

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

<b>In the Matter of</b>	)	
	)	
<b>Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.</b>	)	<b>WC Docket No. 08-238 DA 08-2681</b>
	)	

**REPLY COMMENTS OF THE**

**INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

To the Commission:

The Independent Telephone & Telecommunications Alliance (ITTA) hereby submits these reply comments in the above-captioned proceeding. ITTA supports the joint application filed by CenturyTel, Inc., and Embarq Corporation (collectively, Applicants) and urges the Commission to approve the application on a streamlined basis and without conditions.

ITTA is an alliance of mid-size telephone companies. ITTA members provide a broad range of high-quality wireline and wireless voice, data, Internet, and video services to over 30 million customers in 44 states. ITTA members primarily serve rural and small markets with low population densities, and both CenturyTel and Embarq are consistent with this model. CenturyTel serves 2 million access lines across 25 states; Embarq serves 5.9 million access lines across 18 states. These companies face unique challenges in bringing service to the “wide open” spaces of the Nation. The combination of the companies, however, will increase efficiencies without burdening or imposing adverse

impacts on end-user customers or competitors. According to the Application, end-user customers will receive service after the closing date from the same local operating company from which they received service before the closing date. Not only will the transaction not *disrupt* consumer activity, it should be *virtually transparent* to end-users. Importantly, by retaining the local operating company personnel, the Applicants will assure knowledgeable attention to consumer needs. At the same time, healthy competition within the respective CenturyTel and Embarq service areas assures that consumers will maintain opportunities to take service from other providers.

Trends over the past decade have fostered combinations of telecommunications companies. In these instances, the relevant entities determined that such joining would deliver valuable benefits that would otherwise not be realized. These actions recognize the beneficial economic synergies and economies of scale that emerge when companies combine. Such transactions may not be appropriate for all carriers, and the fact that mergers have not occurred wholesale throughout the industry indicates that carriers evaluate carefully the suitability of their operations for such consolidations.

Nevertheless, the occurrence (and non-occurrence) of such events, whether the merger of large RBOCs,<sup>1</sup> mid-size or smaller carriers,<sup>2</sup> wireless carriers,<sup>3</sup> or the acquisition of small

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<sup>1</sup> See, e.g., *SBC Communications, Inc. and AT&T Corp. Applications for Approval of Transfer of Control: Memorandum Opinion and Order*, WC Docket No. 05-65, FCC 05-183 (2005); *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control: Memorandum Opinion and Order*, WC Docket No. 05-75, FCC 05-184 (2005); *AT&T Inc. and BellSouth Corporation Application for Transfer of Control: Memorandum Opinion and Order*, WC Docket No. 06-74, FCC 06-189 (AT&T/BellSouth) (2006).

<sup>2</sup> See, e.g., *Joint Applications of Global Crossing Ltd. and Citizens Communications Company for Authority to Transfer Control of Corporations Holding Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the*

carriers by a single entity,<sup>4</sup> is evidence of the market's natural movements and ability of carriers to self-determine their appropriate course of action. All of this is consistent with the deregulatory intent of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Against this backdrop, the Commission should approve the Application on a streamlined basis and without conditions.

Mergers enable carriers to reduce costs and increase efficiencies; the Commission should not impose conditions that would counter the benefits. Some parties have requested the Commission to impose on the Applicants numerous conditions related to interconnection and special access pricing.<sup>5</sup> The Commission should reject those proposals, which are based largely upon conditions the Commission imposed when

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*Communications Act and Parts 20, 22, 63, 78, 90, and 101 of the Commission's Rules: Memorandum Opinion and Order, File Nos. ITC-T/C-20000828-00530, CCB Pol No. 00-1, 20001005 AD-09, 0000209675, et al., DA 01-961 (2001) (Citizens/Frontier); Joint Application of Telephone and Data Systems, Inc. and Chorus Communications, Ltd. for Authority to Transfer Control of Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 22, 63, and 90 of the Commission's Rules: Memorandum Opinion and Order, CC Docket No. 01-73, ITC-T/C-20010307-00128, ITC-T/C-20010307-00129, ULS File Nos. 0000352422, 0000352426, et al., DA 01-1914 (2001) (TDS/Chorus).*

<sup>3</sup> See, e.g., *Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations: Memorandum Opinion and Order, WT Docket No. 05-63, File Nos. 0002031766, et al. (2005), Order on Reconsideration, FCC 06-116 (2006); Applications of Western Wireless Corporation and ALLTEL Corporation for Consent to Transfer Control of Licenses and Authorizations: Memorandum Opinion and Order, WT Docket No. 05-50, File Nos. 0002016488, et al. (2005).*

<sup>4</sup> Public Notice: "Notice of Streamlined Domestic 214 Applications Granted," WC Docket Nos. 06-4, 06-13, DA 06-380 (Feb. 17, 2006).

