companies will be treated as separate legal entities; denying Socket any benefit of the efficiencies gained by the merged entities. Finally, Socket is concerned that the overall mindset with respect to wholesale obligations will change for the worse when the two entities are placed under common management. Each of these concerns is explained in more detail herein.

Ordering and Provisioning

10. Embarq's business practices relating to ordering and provisioning intervals tend to be more favorable than those of CenturyTel. For example, Embarq has a five-business day interval for DS1 loop and EEL orders. In contrast, CenturyTel has a fifteen-business day interval for DS1 loop and EEL orders.
11. Embarq's ordering systems are much more robust and automated while CenturyTel's are largely manual with little if any automated or interactive capabilities. For example, Embarq's ordering systems provide customer address information on a "near-instant" basis for both conversion orders and orders for new customer locations. Embarq's systems will also indicate whether a specific customer location can be served out of a particular office during the ordering process. In sharp contrast, CenturyTel's systems cannot provide addressing information or even whether a specific customer location can even be served out of a particular end-office on a real-time or near real-time basis. Instead, Socket will enter the customer address and submit the order. Between the time the order is submitted and when

the order is due several days later, the order will be rejected if the customer address is wrong or the customer location cannot be served out of a particular end-office. This creates delays and causes Socket to have to contact the customer to try another address.

12. The inefficiencies caused by the lack of any addressing capabilities in the OSS are compounded by the complete lack of information CenturyTel is willing to provide about the serving area of a particular end-office or wire center. For example, Socket has collocated in several CenturyTel end-offices and is in the process of collocating in additional wire centers in order to serve customers using xDSL-capable subloops. CenturyTel has refused to provide any information about the geographic area served by these end-offices and wire centers. This obviously makes it extremely difficult if not impossible to make a reasoned business decision on whether to collocate in a particular end-office or wire center or the capacity that the collocation will need.¹
13. When the refusal to provide any information about the serving area of particular end-office or wire center is combined with the lack of addressing capabilities in CenturyTel's OSS systems, it becomes almost a guess about whether or not a specific customer location can be served from a particular wire center. Socket frequently encounters situations where a customer has signed up for Socket's service only for Socket to learn that the customer location cannot be served from the office where Socket is collocated. When this happens, Socket must contact the customer and apologize for being unable to serve that customer's location after all. This obviously creates unnecessary inefficiencies, increases Socket's costs, and creates ill-will as retail customers cannot understand why they would be sold services if Socket could not serve their location.
14. In instances where Socket is unsure which office or wire center serves a particular customer location, Socket faces the situation of submitting multiple orders for a UNE loop from multiple wire centers to the same customer premise in order to get the loop installed as soon as possible. In this scenario, the hope that is that one order will ultimately be worked while the others will eventually be rejected. This is an inefficient process and unnecessarily increases Socket's costs.

¹ To try to "estimate" the boundaries of a particular wire center, Socket has relied upon following aerial cable routes by driving down roads, looking for natural or topographical barriers such as creeks and major highways, and historic knowledge of numbering limitations prior to number portability.

15. In sharp contrast, Embarq's systems have addressing capabilities and automatically provide information about whether a particular customer location can be served from a particular wire center. For example, Embarq's systems will not even let a CLEC submit an order for a loop to a particular customer location if that location cannot be served by that end-office. In addition, Embarq provides Socket with address information of customer locations served by a particular end-office upon request. This permits Socket to easily create maps showing the outline of the area served by the wire center and understand the boundaries of a particular wire center. CenturyTel's practices (or lack thereof) unnecessarily drive up competitor costs through operational inefficiencies. Socket is concerned that Embarq's OSS systems will be permitted to degrade or be replaced by less efficient systems as the two companies integrate. Socket is also concerned that the combined entity will adopt the business practice of refusing to provide any information about the geographic area served by end-offices and wire centers where Socket is inquiring about collocating or actually collocating.
16. As a result of Socket's Missouri arbitration proceeding with CenturyTel, the Socket-CenturyTel ICA has several basic performance measures that require Socket to measure CenturyTel's performance. After the ICA became effective, Socket implemented several of the measures related to installation performance because of performance issues with CenturyTel. For example, in the first few months of tracking, CenturyTel met the due date for circuit installation less than 70% of time. Since Socket began assessing the performance penalties associated with this poor performance, CenturyTel has improved its installation performance.² In some situations, however, Socket is reliant upon task completion notifications to be sent by CenturyTel in order to measure CenturyTel's performance. One of the ways that Socket believes CenturyTel's installation performance improved was CenturyTel began marking orders for xDSL-capable loops as complete when they, in fact, were not complete. In these instances, Socket would dispatch its technician to the customer premises to perform a customer installation only to find out that there were no facilities provisioned. In response to this problem, Socket has implemented a practice of visiting a

