

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

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

**REPLY COMMENTS OF
SPRINT NEXTEL CORPORATION**

Sprint Nextel Corporation (“Sprint”) submits this reply in support of the comments filed by COMPTTEL, Nu Vox and Socket Telecom, LLC.¹ The merger of any two incumbent local exchange carriers requires close scrutiny to ensure that the increased market power of the new entity will enhance competition, not decrease it. Sprint agrees that adoption of COMPTTEL’s proposed conditions, as well as similar conditions proposed by Nu Vox and Socket Telecom, would enable the Commission to determine that the merger, overall, would promote the public interest.

I. BACKGROUND

1. The New CenturyTel Will Rival Qwest in Size. The Applicants would give the Commission the impression that New CenturyTel would be a rural local exchange carrier (“LEC”). They state repeatedly in their Application that they serve “predominantly smaller, rural areas.”² In fact, New CenturyTel will serve vibrant cities (*e.g.*, Las Vegas, Tampa), “some of the fastest

¹ See COMPTTEL Comments, WC Docket No. 08-238 (Jan. 8, 2008); Joint Comments in Opposition to Merger of Embarq Corporation and CenturyTel, Inc, WC Docket 08-238 (January 8, 2009)(“Nu Vox/Socket Comments”)

² See Merger Application at 9. See also *id.* at 2 (same); at 5 (same); at 8 (same); at 9 (same); at 17 (same).

growing suburban markets,”³ and rural areas. This service area mix is very similar to that served by the Regional Bell Operating Company (“RBOC”), Qwest. Indeed, New CenturyTel, with “approximately 8 million access lines,”⁴ is approaching the size of Qwest, which reported serving 10.7 million business and residential lines at the end of September 2008.⁵

2. New CenturyTel will be a highly profitable company. In 2007, the most recent period for which annual data is publicly available, CenturyTel reported profits of \$418 million, with earnings per share of \$3.82 and \$0.26 in dividends per share.⁶ Embarq that year reported profits of \$683 million, with earnings per share of \$4.50 and \$2.38 in dividends per share.⁷ Consequently, the two Applicants collectively enjoyed in 2007 profits of \$1.1 billion.

During the first nine months of 2008, CenturyTel reported profits of \$266 million, with earnings per share of \$2.57 and \$1.47 in dividends – and in June 2008, CenturyTel increased its dividends tenfold, “from \$0.27 to \$2.80.”⁸ Embarq, during the same nine-month period, reported profits of \$578 million, with earnings per share of \$3.92 and \$2.06 in dividends.⁹ Thus, the two Applicants collectively enjoyed during the first nine months of 2008 profits of \$844 million.

The Applicants have further told investors they will become even more profitable following their merger. Specifically, they have stated that New CenturyTel expects to realize one-time

³ R. Matthew Kohly Declaration at 2-3 ¶ 5, Attachment B to NuVox/Socket Comments.

⁴ Merger Application at 11.

⁵ See Press Release, *Qwest Reports Third Quarter 2008 Results*, Attachment D (Oct. 29, 2008).

⁶ See CenturyTel Form S-4, at 9 (Nov. 20, 2008).

⁷ See *id.* at 10.

⁸ See *id.* at 9.

⁹ See *id.* at 10.

synergy savings of \$275 million and thereafter, \$400 million annually.¹⁰ In fact, CenturyTel's CEO told investors it will "reward our shareholders" following the merger:

We expect to maintain our dividend payout ratio of about 50 percent and to continue returning substantial capital to shareholders over time.¹¹

3. New CenturyTel and access line losses. The Merger Application notes that Applicants, like all other incumbent LECs, have encountered a loss of access lines in recent years.¹² The relevance of this fact to this proceeding is not apparent. As the Applicants have explained, the loss of access lines has resulted in "significantly lower CapEx and contributed to the ongoing stability of our cash flow."¹³

Moreover, Applicants' loss of access lines appears to have had no impact on their balance sheet. For example, CenturyTel states it lost 5.7 percent of its lines in 2007.¹⁴ Yet, during that year, CenturyTel's revenues increased by 8.4 percent (\$2.7B vs. \$2.5B in 2006), and its profits increased by 12.9 percent (\$418M vs. \$370M in 2006).¹⁵ This is largely due to the fact that in 2007, CenturyTel gained more broadband connections (186,000) than the number of access lines it lost (41,000).¹⁶

¹⁰ See CenturyTel Investor Presentation, *Merger of CenturyTel and Embarq*, at 9 (Oct. 27, 2008) ("CenturyTel Investor Presentation"), available at www.centurytelebarqmerger.com/keyMaterials.cfm.

