

**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,	)	
	)	
Applications for Transfer of Control of	)	
Authorizations Under Sections 214 and	)	
310(b) of the Communications Act, as	)	
Amended.	)	

**JOINT REPLY COMMENTS OF CENTURYTEL, INC. AND EMBARQ  
CORPORATION**

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## SUMMARY

The merger of CenturyTel, Inc. (“CenturyTel”) and Embarq Corp. (“Embarq”) (collectively “Applicants”) will benefit consumers and promote competition and investment, especially in rural areas. Both companies have grown over the years by integrating smaller and geographically dispersed carriers into telecommunications companies that provide high-quality, innovative services in their largely rural territories. The combination of CenturyTel and Embarq will continue this process and create substantial synergies that will accelerate the provision of new services to consumers, while preserving wholesale infrastructure so that competition can continue to thrive.

In their initial applications, the Applicants demonstrated that there will be significant public interest benefits from the merger and no competitive harm. No party petitioned to deny the applications, and only three parties filed comments. One of these commenters, the New Jersey Division of Rate Counsel, identified one of the principal benefits of the merger, agreeing that the combined company will enjoy superior fiscal stability, which will enable it to ensure continued quality service to its communities.

The FCC has approved mergers if the public interest benefits outweigh the potential for harm. The FCC will adopt narrowly tailored conditions only if they are necessary to counteract specific harms that are caused by the merger. With the instant transaction, there are significant, tangible benefits, with no associated harm to competition. Therefore, past precedent would justify a prompt grant without conditions.

The commenters for the most part ignore the multiple public interest benefits of this transaction:

- The combined entity will create a stronger service provider that will be better able to invest in rural networks that are capable of providing voice, data, and video services, especially in rural areas.

- Both retail and wholesale customers will continue to receive the same services without disruption.
- The combination will promote the availability of advanced and new services, such as broadband, Internet protocol television (“IPTV”), and 700 MHz wireless services.
- CenturyTel can expand the use of its LightCore fiber optic backbone network to the benefit of the combined enterprise and other carriers who need backbone services in an increasingly concentrated backbone market.
- The combined entity will be able to utilize the most modern and efficient back-office systems of both companies that will benefit wholesale and end-user customers.
- The merged companies ultimately will realize substantial cost savings that can make the overall company more efficient, benefiting customers and competition alike.

These tangible benefits undermine any claim that this transaction would not benefit the public interest.

As reflected in the decision of the antitrust authorities to issue an early termination letter concerning the Hart-Scott-Rodino review, there are no competitive harms from the merger.

Although the combined entity will have approximately 7.3 million access lines in 33 states, both companies were created over the years from much smaller, largely rural companies, in widely dispersed geographic territories throughout the United States. The companies are not integrated as other much larger entities are, such as AT&T, Verizon, Comcast, and Time Warner. Neither of the companies has ever been subject to the restrictions of Section 271 of the Communications Act or the Modified Final Judgment. Neither of the companies are facilities-based long distance or wireless providers. In short, there is nothing that would justify competitive concerns as the Commission has raised in other transactions.

The commenters’ assertion that creating a bigger company will necessarily cause harm to competition, is fundamentally flawed. Time and again, the Commission has rejected the notion that larger size necessarily leads to harm to competition. And the commenters ignore the fact that both CenturyTel and Embarq are losing more than five percent of their lines a year to

competition. Indeed, the combined company will have fewer access lines than Embarq alone had in 2003.

Nevertheless, the commenters—relying solely on transactions involving large Bell Operating Companies—advocate that a host of conditions be placed on this transfer. But this is not a Bell merger, which the Commission has made clear raise unique anticompetitive concerns inapplicable to other applications. Instead, this is a combination of two smaller, nonintegrated local carriers that provides significant public interest benefits, especially to rural and small-city markets while causing no competitive harm. In these kinds of transactions, conditions are not warranted, and the Commission rarely imposes conditions on mergers of this kind and it should not do so here.