² Socket's ability to measure CenturyTel's performance was impacted when CenturyTel implemented a new wholesale ordering interface. Since that time, CenturyTel has been sporadic in sending the task completion notices. For example, Socket did not receive the task completion notification on almost 35% of the loop installation orders in the month of October 2008. Without that notification, Socket was unable to calculate CenturyTel's installation performance for that month.

customer premises after the CenturyTel loop order is marked complete or the due date has passed in order to verify facilities were indeed installed. If facilities are installed, Socket will then complete the installation at a later date. If the facilities are not installed, Socket will open a trouble ticket. Socket has also developed systems to begin tracking additional performance measures related to trouble tickets for loops installed within 30 days and the number of trouble tickets overall. The goal is to begin reporting performance for January 2009 on these two measures. While Socket does not have similar performance measures with Embarq, Socket's experience has been that Embarq generally meets the due date on circuit installation. The one exception is UNE orders where Embarq assesses conditioning charges.³ When this occurs, Embarq places the order in jeopardy status and Socket is notified that the loop requires conditioning. If Socket accepts the conditioning charges, Embarq will proceed with the installation but will most often miss the original due date. Based upon the experience with both companies, Socket is concerned that the performance of the combined entity will suffer as a result of this acquisition.

17. The two companies differ markedly on the amount of information they provide about the ordering process. Embarq provides job aids for their ASR and LSR systems that make it easier to determine the specific ordering requirements for different types of orders. CenturyTel simply does not have this information. When submitting a new type of order, Socket's technicians often use job aids provided by other incumbent local exchange carriers when permitted as the starting point for placing orders with CenturyTel. This creates inefficiencies and increases Socket's cost unnecessarily as orders must be submitted multiple times. Socket is concerned that the combined entity will be less willing or less able to provide supporting documentation and other materials.

18. The two companies also differ on the accuracy of the information contained in Customer Service Records (CSR). CenturyTel's information is often missing, inaccurate, or contradicts information contained in CenturyTel's other databases. This is especially true with respect to customers with multiple locations. Since Socket often relies upon this

³ The anti-competitive concerns of this are explained in the section relate to UNE Rates.

information when ordering, any missing, inaccurate, and/or contradictory information ultimately delays facility provisioning by causing orders to be rejected. Because of Embarq's more automated ordering processes, Socket rarely has had to rely upon CSRs. When it has relied upon them, the information has generally been accurate. As in other areas, Socket is concerned the functionality of wholesale OSS systems of the combined entity will deteriorate as the companies combine operations.

UNE Rates

19. Embarq does impose unnecessary delays and expenses on competitors by imposing "line conditioning" charges on DS1 loops. These charges began appearing last year and have increased in frequency to the point that they are required for virtually every DS1 loop order Socket places. These charges range from \$100 to \$350 per loop and are in addition to the standard non-recurring charge for DS1 loops of \$330.83. On the other hand, CenturyTel has not imposed conditioning charges and neither does the other ILEC that Socket leases DS1 loops from. This is a good indicator that Embarq's practice with respect to conditioning charges is outside the norm and unnecessary.

20. Embarq's overall UNE rates in Missouri tend to be higher than those of CenturyTel. While CenturyTel's UNE rates were reviewed by the MO PSC in a cost review process when GTE operated the CenturyTel properties and some of the rates were set during an arbitration proceeding between Socket and CenturyTel, Embarq's UNE rates in Missouri have never been reviewed by the MO PSC. As a result, they tend to be higher. This is particularly true of the non-recurring charges and the recurring rates for dedicated transport. For example, the non-recurring charge for the installation of the DS1 loop and cross-connect imposed by Embarq is \$330.83 while CenturyTel charges a rate of the \$102.47 for loop and \$42.47 for the cross-connect. The disparity is even worse on the recurring rates for UNE Dedicated Interoffice Transport. Embarq's UNE rates are route-specific so an overall comparison is not possible. However, looking at a few examples shows the disparity. For a dedicated DS1 interoffice transport between Embarq's Jefferson City exchange and its California exchange located 22 air-miles away, Embarq's UNE recurring rate is \$700.79. This rate is even higher than special access for the same route. This rate has simply made it impossible for Socket to

compete in the California exchange using DS1 EELs. In contrast, if CenturyTel's rates, which have been reviewed by the MO PSC, for DS1 dedicated interoffice transport were applied to the 22 air-mile route, the monthly recurring rate would be \$62.92.