¹¹ Transcript of Investor October 25 Conference Call, available at CenturyTel Form 425, at 8 (Oct. 27, 2008) ("October 29 Investor Call Transcript").

¹² See Merger Application at 10-11.

¹³ October 29 Investor Call Transcript at 5. This is because the "primary issue continues to be reduced new orders, rather than disconnects," with "the decline in gross adds [being] accompanied by a reduction in the number of new service addresses." *Id.*

¹⁴ See CenturyTel 2007 Form 10K, at pdf page 9 (Feb. 29, 2008).

¹⁵ See *id.* at pdf page 28.

¹⁶ See *id.* In addition, as one of the Applicants has pointed out, access line loss data can be misleading because they often do "not represent a loss of the customer relationship," as "certain consumer access lines have been replaced with our high-speed Internet service and certain of our business access line losses result from the conversion to our data services." Embarq 2007 Form 10K at 33 (Feb. 29, 2008).

II. APPLICANTS MUST DEMONSTRATE THAT THEIR MERGER WOULD ENHANCE COMPETITION AND CONSUMER WELFARE

The Applicants have stated their merger would be “compelling for shareholders” because, among other things, they would have a “dividend payout ratio of ~50% and [an] expectation to return substantial capital to shareholders.”¹⁷ The Commission, however, must determine whether the merger will promote the public interest, not shareholder value.¹⁸

As COMPTTEL explains, the Commission will not consider claimed synergy savings where, as here, there is an “absence of explicit pass-throughs committed to by the Applicants.”¹⁹ In the end, Applicants’ public interest argument is that with a merger, “Customers will benefit through their ability to subscribe to existing and future services.”²⁰ Such a generic statement is not a merger-specific public interest benefit and certainly is not a verified merger-specific benefit.²¹

Applicants further claim their merger would pose “no danger of anticompetitive harm” and “will not harm competition.”²² But their Application does not support these assertions. In-

¹⁷ CenturyTel Investor Presentation, *Merger of CenturyTel and Embarq*, at 4 (Oct. 27, 2008) (“CenturyTel Investor Presentation”), available at www.centurytelebarqmerger.com/keyMaterials.cfm.

¹⁸ Section 214(a) of the Act, for example, specifies that the FCC may approve an acquisition only if the public interest “require[s] or will require” the acquisition. 47 U.S.C. § 214(a).

¹⁹ COMPTTEL Comments at 4, quoting *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd 14032 at ¶ 242 (2000). See also *Verizon/FairPoint Transfer Order*, 23 FCC Rcd at 531 n.103 (“We do not rely on FairPoint’s assertion that the transaction will result in FairPoint achieving a net cost savings because the record does not definitively support this claim.”); *id.* at 530 ¶ 27 (FCC “dismiss[es] speculative benefits that it cannot verify.”).

²⁰ Merger Application at 9.

²¹ The FCC has held it will consider only those public interest benefits that are “verifiable” and “merger-specific.” See, e.g., *Verizon/FairPoint Transfer Order*, 23 FCC Rcd at 529-30 ¶¶ 25, 27. Applicants must thus demonstrate that they will pursue “business strategies resulting in demonstrable and verifiable benefits that could not be pursued but for the combination.” *Id.* at 529 ¶ 25.

²² Merger Application at 13.

deed, as NuVox/Socket point out, Applicants devote only one sentence to their competitors, with the Application stating:

Finally, this transaction will have no impact on the terms of any existing interconnection agreements or obligations under state and federal laws regarding interconnection.²³

Applicants also do not address the applicable legal standard governing this proceeding. Under the public interest standard, the question is not simply whether a merger would harm competition, but whether the proposed transaction “*will enhance, rather than merely preserve, existing competition.*”²⁴ And, the Commission has held it will approve a merger proposal only if it is “convinced that [the transaction] will *enhance* competition.”²⁵ Here, however, Applicants make no attempt to show their merger “will enhance . . . existing competition.”