Moreover, the commenters provide no sound justification for the specific conditions they advocate. For example, the transaction has no impact on the provision or pricing of unbundled network elements or other intercarrier relationships governed by interconnection agreements, and therefore there is no justification for intruding here on this traditional area of state authority. Similarly, the merger has no effect on the market for special access, because CenturyTel and Embarq do not compete with each other for special access. The Commission has an open proceeding looking at special access, and should address any special access issues in such an industry-wide proceeding, not in this merger. Finally, many of the conditions the commenters seek would take localized processes and services and require them to be made on a state or company-wide basis. Not only do these kinds of conditions lack any connection to this transaction, they threaten the merged company's ability to tailor its services to local conditions, a strength that has made both companies leaders in providing highly responsive local phone and broadband services in different states and regions.

For these reasons, as well as those set out in the initial applications, the Applicants urge the Commission to grant expeditiously the applications without conditions.

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**JOINT REPLY COMMENTS OF CENTURYTEL, INC. AND EMBARQ CORPORATION**

CenturyTel, Inc. (“CenturyTel”) and Embarq Corp. (“Embarq”) (collectively “Applicants”) hereby jointly reply to the three comments that were filed with the Commission with respect to the above-captioned applications seeking transfer of control of Embarq to CenturyTel.<sup>1</sup> No one petitioned to deny the transfer, and the comments themselves fail to demonstrate any public interest reason why the proposed transaction should be denied, delayed, or made subject to conditions. The Commission should grant the applications expeditiously and without conditions, consistent with numerous precedents in similar transactions.

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<sup>1</sup> The FCC established a joint pleading cycle in which to file petitions or comments in Public Notice, *Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, WC Docket No. 08-238, DA 08-2681 (Dec. 9, 2008)(“Public Notice”).

## I. BACKGROUND

CenturyTel and Embarq applied for approval of a stock-for-stock exchange that would ultimately transfer control of Embarq to a wholly owned subsidiary of CenturyTel, with current Embarq shareholders receiving roughly two-thirds of the common stock of CenturyTel.<sup>2</sup> Both companies have strong reputations as customer-focused businesses, and each is committed to providing excellent communications services to its markets, including rural, small-city, and suburban markets.<sup>3</sup> Both companies are mid-size incumbent local exchange carriers (“ILECs”) which operate in largely separate and widely dispersed geographic areas today. CenturyTel currently operates in 25 states, providing local exchange services to roughly 2.0 million telephone access lines and high-speed internet connections to approximately 630,000 subscribers. Embarq has ILEC operations in 18 states, serves 5.9 million access lines, and has 1.4 million broadband service subscribers.<sup>4</sup>

Both companies have been losing access lines to competition at a rapid rate. Embarq, for example, lost slightly over 6 percent of its switched access lines annually in 2006 and 2007, and lost 8.6 percent on a year-over-year basis as of September 30, 2008.<sup>5</sup> Excluding its acquisition of Madison River’s access lines, CenturyTel has experienced line loss of roughly 5 to 6 percent

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<sup>2</sup> The Applicants filed an application to transfer the domestic 214 authorization held by Embarq to CenturyTel on November 25, 2008. The Applicants filed applications to transfer the international 214 authorizations held by Embarq to CenturyTel on November 26, 2008. The Applicants filed applications to transfer the wireless applications of Embarq to CenturyTel, Inc. on December 4, 2008. The identifying authorization numbers and call signs for these applications are contained in the Public Notice.

<sup>3</sup> CenturyTel serves principally rural areas. Embarq serves as the ILEC in rural, suburban, and small city markets in 18 states. Its only major city market is Las Vegas, Nevada, where it likewise is committed to providing excellent communications services to its customers.

<sup>4</sup> 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, at 2-3 (Nov. 25, 2009)(“Domestic 214 Application”).

<sup>5</sup> See Embarq Corporation, Quarterly Report (Form 10-Q) (filed on Oct. 30, 2008); Embarq Corporation, Annual Report (Form 10-K) (filed on Feb. 29, 2008).

annually since 2006.<sup>6</sup> Neither CenturyTel nor Embarq owns any wireless carriers.<sup>7</sup> Both carriers only resell long distance services, and therefore rely on other, facilities-based long distance carriers, to provide long-distance.