21. Socket is in the process of negotiating a new Interconnection Agreement with Embarq in Missouri. Embarq is proposing UNE rates that are significantly higher than the ones currently paid by Socket. For example, the new DS1 loop rate being proposed by Embarq is 80% higher in Embarq's larger exchanges and over 500% higher in Embarq's smaller exchanges. Similarly, the new two-wire loop rate being proposed by Embarq is over 50% higher in Embarq's larger exchanges while it is over 270% higher in Embarq's smaller exchanges. While part of the justification for the increases is due to changes in the rate centers that makeup the different deaveraged rate bands, the largest part of the increase is due to changes in the inputs used to calculate the new rates.

Maintenance and Repair

22. The two companies have very different business practices and capabilities for Maintenance and Repair, with CenturyTel generally having less efficient and more anticompetitive systems. For example, when Socket reports a trouble ticket to CenturyTel, Socket places a call to the number for CenturyTel's Service Bureau that puts Socket in a queue with CenturyTel's retail customers placing retail trouble reports. The CenturyTel agent that answers is a repair center operator that deals with retail and wholesale trouble tickets. The repair center operator has no testing abilities and can only take information and open an internal ticket. Socket's ability to have trouble tickets worked on a timely basis is hampered by the fact that the repair center operator is often unable to locate wholesale circuit IDs. As a result, Socket often has to open a "Miscellaneous Ticket". Socket's wholesale tickets are then assigned to techs along with retail tickets.
23. Socket especially has trouble when placing a trouble ticket for DS1 service provisioned using HDSL over an xDSL-capable loop. When placing the ticket, Socket specifically notes the

service being provisioned is a DS1 Service.⁴ Despite this, CenturyTel does not treat the ticket as trouble with a DS1 service and instead treats it as simply a trouble ticket for a business DSL service. Business DSL tickets are given a lower priority than trouble tickets for CenturyTel's comparable wholesale and retail DS1 services. These trouble tickets are assigned to a different set of technicians that are often unfamiliar with HSDL service. It is not uncommon for the CenturyTel technician assigned the ticket to contact Socket and ask, "What do we do with this?" or have the CTEL tech report "no dial tone." An HSDL loop will not have dial tone and the circuit will be taken down when tested for dial tone. Any technician that is familiar with DS1 Service should have that knowledge. In sharp contrast, Embarq's systems for placing trouble tickets are far superior.⁵ Socket's technicians do not have to wait in a queue with retail customers or speak to repair bureau operators who are simply there to open trouble tickets. Instead, Socket's technicians are usually able to speak to a technician that has access to remote HDSL testing access. Because of this, resolution of a ticket for DS1 trouble is much faster than with CenturyTel.

24. CenturyTel has a business practice of closing all trouble tickets within 24 hours. As a result, CenturyTel is generally unwilling to keep a trouble ticket open while a circuit is monitored to isolate the trouble or ensure that the trouble was truly resolved. Embarq does not have that same business practice and is willing to keep a trouble ticket open while monitoring a circuit resulting in better repair performance.

Directory Listings

25. The two companies also have different capabilities when it comes to directory listings. CenturyTel's system is more manual and error prone. CenturyTel's directory listing interface only displays a straight-line view of the listing and will not show any features. For example with a complex business listing with multiple lines or multiple locations,

⁴ A variety of services are provisioned over xDSL-capable loop have different priority levels and require different technical skills to troubleshoot. Socket denotes the service as a DS1 service due to the need for a higher priority to maintain CenturyTel's parity obligation and the need for a different skill level to troubleshoot problems with HDSL service.

⁵ To date, Socket only has experience reporting trouble tickets on DS1 loops with Embarq.

CenturyTel's interface will only show the caption header and not a complete set of listings. In addition, the listing requests submitted through its interface are subjected to layers of interpretation. As a result, what appears in CenturyTel's interface or even the galleys is not necessarily what appears in the actual directory.

