



VIA ELECTRONIC DELIVERY

January 23, 2009

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554 (via electronic filing)

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

Dear Ms. Dortch:

This letter should serve as the reply comments of the National Association of State Utility Consumer Advocates (“NASUCA”), regarding the Federal Communications Commission’s (“FCC” or “Commission”) review of this transaction, in which CenturyTel, Inc. (“CenturyTel”) proposes to purchase Embarq Corporation (“Embarq”). Only three sets of comments were filed in response to the Commission’s Public Notice.¹ That should not lead the Commission to view this merger as of no consequence, however. The comments of competitors – combined comments from NuVox and Socket Telecom, LLC (“NuVox/Socket”) and comments from COMPTTEL – and of NASUCA member the New Jersey Division of Rate Counsel (“NJ Rate Counsel”) set forth a number of ways in which this transaction could harm the public interest, and propose conditions that will balance out those harms.² NASUCA supports all three comments.

¹ DA 08-2681 (rel. December 9, 2008).

² NASUCA rejects the notion typically espoused in Commission merger proceedings that conditions may only serve to cure the harms, rather than providing benefits to offset them. See, e.g., *In the Matter of AT&T Corp. and SBC Communications Inc. Application Pursuant to Section 214 of the Communications Act of 1934 and Section 63.04 of the Commission’s Rules for Consent to the Transfer of Control of AT&T Corp. to SBC Communications Inc.*, WC Docket No. 0565, NASUCA Comments (May 10, 2005) at 16-17. In addition, NASUCA’s support for conditions to meet the standards of federal law should not be read as an indication that such conditions would meet the requirements of state law.

The background of this transaction is meticulously laid out in NJ Rate Counsel's comments.³ The applicants' claims for benefits in the transaction are also described, along with applicants' attempts to downplay possible harms to the public interest.⁴ NJ Rate Counsel also sets out the legal standard under which the merger must be reviewed, as described by the Commission itself:

[T]he Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes. The Commission then employs a balancing test weighing any potential public interest harms of the proposed transaction against the proposed public interest benefits. The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.⁵

NJ Rate Counsel and the competitive commenters demonstrate the extent to which CenturyTel and Embarq have not met their burden here.

NJ Rate Counsel raises questions regarding the financial viability of the combined company,⁶ but a detailed analysis shows that the firm should "be situated favorably to other large telecommunications companies, and even better than several large companies."⁷ NASUCA agrees with Rate Counsel that "[b]ased on this anticipated level of financial health, and CenturyTel's stated goal of becoming the leading broadband provider in its territories, ... the Commission [should] hold the Applicants to this goal."⁸ NASUCA also agrees that these "general promises to deploy broadband should be translated into specific commitments with measurable milestones."⁹

Understandably, NuVox/Socket and COMPTTEL focus on potential competitive harms from the merger. They show that the merger will decrease competition in markets served by Embarq and CenturyTel,¹⁰ and that the merged company will have an enhanced ability

³ NJ Rate Counsel Comments at 2-6.

⁴ Id. at 6-11.

⁵ *In the Matter of Applications Filed for the Transfer of Certain Spectrum Licenses and Section 214 Authorizations in the States of Maine, New Hampshire, and Vermont from Verizon Communications Inc. and its Subsidiaries to FairPoint Communications, Inc.*, WC Docket No. 07-22, Memorandum Opinion and Order, (rel. January 9, 2008), ¶ 11, quoted in NJ Rate Counsel Comments at 11-12.

⁶ NJ Rate Counsel Comments at 15.

⁷ Id. at 19.

⁸ Id.

⁹ Id. at 20-21; see also COMPTTEL Comments at 4.

¹⁰ NuVox/Socket Comments at 10-14; COMPTTEL Comments at 3..

and incentive to engage in discrimination against competitors.¹¹ NASUCA supports the proposals for conditions to include requiring the negotiation of multi-state interconnection agreements¹²; requiring single wholesale prices in each state despite multiple operating companies¹³; adopting the AT&T/BellSouth merger conditions¹⁴; use of Embarq's – rather than CenturyTel – OSS¹⁵; and controlling the companies' special access rates.¹⁶ In addition, requiring the provision of wholesale broadband transmission service would benefit consumers.¹⁷

With the adoption of these conditions, the Commission will ensure that this transaction will benefit and will not harm the public interest. In the absence of such commitments, the Commission should reject the transaction.

Respectfully submitted,

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¹¹ NuVox/Socket Comments at 14-15; COMPTTEL Comments at 3.

¹² COMPTTEL Comments at 7.

¹³ COMPTTEL Comments at 7-8; see also NuVox/Socket Comments at 31-32.

¹⁴ COMPTTEL Comments at 6; NuVox/Socket Comments at 22-23.

¹⁵ NuVox Socket Comments at 27-31.

¹⁶ COMPTTEL Comments at 8-9; NuVox/Socket Comments at 33-36.

¹⁷ NuVox/Socket Comments at 39-40.