In response to the Applicants' Hart-Scott-Rodino filings, the Federal Trade Commission sent an early termination letter to the companies announcing that it would neither challenge this transaction, nor seek further information.<sup>8</sup>

## II. STANDARD OF REVIEW

The FCC will review the merger pursuant to sections 214(a) and 310(b) to determine whether it will serve the public interest, convenience, and necessity.<sup>9</sup> First, the Commission will determine whether the merger complies with all applicable laws and regulations. Second, it will employ a balancing test weighing any potential public interest harms of the proposed transaction against the public benefits expected to be gained.<sup>10</sup> The primary goal of evaluating the public interest benefits of a merger is to determine whether the transaction will promote competition or promote the availability of advanced services.<sup>11</sup> Not only will the Commission employ

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<sup>6</sup> See CenturyTel, Inc., Quarterly Report (Form 10-Q) (filed on Oct. 31, 2008); CenturyTel, Inc., Annual Report (Form 10-K) (filed on Feb. 29, 2008).

<sup>7</sup> Embarq resells some wireless services, CenturyTel has no wireless operations to speak of; however, it did purchase substantial 700 MHz spectrum in the recent FCC auction.

<sup>8</sup> Letter from Renee A. Hallman, FTC, to Stacey W. Goff, CenturyTel (Nov. 21, 2008) ("FTC Letter").

<sup>9</sup> See, e.g., *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, 23 FCC Rcd. 514, ¶ 11 (2008) ("Verizon/FairPoint Order").

<sup>10</sup> See, e.g., *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, WT Docket 04-70, Memorandum Opinion and Order, 19 FCC Rcd. 21522, ¶ 40 (2004) ("Cingular/AT&T Wireless Order"); *General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee*, MB Docket No. 03-124, Memorandum Opinion and Order, 19 FCC Rcd. 473, ¶ 15 (2004) ("News Corp./Hughes Order").

<sup>11</sup> See, e.g., *Cingular/AT&T Wireless Order*, ¶ 41; *Verizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum

traditional antitrust principles,<sup>12</sup> it will also consider whether the merger will accelerate competition in the future.<sup>13</sup> The FCC will refuse to consider comments if they do not contain specific facts which can establish a prima facie case for denial or conditioning a merger.<sup>14</sup> If the public interest harms exceed public interest benefits, the FCC will consider adopting narrowly tailored conditions to remedy those harms, but only those necessary to remedy those harms that are transaction-specific.<sup>15</sup>

### **III. THE COMBINATION OF THESE TWO MID-SIZE COMPANIES WILL PROVIDE SIGNIFICANT PUBLIC INTEREST BENEFITS.**

The instant transaction produces identifiable and significant benefits to customers and the communications marketplace. As stated in its application, it combines two mid-size companies who are dwarfed by larger, better funded companies, such as AT&T, Verizon, Comcast, and Time Warner. The merger is a procompetitive response to developments in competition, technology, new customer preferences, and convergence of communications services platforms. Successful adaptation to this evolution is critical to maintaining sufficient economic resources necessary to provide excellent communications services to consumers at affordable rates. Both

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Opinion and Order, 20 FCC Rcd. 18433, ¶ 17 (2005) (“*Verizon/MCI Order*”); 47 U.S.C. § 706.

<sup>12</sup> *Cingular/AT&T Wireless Order*, ¶ 42; *News Corp./Hughes Order*, ¶ 17.

<sup>13</sup> *Cingular/AT&T Wireless Order*, at ¶ 42; *Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, MB Docket No. 02-70, Memorandum Opinion and Order, 17 FCC Rcd. 23246, ¶ 28 (2002) (“*AT&T/Comcast Order*”).

<sup>14</sup> *See, e.g., Existing Shareholders of Clear Channel Communications, Inc. (Transferors) and Shareholders of Thomas H. Lee Equity Fund VI, L.P., Bain Capital (CC) IX, L.P., and BT Triple Crown Capital Holdings III, Inc. (Transferees)*, BTCCT-2006121AVR, et. al, 23 FCC Rcd. 1421, ¶ 28 (2008).