26. CenturyTel's listings can be seen in galley "proofs" in the form of spreadsheets but accuracy is still questionable. Because of the error-prone nature of CenturyTel's directory listing system, Socket has a full-time employee that spends a significant part of his time dedicated to reviewing the spreadsheets that CenturyTel provides on a quarterly basis as well as before each directory is published. When Socket finds errors, the listings are corrected on the spreadsheet and CenturyTel is provided with the PON of originally submitted correct entry. Socket is often required to resubmit the directory listing request as well. Even then, these same errors often appear multiple times and require multiple corrections. If bad listings do make it into the directory published by CenturyTel's vendor, these same bad listings are provided to all other directory publishers who publish directories within the next twelve months even if Socket corrects the listing through CenturyTel. For example, when CenturyTel's publisher publishes a directory in July 2007, bad listings in that directory will be provided to all other publishers until June 2008 even if corrections were made as early as August 2007. CenturyTel's process for deleting listings is also more error prone than Embarq's.

27. Embarq, on the other hand, has a much better and more accurate system for submitting and reviewing directory listings. For example, listings appear exactly as they appear in the directory and any changes to listings are shown on a real-time basis. Socket understands that Embarq is scheduled to change the interface in the near future and is unsure what capabilities will be available in the future. Socket is concerned the listing process and the accuracy of the combined entity will suffer as a result of this acquisition.

911 Listings

28. The business practices and interfaces with respect to 911 entries and databases are also different with Embarq, again, having superior business practices and interfaces.

CenturyTel's system is not as automated so it is a frequent occurrence for 911 entries not to be unlocked after a number is ported; delaying the record update to show Socket as the new service provider and make any changes to the 911 database entry. When this happens, Socket has to manually submit the entries repeatedly until the listing is unlocked or place a call to CenturyTel and request that the 911 entry be unlocked. With Embarq's systems, the listings are unlocked automatically when the port is reported as completed. In the event the port order is not marked complete for some reason, Embarq's systems resubmit the 911 record update automatically for up to six days. Socket is concerned the record updating process and the accuracy of the records will suffer as a result of this acquisition.

Billing

29. The two companies differ markedly in the accuracy of their wholesale bills. CenturyTel's are generally plagued with errors. As a result, Socket is forced to incur the time and expense of submitted billing disputes. Many of these disputes are submitted repeatedly until the problem is corrected. The errors include incorrect rates, incorrect resale discounts, third-party charges associated with ported numbers being applied to Socket's account instead of the end-user's account, incorrect rate elements, etc. In sharp contrast, Embarq's invoices are much more accurate and Socket has submitted far fewer billing disputes.

Treatment of Affiliates

30. CenturyTel acquired its Missouri properties in two separate transactions and maintains them as two separate legal entities. However, the two companies are managed jointly with many of the same people performing the same functions for each entity. Since these are two separate legal entities, Socket is required to maintain separate interconnection agreements, separate interconnection arrangements, and generally conduct business separately with each of the affiliates. Also because these are separate legal entities, Socket is unable to lease dedicated interoffice transport between CenturyTel of Missouri's tandems and Spectra Communications Group, LLC d/b/a CenturyTel's end-offices that subtend them. This

precludes Socket from leasing UNE dedicated interoffice transport for use in EELs.⁶ As a result, Socket is effectively precluded from competing in these exchanges. In the context of interconnection, Spectra Communications Group, LLC has claimed that Socket is not permitted to interconnect at a single POI per LATA and exchange all traffic through that interconnect because doing so is not technically feasible. According to Spectra Communications Group, LLC, the reason Socket's requested interconnection arrangement is not technically feasible is because Spectra Communications Group, LLC maintains separate networks throughout the LATA and does not own inter-exchange facilities. Instead the interexchange facilities are owned by a third-party such as its affiliated ILEC, CenturyTel of Missouri, LLC. Socket is concerned that if this acquisition occurs, the Embarq ILEC subsidiary operating Missouri will similarly be treated as a separate legal entity despite the integration touted in the merger documents. This will require Socket to separately interconnect and operate with each legal entity. This will deny Socket any of the efficiencies these entities gain by consolidating operations.