<sup>5</sup> See, generally, Comments of COMPTTEL (filed Jan. 8, 2009); Joint Comments of NuVox and Socket Telecom, LLC, pp. 15-40 (filed Jan. 8, 2009) (NuVox/Socket).

substantially larger carriers merged.<sup>6</sup> By contrast, the instant application does not bode the concern that emerged when the large RBOCs moved toward consolidation; neither the combination of CenturyTel and Embarq, and certainly neither company individually, wields the type of market power ascribed to the colossuses that were created when the RBOCs merged. Proposals to impose conditions modeled after those large company mergers will impose undue burdens upon the Applicants and their customers, and are wholly unnecessary.

If anything, the merger of the Applicants reflects the competitive nature of the market place. Each of the Applicants reports perennial line loss.<sup>7</sup> This experience mirrors generally conditions faced across the ILEC industry, which faces inroads made by a variety of service providers, including CLECs, wireless, and IP-enabled service providers. That loss in turn spurs carriers to consider what sort of actions will engender the most beneficial results. The Commission should not take any actions that would either stymie these instant efforts or discourage similar future transactions, or both. Unfortunately, however, the types of conditions that some parties have recommended would have the potential effect of depressing other mid-size carriers' interest in maximizing efficiency and consumer benefits through mergers and acquisitions.

Over the past decade, the Commission has ruled on numerous mergers among ILECs: between 1997 and 1999, the Commission reviewed and approved merger proposals offered by SBC and Ameritech<sup>8</sup> and Bell Atlantic and NYNEX;<sup>9</sup> between 2000

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<sup>6</sup> See e.g., NuVox/Socket at 16, 17, 23.

<sup>7</sup> Application at 10.

<sup>8</sup> *Supra* n.2.

and 2001, Commission-approved mergers included SBC and BellSouth,<sup>10</sup> Bell Atlantic and GTE,<sup>11</sup> and USWest and Qwest;<sup>12</sup> between 2005 and 2006, the Commission approved mergers between AT&T and BellSouth.<sup>13</sup> The matter currently before the Commission is clearly distinguishable. The merger of CenturyTel and Embarq will result in a telephone company of fewer than 8 million access lines; by contrast, the most recent AT&T merger resulted in a combined line count of nearly 70 million access lines.<sup>14</sup>

Proposed conditions based on the Commission's decision in the AT&T and BellSouth proceeding are not applicable to the instant Application. Whereas the AT&T/BellSouth merger contemplated the creation of an entity with nearly 70 million lines, the instant transaction will result in a "still mid-sized" carrier serving fewer than 8 million lines with a negligible amount of adjacent service areas, and with no evident intent to enter each other's service areas that would be squelched by consummation of the

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<sup>9</sup> *Applications of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of NYNEX Corporation and its Subsidiaries: Memorandum Opinion and Order*, File No. NSD-L-96-10, FCC 97-286 (1997).

<sup>10</sup> *Applications of SBC Communications, Inc. and BellSouth Corporation for Consent to Transfer of Control or Assignment of Licenses and Authorizations: Memorandum Opinion and Order*, WT Docket No. 00-81, File Nos. 0000117778, *et al.* DA 00-2223 (2000).

<sup>11</sup> *Application of GTE Corporation, Transferer, 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: Memorandum Opinion and Order*, CC Docket No. 98-184, FCC 00-221 (2000).

<sup>12</sup> *Qwest Communications International Inc. and US West, Inc., Applications for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License: Memorandum Opinion and Order*, CC Docket No. 99-272, FCC 00-91 (2000).

<sup>13</sup> *Supra* n.2.