<sup>15</sup> *Verizon/MCI Order*, ¶ 19 (footnote omitted) (“Despite broad authority, the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (i.e., transaction-specific harms) and that are related to the Commission’s responsibilities under the Communications Act and related statutes. Thus, we will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.” *Cingular/AT&T Wireless Order*, ¶ 43; *News Corp./Hughes Order*, ¶ 131.

CenturyTel and Embarq have their own individual strengths to bring to the combined company, which will consequently enhance the quality services already provided to customers and the communities they serve. CenturyTel has relatively low debt levels and a proven and stable management track record. It has a quality local network and growing IPTV capability. It owns a backbone fiber network that traverses parts of both companies' service territories. Embarq, on the other hand, has a greater scale of providing local communications services. It has in place modern wholesale support systems as well as industry-leading provisioning systems. The combined entity can use these separate strengths to create a stronger and more capable company, better enabling the new CenturyTel to service its retail and wholesale customers as well as to compete against much larger providers.

The commenters assert that the applications fail to prove that the public interest benefits they identify will come to pass<sup>16</sup> and further investigation therefore is warranted.<sup>17</sup> But they ignore CenturyTel's proven track record of integrating acquired properties. CenturyTel has successfully purchased and integrated complete companies, such as PTI and Madison River, as well as exchanges purchased from much larger companies.<sup>18</sup> In doing so, CenturyTel has provided substantial network investment and maintained a high service quality for consumers. There is thus no reason to believe that CenturyTel will not have similar success completing the

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<sup>16</sup> Comments of COMPTTEL, WC Docket No. 08-238, at 4 (Jan. 8, 2009) ("COMPTTEL Comments"); Joint Comments in Opposition to Merger of Embarq Corporation and CenturyTel, Inc., WC Docket No. 08-238, at 8 (Jan. 8, 2009) (filed by NuVox and Socket Telecom, LLC) ("NuVox Comments").

<sup>17</sup> Comments of The New Jersey Division of Rate Counsel, WC Docket No. 08-238, at 23 (Jan. 8, 2009) ("New Jersey Rate Counsel Comments").

<sup>18</sup> See, e.g., Public Notice, *Domestic Section 214 Authorization Granted, Application for Transfer of Control of Madison River Communications and Madison River Telephone Company, LLC to Century Tel, Inc.*, WC Docket No. 07-3, 22 FCC Rcd. 3584 (Wir. Comp. Bur., 2007).

current transaction with substantial benefits for consumers.<sup>19</sup> The Applicants spelled out these benefits in detail in their initial applications, and the commenters have essentially ignored them.

**A. The Combined Entity Will Be a Stronger Service Provider and Network Investor.**

As the Applicants explained in their initial applications, this merger gives the post-transaction CenturyTel the financial strength and flexibility to continue providing outstanding service and enhanced offerings to customers. The post-transaction company is expected to have pro forma revenue in excess of \$ 8.8 billion, and the merger will be completed without adding any incremental debt to the combined company. As the New Jersey Division of Rate Counsel noted, “Based on the historical financial ratios and the Applicants’ pro forma, the combined company would be situated favorably to other large telecommunications companies, and even better than several large companies.”<sup>20</sup> The post-transaction CenturyTel will have the fiscal stability to provide consumers consistent quality service, as well as the ability to provide new services demanded by a competitive marketplace. No commenter seriously contends otherwise.<sup>21</sup>

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<sup>19</sup> Although New Jersey Rate Counsel has requested further investigation of the combined entity (*see, e.g.*, New Jersey Rate Counsel Comments at 23), it raises no specific issues that would warrant such an investigation.

<sup>20</sup> *Id.*

<sup>21</sup> *See id.* at 20. Because the combined entity will have the existing financial, operational, and personnel resources of both companies, the instant merger does not raise issues raised in other mergers where a much smaller company purchases a much larger company, and the larger company’s resources will become unavailable to the company in the future. *See, e.g., Verizon/FairPoint Order* (Commission refused to adopt conditions in a merger even where opposing parties raised substantial financial and operation questions as to the ability of the smaller acquiring company to operate the larger company). Additionally, since the transaction involves no new debt or equity offerings, CenturyTel will not need to obtain financing in today’s financial markets. Thus, there is no reason to further investigate the financial wherewithal of CenturyTel to acquire and operate the combined entity, as the New Jersey Rate Counsel suggests. Finally, any future acquisitions are wholly speculative at this point, and there is no basis to consider them at this time.