31. The CenturyTel ILECs lease dedicated transport from a non-ILEC affiliate, LightCore, for transport between switching offices within the CenturyTel ILEC service territory. As these facilities are owned by a non-ILEC affiliate, they are not subject to unbundling obligations. This raises a concern about the potential availability of dedicated interoffice transport facilities for unbundling. This practice also creates repair delays. When Socket reports trouble on interconnection circuits to CenturyTel for facilities ultimately provisioned by its affiliate, CenturyTel is unable to directly test and repair the facilities. Instead, CenturyTel has to open a trouble ticket with LightCore and rely upon its affiliate to test and repair the

⁶ Socket arbitrated this issue in an arbitration proceeding conducted before the MO PSC pursuant to Section 251(b)(1) of the Telecommunications Act of 1996. On this issue, the MO PSC concluded, "The Commission has expressed its dismay on several occasions that CenturyTel operates as one company when it is to its advantage but operates as two entities, CenturyTel of Missouri, Inc. and Spectra, when that is more advantageous. Despite this concern, CenturyTel of Missouri, Inc. and Spectra are certificated as two separate entities providing service in Missouri." The MO PSC further concluded that the FCC's definition of interoffice transport found at 47 CFR 51.319 "appear to talk about a single ILECs at time and multiple ILECs at other times". However, the PSC ultimately affirmed the Arbitrator's decision on this issue and ruled that CenturyTel is not required to provide dedicated transport between separate legal entities. See Case No. TO-2006-0299, *Petition of Socket Telecom, LLC for Compulsory Arbitration of Interconnection Agreements with CenturyTel of Missouri, LLC and Spectra Communications Group, LLC pursuant to Section 251(b)(1) of the Telecommunications Act of 1996*, Final Commission Decision, June 30, 2006.

facility and report back to CenturyTel, who, in turn, passes the information to Socket. In at least one instance, the CenturyTel technician dispatched to test and repair a circuit using these third-party facilities had to wait until the next morning to open a trouble ticket with LightCore. Embarq does not have this practice and this has not been a problem with Embarq.

Overall Responsiveness and Mind-Set With Respect To Obligations Imposed By Telecommunications Act Of 1996

32. CenturyTel is generally less responsive and more likely to miss deadlines than Embarq. For example, Socket submitted a bona-fide request (BFR) seeking to develop a loop hot-cut process for having xDSL-capable loops and subloops provisioned. This process was necessary because of the frequency of loop orders that were unworkable due to a “lack of facilities”. Socket submitted the original BFR on October 10, 2008.⁷ After an initial acknowledgement of the request, CenturyTel has not provided any additional response despite the specific response time periods set forth in the interconnection agreement between the parties. To date, CenturyTel lacks any kind of loop hot cut process which Socket views as a necessity in order to be able to serve a broad range of customers. This general lack of responsiveness which ultimately causes delays flows through to most other matters as well, such as Socket’s BFR request for subloop pricing that was submitted in April 2008 and is still pending, as well as Socket’s Dark Fiber Inquiry for four strands of dark fiber between two end-offices in the Columbia, MO exchange that was submitted on July 24, 2008 and finally responded to on January 7, 2009 with a response stating, “According to our field VP in Missouri, there are no spare dark fibers available at this time.”⁸ In contrast, Embarq generally seems to take its obligations more seriously and, as a result, is generally more responsive.
33. CenturyTel is also more willing to openly engage in anti-competitive behavior as shown by the multiple Missouri PSC findings that CenturyTel engaged in anti-competitive behavior and violated interconnection agreement obligations. In the first complaint brought by Socket

⁷ Prior to submitting the BFR requesting a Loop Hot-Cut Process, Socket requested a collaborative process to develop such a procedure. CenturyTel did not respond to that request.

⁸ In contrast, other incumbents have a five-day interval on Dark Fiber Inquiries.

while the parties were operating under their current ICA, the MO PSC found that CenturyTel was refusing to provision Remote Call Forward (“RCF”) service and seeking to limit the future availability of retail RCF service through a tariff revision to, “erect barriers in front of its competitor.”⁹ The MO PSC ultimately ordered CenturyTel to provision the services and rejected its tariff filing seeking to grandfather Remote Call Forward service. In Socket’s second complaint related to CenturyTel’s refusal to port numbers in situations that CenturyTel maintained constituted location portability, the MO PSC found that CenturyTel’s refusal violated its interconnection agreement with Socket. Specifically, the MO PSC found that