III. THE CONDITIONS PROPOSED ARE APPROPRIATE IN THIS CONTEXT

The Commission has recognized that a merger of two incumbent LECs, with each holding “dominant” market power in its service area, rarely promotes the public interest. After all, the merger of two incumbent LECs into an even larger incumbent will rarely “accelerate the decline of market power by dominant firms.”²⁶ In this regard, the Commission has recognized that the merger of two incumbent LECs ordinarily increases the potential for harm to competition because the merger would “increase the incentives and ability of the merged entity to discriminate

²³ NuVox/Socket Comments at 9, quoting Merger Application at 12.

²⁴ *Verizon Wireless/Alltel Merger Order*, 23 FCC Rcd 11401 at ¶ 28 (emphasis added). See also *Verizon Wireless/Rural Cellular Merger Order*, 23 FCC Rcd 12463, 12479 ¶ 32 (2008); *Sprint/Clearwire Order*, WT Docket No. 08-94, FCC 08-259, at ¶ 21 (2008); *Sirius/XM Merger Order*, 23 FCC Rcd 12348, 12365 ¶ 29 (2008).

²⁵ *SBC/Ameritech Merger Order*, 14 FCC Rcd 14712, 14738 ¶ 49 (1999)(emphasis added), quoting *Bell Atlantic/NYNEX Merger Order*, 12 FCC Rcd 19985, 19987 ¶ 2 (1997). See also *Time Warner/America Online Merger Order*, 16 FCC Rcd 6547, 6555 ¶ 21 (2001).

²⁶ *Verizon/FairPoint Transfer Order*, 23 FCC Rcd at 521 ¶ 13; *AT&T/BellSouth Merger Order*, 22 FCC Rcd 5662, 5673-74 ¶ 21 (2008).

against rivals.”²⁷ As COMPTTEL points out, Applicants have told investors that their merger will result in an even “Stronger Wholesale Division,” which would give the merged firm “even greater power and control over its competitors.”²⁸

To address this situation, the Commission has routinely adopted in prior incumbent LEC merger orders numerous conditions to facilitate market entry and to reduce transaction costs. These conditions, the Commission determined, “alter[ed] the public interest balance of the proposed merger by mitigating substantially the potential public interest harms while providing additional public interest benefit.”²⁹

COMPTTEL has proposed several conditions to facilitate market entry and to reduce transaction costs, and NuVox/Socket have proposed similar conditions. Sprint agrees with these parties that these conditions are necessary before the Commission can approve the proposed merger as promoting the public interest.

A. The Commission Should Adopt the Six Interconnection Agreement Conditions That COMPTTEL Has Proposed

COMPTTEL has proposed adoption of six conditions pertaining to interconnection agreements (“ICAs”) that would facilitate entry and reduce transition costs for both CenturyTel post-merger and competitive carriers.³⁰ NuVox/Socket propose similar conditions.³¹

²⁷ *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd at 14086 ¶ 96, 14089 ¶ 104. Likewise, in approving FairPoint’s acquisition of Verizon’s New England assets, the FCC noted that “because FairPoint has a much smaller footprint than Verizon it will have a smaller incentive to discriminate.” *FairPoint/ Verizon Transfer Order*, 23 FCC Rcd at 523 ¶ 17.

²⁸ See COMPTTEL Comments at 3, quoting CenturyTel Briefing Document, *A Win for Customers, Employees and Communities: Merger of CenturyTel and Embarq*, at 5 (Nov. 13, 2008), available at http://www.centurytelambarqmerger.com/merger_key_materials/Briefing_Document.pdf.

²⁹ *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd 14032 at ¶ 247. See also *SBC/Ameritech Merger Order*, 14 FCC Rcd 14712, 14718 ¶ 5 (1999)(Conditions adopted “tip the scales, so that, on balance, the application to transfer licenses and lines should be approved.”).