<sup>14</sup> *See*, AT&T/BellSouth, *supra* n.2, at paras. 7, 13.

transaction. The concerns articulated in regard to other, larger carriers do not apply here. The example set by the Commission in the Citizens/Frontier and TDS/Chorus transactions, which were both approved without onerous conditions, is applicable to the instant proceeding.<sup>15</sup> In the TDS/Chorus proceeding, particularly, the Commission distinguished between the possible intent the mid-size carrier may have had in entering the other party's service area from the similar concerns the Commission had in the larger-company Bell Atlantic/NYNEX, SBC/Ameritech, and Bell Atlantic/GTE proceedings.<sup>16</sup>

The instant transaction should result in an otherwise unavailable opportunity to leverage economies of scale and scope and to not only deliver greater efficiencies to end-users but to also speed the delivery of broadband and other advanced services. As noted by the Applicants,

[k]ey drivers of these synergies include reduction of corporate overhead, elimination of duplicate functions, realization of enhanced revenue opportunities, and achievement of increased operational efficiencies through the adoption of best practices and capabilities from each company.<sup>17</sup>

In particular, the Applicants cite economies of scale that would be realized for transport, which is a major cost of providing broadband.<sup>18</sup> The Applicants' stated interest in accelerating broadband deployment is backed-up by prior achievements of not only the parties to the transaction, but also other mid-sized carriers. For example, Madison River Communications, which CenturyTel acquired several years ago, built a high-quality network that is nearly 100 percent broadband-enabled and includes a 2,400 route-mile

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<sup>15</sup> *Supra* n.3.

<sup>16</sup> TDS/Chorus at para. 10.

<sup>17</sup> Application at 7.

<sup>18</sup> Application at 8.

fiber network.<sup>19</sup> In Arkansas alone, CenturyTel invested \$73,951,000 in new capital improvements from mid-year 2000 until year-end 2001 to provide local dial-up and DSL services throughout the state. Another ITTA member, TDS Telecom, offers a wide diversity of high-speed internet options with speeds ranging from 256K to as high as 4 MEG symmetrical access in the vast majority of its 120 exchanges in 28 states. Additionally, TDS Telecom has invested in fiber-optic network infrastructure in Tennessee, capable of providing IP-video offering robust high-definition channels, digital video recorder technology, and video-on-demand.

Both Applicants in the instant proceeding have natural incentives to continue their investment in rural and small urban markets. In addition to being consistent with the companies' respective and collective pecuniary goals, those objectives are also consistent with the public interest.

Competition is not a static state of affairs where market share determines whether an industry is "competitive." Competition is a dynamic process where firms discover new ways to innovate and to compete for customers. Businesses merging in order to gain new competencies are a vital part of the competitive process.<sup>20</sup>

The Commission is aware of current market-shaking paradigms. By way of example, the Commission has endeavored over a course of years for the appropriate classification of IP-enabled traffic. ITTA has urged in the intercarrier compensation proceeding regulatory parity for voice traffic, citing widespread consumer viewpoints of IP-enabled

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<sup>19</sup> See *CenturyTel Completes Madison River Purchase*, TMCNET NEWS, Apr. 30, 2007, at <http://www.tmcnet.com/usubmit/2007/04/30/2565023.htm>.

<sup>20</sup> Benjamin Powell, "Telecom Mergers are Part of the Competitive Process," San Jose/Silicon Valley Business Journal (Sep. 13, 2005)

voice services as substitutes for PSTN voice services.<sup>21</sup> That IP-enabled services are encroaching on traditional voice providers cannot be disputed. The abiding question raised in the instant proceeding is how the Commission will enable carriers to meet those and other new forces. In the instant proceeding, the Applicants have determined that merger of their companies will result in increased efficiencies and opportunities to accelerate deployment of broadband and advanced services as they move forward in a new competitive marketplace. The state of competition in the carriers' respective service areas obviates any supposed justification for merger conditions similar to those imposed on large RBOC transactions; similarly, the few instances of overlapping or adjacent service areas should not support the imposition of unnecessary requirements.

Accordingly, for the reasons stated herein, ITTA supports approval of the Application on a streamlined basis and without conditions.

Respectfully submitted,

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<sup>21</sup> See, e.g., *High-Cost Universal Service Support* (WC Docket No. 05-337); *Federal-State Joint Board on Universal Service* (CC Docket No. 96-45); *Lifeline and Link-Up* (WC Docket No. 03-109); *Universal Service Contribution Methodology* (WC Docket No. 06-122); *Numbering Resource Optimization* (CC Docket No. 99-200); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996* (CC Docket No. 96-98); *Developing a Unified Inter-carrier Compensation Regime* (CC Docket No. 01-92); *Inter-carrier Compensation for ISP-Bound Traffic* (CC Docket No. 99-68); *IP-Enabled Services* (WC Docket No. 04-36); *Comments of the Independent Telephone & Telecommunications Alliance*, at 15-17 (filed Nov. 26, 2008).