The evidence shows that CenturyTel stands alone in its refusal to make such ports. [cite omitted] Socket has proven that national incumbent carriers like AT&T and Embarq, competitive CLECs, and the LNPA-WG, a nationally recognized representative of the industry, all find the requested ports should be provided. [cite omitted] Such evidence proves that CenturyTel is required to provide the ports pursuant to the provisions of the interconnection agreements that require compliance with industry practices and guidelines. [cite omitted] The Respondents’ interconnection agreements with Socket require Respondents to port these numbers

CenturyTel of Missouri, LLC and Spectra Communications Group, LLC d/b/a CenturyTel shall provide number portability to Socket Telecom, LLC under the circumstances described in this Report and Order, both as to the specific requests listed in Socket Telecom, LLC’s complaint and in general.¹⁰

Besides Socket, several other carriers have also found it necessary to file formal complaints with the MO PSC on a number of issues including interconnection, number porting, and billing.

34. In addition to these significant findings, CenturyTel has engaged in other anti-competitive practices and is more willing to engage in its own “self-help” remedies. For example, during the dispute between Socket and CenturyTel regarding CenturyTel’s refusal to port telephone numbers when CenturyTel alleged doing so would result in location portability, CenturyTel

⁹ Case No. TC-2007-0307, *Tariff Filings of CenturyTel of Missouri, LLC, d/b/a CenturyTel, and Spectra Communications Group, LLC, d/b/a CenturyTel, to Grandfather Remote Call Forwarding Services to Existing Customers and Existing Locations, Report and Order*, December 4, 2007, pgs. 13.

¹⁰ Case No. TC-2007-0341, *Socket Telecom, LLC, Complainant, v. CenturyTel of Missouri, LLC, d/b/a CenturyTel, and Spectra Communications Group, LLC, d/b/a CenturyTel, Report and Order*, March 26, 2008, pgs. 15 – 16.

began “verifying” whether or not Socket’s port orders constituted location portability in a variety of anti-competitive manners. This verification included, CenturyTel dispatching technicians to the customer premise to look for Socket’s facilities and even going so far as to contact a customer under the guise of needing capacity information as a result of the LNP request to determine whether the port request would constitute location portability. Setting the dispute about location portability aside, the willingness to “take the law into its own hands” via its own “verification process” is extremely troublesome. Socket has not experienced Embarq engaging in the type of practices. Socket is concerned this CenturyTel’s habit of resorting to anti-competitive self-help remedies will expand to the Embarq properties if the entities are combined under common management.

35. Similarly, Socket’s experience has been that there seems to be very little, if any, separation between CenturyTel’s wholesale and retail operations. Socket has been and remains concerned about wholesale information being used in retail situations. This concern is based upon information relayed to Socket during the sales or installation process such as a customer indicating they were contacted by CenturyTel’s sales personnel and indicating the sales call was in response to a Socket loop or port order. In contrast, Socket’s experience has been that there seems to be a much greater degree of separation between Embarq’s wholesale and retail organizations and does not have the same concerns about wholesale information being used in retail situations. Socket is concerned the separation between retail and wholesale operations in the Embarq properties will be reduced if the entities are combined under common management.

36. CenturyTel has also shown a willingness to impose “ad hoc” limitations and procedures on ordering and provisioning that are not supported by interconnection obligations or standard practices. For example, CenturyTel recently rejected one of Socket’s number port requests because the quantity of numbers to be ported exceeded one hundred numbers. When Socket inquired about the rejected order, CenturyTel informed Socket about a new policy that limited the quantity of numbers that could be ported for a single customer in a single day at one hundred numbers. This limitation was imposed despite the fact that Socket had previously completed number ports involving more than one hundred numbers for a customer in a single day with CenturyTel. Similarly, there is no such limitation found in our interconnection agreement, in any industry standard practice and, much less industry best

practices put forth by the Local Number Portability - Working Group. Socket was able to eventually work through this dispute and was able to get the numbers ported but not after delays that required rescheduling the port, contacting the customer and rescheduling the customer's vendor. Socket has not seen similar "ad hoc" limitations invented by Embarq and is concerned about the expansion of "ad hoc" limitations in the entities are permitted to combine.

37. Socket has had to rely upon the informal dispute resolution process in our ICA on numerous occasions and file formal complaints before the Missouri Public Service Commission on three occasions. Socket has prevailed on both complaints that have been resolved by the MO PSC. At the time of this writing, the third complaint is pending. Socket has not had to resort to complaints with Embarq. The most contentious issue between Socket and Embarq was able to be resolved without resorting to formal dispute resolution or complaints.