³⁰ See COMPTTEL Comments at 6-8 and Appendix A at pages 1-2.

³¹ See NuVox/Socket Comments at 21-24.

Sprint supports adoption of the six conditions that COMPTEL has proposed. As COMPTEL notes, CenturyTel following the merger will operate “approximately 80 different ILECs in 33 different States.”³² The Merger Application makes clear that the new CenturyTel intends to require its competitors to negotiate a separate agreement with each of these 80 ILEC affiliates, including in States where the post-merger company operates multiple incumbent LECs in the same State.³³

CenturyTel may have legitimate reasons for maintaining so many incumbent LECs. But as COMPTEL points out, competitive carriers should “not be penalized by Applicants’ decision to maintain an archaic and redundant corporate structure.”³⁴ There should be only one ICA with post-merger CenturyTel per State – regardless of the number of incumbent LECs that CenturyTel chooses to maintain in a given State. Indeed, as the Commission has recognized in prior ILEC merger proceedings,³⁵ competitive carriers should also have the option of having only one multi-State ICA with CenturyTel.³⁶

The six ICA conditions that COMPTEL has proposed will also, the Commission has recognized, “facilitate market entry . . . as well as the spread of best practices” that “clearly favor public rather than private interests,” and thus “assure carriers some ability to obtain beneficial arrangements.”³⁷ These conditions are an especially effective tool because best practices “will

³² COMPTEL Comments at 7.

³³ See Merger Application at 12.

³⁴ COMPTEL Comments at 8.

³⁵ See, e.g., *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd 14032 at ¶ 306 (“Negotiating a separate interconnection agreement between the same parties in multiple states can impose substantial unnecessary costs and delays on competitors and provides incumbent LECs with an incentive to game the process.”); *SBC/Ameritech Merger Order*, 14 FCC Rcd 14712, 14873 ¶ 389 (1999).

³⁶ Of course, even a multi-State ICA may need to be filed with, and approved by, the regulatory commission in each State.

³⁷ *SBC/Ameritech Merger Order*, 14 FCC Rcd at 14867 ¶ 377, 14872 ¶ 388, and 14888 ¶ 424.

be identified in full or in part by the Applicants' customers and regulators, not by" the Applicants.³⁸ These ICA conditions thus help ensure that Applicants' merger will likely "enhance, rather than merely preserve, existing competition."³⁹

Although Applicants state they intend to implement "best practices" to benefit "consumers,"⁴⁰ they make no similar commitment regarding their competitors or other carriers. Moreover, NuVox/Socket document that after prior CenturyTel acquisitions, CenturyTel eliminated automated systems such as circuit databases that the selling ILEC had used, thereby forcing competitors to begin using a manual process in CenturyTel's newly acquired properties.⁴¹ Following one of its prior acquisitions, CenturyTel further required Socket to maintain "separate interconnection agreements, separate interconnection arrangements, and generally conduct business separately with each of [CenturyTel's] affiliates" in the same State – even though CenturyTel's ILEC affiliates are "managed jointly with many of the same people performing the same functions for each entity."⁴²

As noted above, the Commission has held it will approve a merger of two incumbent LECs only if the transaction "will enhance, rather than merely preserve, existing competition."⁴³ COMPTel's six proposed ICA conditions would help assure that competitive carriers have "some ability to obtain beneficial arrangements" from the transaction.⁴⁴

³⁸ *SBC/Ameritech Merger Order*, 14 FCC Rcd at 14888 ¶ 424.

³⁹ *Verizon Wireless/Alltel Merger Order*, 23 FCC Rcd 11401 at ¶ 28.

⁴⁰ See Merger Application at 7 and 9.

⁴¹ See R. Matthew Kohly Declaration at 3 ¶ 8, Attachment B to NuVox/Socket Comments.

⁴² *Id.* at 12 ¶ 30.

