

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

Embarq Corporation, Transferor, and	)	
CenturyTel, Inc., Transferee, Application for	)	
Transfer of Control of Domestic	)	WC Docket No. 08-238
Authorizations Under Section 214 of the	)	
Communications Act, as Amended	)	

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**REPLY COMMENTS OF THE NEW JERSEY DIVISION OF RATE COUNSEL**

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**I. INTRODUCTION**

Few entities submitted comments regarding the application of CenturyTel, Inc. (“CenturyTel”) and Embarq Corporation (“Embarq”) (jointly, “Applicants”) to the Federal Communications Commission (“FCC” or “Commission”) for transfer of control. In addition to the New Jersey Division of Rate Counsel, which submitted comments, NuVox and Socket Telecom, LLC (“NuVox/Socket”) filed joint comments in opposition to the proposed merger and COMPTTEL, an industry association, also filed comments. The New Jersey Division of Rate Counsel (“Rate Counsel”) submits these brief reply comments pursuant to the FCC’s notice of its pleading cycle.<sup>1</sup>

**II. DISCUSSION OF COMMENTS**

**NuVox/Socket raises serious concerns about the impact of the proposed transaction on competitors’ ability to serve customers.**

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<sup>1</sup>/ “Applications filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc,” WC Docket No. 08-238, “Pleading Cycle Established,” DA 08-2681, released December 9, 2008.

NuVox/Socket raises concerns about the potential anticompetitive impact of the proposed merger as well as about the speculative benefits of the proposed transaction.<sup>2</sup> Among other things, NuVox/Socket claims that, because CenturyTel is the acquiring company, it may substitute its comparatively worse wholesale practices and capabilities for those of Embarq, the acquired company.<sup>3</sup> NuVox/Socket provides numerous examples of Embarq's practices being superior to those of CenturyTel (*e.g.*, a five-business-day provisioning interval for unbundled network elements ("UNE") rather than a 15-business-day interval and a more efficient operations support system ("OSS")) and justifies amply its concern that the new entity will forsake the higher quality operating practices for the more cumbersome and less efficient wholesale practices of CenturyTel.<sup>4</sup>

Competition can benefit consumers through increased choice, service innovation, service quality, and lower prices. Therefore, Rate Counsel urges the Commission to heed the well-documented concerns that NuVox/Socket raises regarding the need to ensure that the merged entity adopts the best practices and not the worst practices of the individual companies in their interactions with competitive local exchange carriers ("CLEC").<sup>5</sup> Among the diverse concerns that NuVox/Socket raises, and that merit the Commission's analysis are claims that CenturyTel's wholesale provisioning is less-

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<sup>2</sup> / NuVox/Socket states, among other things: "Hoped-for synergies, good intentions and nice ideas do not equate to tangible benefits." NuVox/Socket, at 2. *See also, id.*, at 8-9.

<sup>3</sup> / *Id.*, at 3.

<sup>4</sup> / *Id.*, at 3-4. *See also*, Declaration of Anthony Walsh and Edward Cadieux, on behalf of NuVox, at paras. 4-8; Declaration of R. Matthew Kohly on behalf of Socket ("Kohly Declaration"), at paras. 7-43,

<sup>5</sup> / The concerns that NuVox/Socket raises about the relatively better wholesale service quality of Embarq are similar to those that Rate Counsel raised in its initial comments (at 23-26) regarding the comparatively better *retail* service quality offered by CenturyTel relative to that offered by Embarq. In each instance, the Commission should create accountability so that the merged entity adopts the seemingly better wholesale service quality practices of Embarq and the seemingly better retail service quality practices of CenturyTel.

reliable than that of Embarq;<sup>6</sup> and that the transaction would expand the footprint in which the applicants possess the incentive and ability to discriminate against rivals.<sup>7</sup>

In establishing conditions, the Commission should safeguard against the deterioration of either wholesale or retail service quality to the “lowest common denominator” of the two merging companies. Specifically, the Commission should establish a deadline by which the merged entity must adopt the best practices of the other company.<sup>8</sup>

Rate Counsel concurs with NuVox/Socket that the imposition of conditions on the merger would be consistent with past Commission practices regarding mergers among major wireline service providers.<sup>9</sup> Rate Counsel recommends that the Commission consider adopting not only the conditions that Rate Counsel set forth in its initial comments, but also the conditions that NuVox/Socket describes related to promoting competition which are set forth in its comments.<sup>10</sup>

These measures are reasonable and are critically important to ensure competition for consumers. The operational efficiencies that the Applicants anticipate should be extended to wholesale operational efficiencies, with the quality of wholesale operations *raised* to the higher-performing company’s practices by dates that the FCC establishes.

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<sup>6</sup> / NuVox/Socket, at 12.

<sup>7</sup> / *Id.*, at 14.

<sup>8</sup> / *See* Kohly Declaration, at para. 7, stating: “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” and also *id.*, at para. 8 describing Socket’s experience after CenturyTel obtained Verizon’s Missouri properties.