ADSL Transmission Services

Wholesale Pricing

38. Socket's affiliate, Socket Internet, provides retail ADSL service to residential and business customers using ADSL Transmission Service purchased through DSL Commercial Service Agreements throughout both CenturyTel's and Embarq's service territory. In many areas where Socket Internet provides ADSL service, Socket Internet is the only competitive alternative to the incumbent's ADSL service and satellite service. In both ILEC's territories, Socket Internet faces a "price squeeze" between the wholesale rate that it pays to the incumbent and the retail rate charged by the incumbent. For example, CenturyTel of Missouri, LLC's wholesale rate for 1.5M/256K is \$37.50 while the retail rate for the same service in a bundle is \$19.99.¹¹ As a result, Socket's wholesale rate for the transmission service alone is nearly twice as high as the prevailing retail rate charged by CenturyTel for

¹¹ When consumers are making the choice between providers, it is the bundled service that Socket competes against and thus, the bundled rate is the one relevant to the customer's purchase decision.

the entire ADSL service.¹² The ADSL Transmission Service is only one input into the provision of retail ADSL service. As such, it only represents part of the overall cost of providing retail ADSL service and does not include any of Socket Internet's other network and support costs. As a result of the wholesale pricing for the ADSL Transmission Service, Socket Internet is forced to compete with a much a higher cost structure than the incumbent, creating unfair competitive-advantage for CenturyTel's retail DSL service. While Socket is able to compete for customers who make their purchasing decision on more than price alone such as customers who value excellent customer service and support, Socket is precluded from competing for customers whose purchasing decision is based largely upon price.

39. Embarq's rates for ADSL Transmission Service result in a similar, albeit less severe, "price squeeze." Embarq's wholesale rate for ADSL Transmission Service is \$21 for 768K/384K. The retail rate for the comparable DSL service is \$19.95 in a bundle. Similarly, the wholesale rate for ADSL Transmission Service is \$31 for 3.0Mbps/640K. The retail rate for comparable ADSL service is \$29.95 in a bundle.
40. Socket Internet is concerned about its future ability to compete with the combined entity given the competitive disadvantage it finds itself in because of the "price squeeze". Socket Internet is especially concerned that Embarq's wholesale rates will be increased to match CenturyTel's when the companies are placed under common management.

Service Availability

41. CenturyTel has a general business practice of limiting the geographic availability of its wholesale ADSL Transmission Service. It does this by not permitting Socket Internet to purchase the ADSL Transmission service for its extended reach ADSL services. There is no technical reason for this limitation. This limits the geographic availability of the necessary

¹² CenturyTel's wholesale rate is significantly higher than the wholesale rates charged by other ILECs for the comparable service. This provides proof that CenturyTel's rate bears no relation to costs. CenturyTel's retail rate used in the example is based upon the advertised bundled ADSL rate of \$14.99 plus a \$5.00 speed upgrade charge.

wholesale input into Socket Internet's ADSL product and creates a competitive advantage for CenturyTel's retail DSL service. Also, CenturyTel does not make available every retail speed package as a wholesale service to Socket Internet.

42. Embarq has no similar business practices that intentionally limit the availability of wholesale ADSL Transport. Socket Internet is not aware of any retail DSL offering that is also not available as a wholesale DSL transport service. Socket is concerned that CenturyTel's business practice of intentionally limiting the availability will be expanded to the Embarq ILEC properties when the two companies are combined under common management.