⁴³ *Verizon Wireless/Alltel Merger Order*, 23 FCC Rcd 11401 at ¶ 28 (emphasis added). See also *Verizon Wireless/Rural Cellular Merger Order*, 23 FCC Rcd 12463, 12479 ¶ 32 (2008); *Sprint/Clearwire Order*, WT Docket No. 08-94, FCC 08-259, at ¶ 21 (2008); *Sirius/XM Merger Order*, 23 FCC Rcd 12348, 12365 ¶ 29 (2008).

⁴⁴ *SBC/Ameritech Merger Order*, 14 FCC Rcd at 14888 ¶ 424.

B. The Commission Should Adopt the Special Access Conditions That COMPTTEL and NuVox/Socket Have Proposed

COMPTTEL and NuVox/Socket also propose a set of conditions pertaining to Century-Tel's provision, post merger, of special access facilities.⁴⁵ Sprint agrees with these proposals. Indeed, the Commission has adopted these very conditions in past ILEC merger proceedings – including in the recent *AT&T/BellSouth Merger Order*.

As Sprint and other competitive carriers have documented in WC Docket No. 05-25, incumbent LECs in most areas of the country have a monopoly in the provision of critical special access facilities and they are able to realize obscene profits as a result.⁴⁶ If a merger between two incumbent LECs must “enhance, rather than merely preserve, existing competition,” then competitive carriers must obtain some benefit from the merger. Conditions that limit the monopoly rents Applicants can impose on and receive from their competitors would facilitate this public interest objective. The proposed rate caps and other special access provisions are especially justified by Applicants' receipt of sizable high-cost subsidies – over \$319 million in 2007 alone – funded in part by customers of Applicants' competitors.

C. Other Important Conditions

Sprint also agrees with Nu Vox/Socket that there are other important conditions that should be imposed to ensure that the New CenturyTel complies with best practices. Specifically, Sprint supports the number porting, single point-of-interconnection, OSS, and transit service ob-

⁴⁵ See COMPTTEL Comments at 8-9 and Appendix A at pages 2-3; NuVox/Socket Comments at 33-36.

⁴⁶ See, e.g., Comments filed on August 8, 2007 in WC Docket No. 05-25 by Sprint Nextel (p. 22), T-Mobile (p. 6), Time Warner Telecom and One Communications (p. 5), XO Communications et al. (p. 2), COMPTTEL (p. 2), AdHoc Telecommunications Users Committee (p. 5); reply comments filed on August 15, 2007 by Sprint Nextel (p. 6), T-Mobile (p. 2 and Attachment A), and New Jersey Division of Rate Counsel (p. 7); and ex parte letters filed by Sprint Nextel (August 22, 2007 and October 5, 2007) and T-Mobile (October 11, 2007).

ligations proposed by Nu Vox/Socket. Sprint has experienced similar difficulties as those described by Nu Vox/Socket when dealing with the current CenturyTel and would encourage the Commission to require the new entity to maintain the best practices of Embarq. For example, CenturyTel currently limits number porting to fifty numbers per day, an arbitrary limit in no way authorized under current law.⁴⁷ Likewise, Embarq has established an electronic interface for the processing of number porting requests that permits ports to be completed more quickly than on the CenturyTel network. The new CenturyTel should move to these systems and not be permitted to undo the more pro-competitive aspects of Embarq's network operations.⁴⁸

IV. CONCLUSION

For the foregoing reasons, Sprint Nextel Corporation agrees with COMPTEL and Nu-Vox/Socket that the Commission should only approve the application for merger subject to the conditions discussed above.

Respectfully submitted,

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⁴⁷ See, Century Tel Service Guide, available at: <http://business.centurytel.com/business/Wholesale/InterconnectionServices/Library/CenturyTelServiceGuide.pdf>. Century Tel apparently implements these guidelines in an arbitrary fashion, see, Declaration of Mathew Kohly, ¶ 36, Attachment B to NuVox/Socket Comments.

⁴⁸ See, e.g., R. Matthew Kohly Declaration at 3 ¶ 8, Attachment B to NuVox/Socket Comments.

Certificate of Service

I, Jo-Ann Monroe hereby certify that a copy of the foregoing Sprint Reply Comments was served on January 23, 2009 by first-class United States mail, postage prepaid or, where indicated by *, by electronic mail.

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