<sup>9</sup> / NuVox/Socket, at 16 (observing that the Commission adopted conditions in six of the past seven major wireline service provider merger proceedings).

<sup>10</sup> / *Id.*, at 21-40.

In order to ensure non-discrimination, NuVox/Socket proposes that the merged entity offer to Internet service providers (“ISP”) ADSL service that is functionally equivalent to any retail ADSL that the merged entity offers to retail customers.<sup>11</sup> This proposed condition is consistent with the nation’s overarching goal of achieving the widespread deployment of affordable broadband service. Similarly, NuVox/Socket’s proposed condition that the price of the wholesale DSL offering not exceed that of the retail price (whether purchased separately or in a bundled service offering)<sup>12</sup> is consistent with national broadband goals.<sup>13</sup>

**COMPTEL’s concerns about the impact of the proposed transaction on CLECs merits the Commission’s careful consideration.**

COMPTEL also seeks denial of the proposed merger, and, in the alternative, requests that the Commission adopt conditions to offset the anticompetitive impacts of the transaction.<sup>14</sup> COMPTEL’s members rely on the Applicants’ networks and purchase essential services such as special access from the Applicants.<sup>15</sup> Therefore, the Applicants’ post-merger wholesale practices affect COMPTEL members’ ability to compete effectively, which, in turn, affects consumers’ telecommunications options.

Rate Counsel concurs with COMPTEL that the Applicants have must demonstrate that they will pass on the anticipated savings to consumers,<sup>16</sup> and that the Commission, if

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<sup>11</sup>/ *Id.*, at 39.

<sup>12</sup>/ *Id. See also, id.*, at 40 (observing that CenturyTel of Missouri, LLC’s wholesale rate for 1.5/256K is \$37.50 while the retail rate for the same service in a bundle is \$19.99).

<sup>13</sup>/ *See also* Kohly Declaration, at paras. 38-40 (describing a wholesale-retail DSL price squeeze), and at paras. 41-42 (describing limitations on the availability of wholesale DSL).

<sup>14</sup>/ COMPTEL, at 1.

<sup>15</sup>/ *Id.*, at 2.

<sup>16</sup>/ *Id.*, at 4.

it approves the merger, should require such a condition.<sup>17</sup> Rate Counsel urges the Commission to adopt the conditions that COMPTTEL identifies, which are based in part on the FCC's conditions on the AT&T/BellSouth merger, to reduce CLECs' transaction costs,<sup>18</sup> and which also include measures to prevent increases in the prices for special access services.<sup>19</sup>

### III. CONCLUSION

Rate Counsel reiterates its recommendation that the FCC seek additional detailed information from the Applicants and also that the FCC require tangible, measurable conditions and commitments to ensure that consumers benefit from the proposed transaction and are protected from any harm that the transaction could cause.

Among the information that the Commission should seek from the Applicants:

- Detailed information about the status of retail and wholesale broadband prices, speed, and deployment in their territories;
- Plans, if any, for future acquisitions;
- Detailed supporting documentation for the projected synergies;
- ARMIS service quality data for 2008 separately for Embarq and CenturyTel in advance of the April 1, 2009 filing date to enable the Commission to assess the quality of service offered in the states in which the Applicants operate; and
- Detailed information about the Applicants' intentions regarding its wholesale operations, including specific, measurable milestones for adopting best practices.

Among the conditions that the Commission should consider are the following:

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<sup>17</sup> / *Id.*, at 5.

<sup>18</sup> / *Id.*, at 6-8.

<sup>19</sup> / *Id.*, at 8-9. *See also, id.*, at Appendix A, which summarizes COMPTTEL's proposed conditions.

- Separate boards of directors for the two operating entities;
- Separate records for the two operating entities;
- A commitment on and the reporting of affiliate transactions consistent with 47 C. F. R. § 32.27 (i.e., the FCC's cost accounting safeguards).
- Deployment of affordable broadband service throughout the Applicants' operating territory with specific milestones specified;
- Subsidized broadband service for Lifeline participants;
- Providing state regulators and consumer advocates with detailed maps of broadband availability, using standard GIS formats by a date certain;
- Raising the quality of service offered in each of the Embarq operating territories to the level offered in the best-served CenturyTel territory;
- A commitment to continue ARMIS reporting for at least five years after the merger occurs;
- Maintaining service quality at FCC-established standards with a financial consequence should the Applicants fail to meet these minimum service quality standards;
- The adoption of best practices so that the Applicants adopt the higher-performing practices of the two merging companies with respect to retail and wholesale service quality;
- Safeguards against retail and wholesale service degradation; and
- Conditions such as those recommended by NuVox/Socket and by COMPTel to ensure that the Applicants adopt wholesale best practices and do not discriminate against CLECs.

Rate Counsel will supplement its analysis and recommendations based on its review of additional information provided by the Applicants.

Respectfully submitted,

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