Ordering and Provisioning

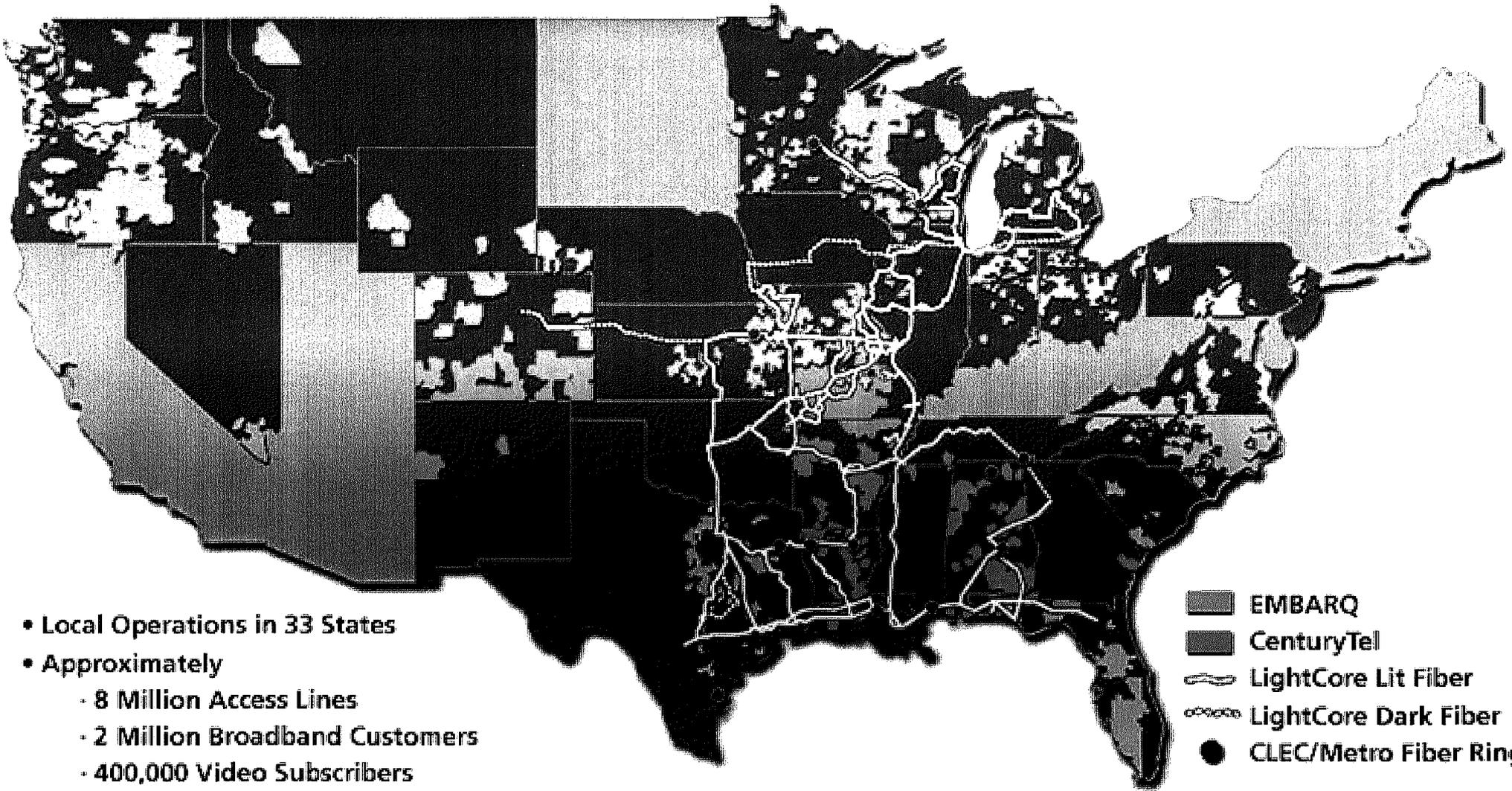
43. Socket Internet faces the same ordering and provisioning issues on the wholesale DSL Transport Service that Socket faces on the wholesale side when ordering UNEs and number ports. This is mainly due to systems that are largely manual and provide no real-time or near real-time information when placing an order such as address validation or service availability. Socket Internet does not face these same ordering and provisioning limitations when competing in Embarq's service territory. Just like on the CLEC side, Embarq's systems are more automated and provide real-time information such as address validation. Just as on the CLEC side, Socket Internet is concerned the functionality of wholesale OSS systems of the combined entity will deteriorate or be eliminated as the companies combine operations.

I assert under penalty of perjury that the foregoing is true and correct to the best of my information and belief. This concludes my declaration.

R. Matthew Kohly
R. Matthew Kohly

Dated: January 8, 2009

**Attachment C: Combined Coverage Map
of CenturyTel and Embarq**



- Local Operations in 33 States
- Approximately
 - 8 Million Access Lines
 - 2 Million Broadband Customers
 - 400,000 Video Subscribers

- EMBARQ
- CenturyTel
- ~ LightCore Lit Fiber
- - - LightCore Dark Fiber
- CLEC/Metro Fiber Rings