In addition to combining the financial strength of the two Applicants, this transaction combines their expertise in serving varied and largely rural and small-city markets, allowing them to continue to provide quality services to those areas. The new entity can capitalize on the collective knowledge of local customers' needs and deliver innovative product offerings, particularly to these rural and smaller markets that are not the focus of larger communications companies. The FCC has thus approved mergers like this one virtually without comment, implicitly recognizing the obvious consumer benefits.<sup>22</sup>

**B. The Merger Will Be Seamless to Customers.**

As demonstrated in the applications, current customers of both CenturyTel and Embarq will see no disruption of service.<sup>23</sup> The transaction and consolidation should be seamless to the customer. No commenter seriously challenges this fact. In addition, wholesale customers will continue to receive services pursuant to existing interconnection contracts, and they have substantial protections built into Sections 251 and 252 of the Communications Act, which will be applicable to the combined company as before.<sup>24</sup>

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<sup>22</sup> Public Notice, *Wireline Competition Bureau Grants Consent For Transfer of Control of Valor Communications Group, Inc. and Its Subsidiaries from Valor Communications Group, Inc. to New Valor, And the Transfer of Control of Alltel Holding Corp. and Its Subsidiaries from Alltel Corporation to New Valor*, WC Docket No. 05-354, DA No. 06-154 (Wir. Comp. Bur., Jan. 25, 2006) (“Alltel/Valor Notice”); Public Notice, *Domestic Section 214 Application Filed for the Transfer of Control of North Pittsburgh Systems, Inc. to Consolidated Communications Holdings, Inc.*, WC Docket No. 07-151, DA 07-4520 (Wir. Comp. Bur., Nov. 5, 2007) (“Consolidated/North Pittsburgh Notice”); *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 Communications Act and Parts 20, 22, 63, 78, 90, and 101 of the Commission's Rules*, 16 FCC Rcd. 8507 (WCB/IB/CSB/WTB, 2001) (“Citizens/Frontier Order”).

<sup>23</sup> Domestic 214 Application at 11-12.

<sup>24</sup> 47 U.S.C. §§ 251-52. Applicants respond to the specific allegations related to administration of interconnection arrangements in Missouri at pages 20-22, *infra*.

**C. The Combination Will Promote Availability of Broadband, Advanced, and New Services.**

As explained in the Applicants' initial applications, CenturyTel and Embarq are leading rural broadband providers. Both entities have been deploying broadband services, and at faster and faster speeds, in their respective territories. The added financial strength and stability of the combined entity will enable these companies to continue to build out broadband to increasingly remote locations in their respective territories at higher speeds in all areas. In addition to other scale and scope efficiencies, by combining Embarq's existing network with CenturyTel's backbone network, including its fiber optic transport facilities, the Applicants also will be able to realize greater economies of scale for transport services. The combined network will place more Embarq and CenturyTel customers within economically feasible reach of the backbone network, which accommodates next-generation broadband applications. This means that more customers in more areas will have an opportunity to receive next-generation broadband network services as a result of this transaction.

Similarly, CenturyTel is well along in beginning to provide IPTV services.<sup>25</sup> CenturyTel also has experience in providing traditional cable television service in several smaller markets. The combination will enable the company to use CenturyTel's assets, capabilities, and experience to provide IPTV services in additional CenturyTel territories, as well as in Embarq territories. As an IPTV provider, the combined entity is and will continue to be a new entrant in the video marketplace, competing against entrenched dominant providers, such as Comcast and Time Warner, as well as existing television broadcasters and other media properties. However, the transaction gives the merged entity the access to capital and market know-how required for

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<sup>25</sup> Domestic 214 Application, Declaration of Stewart J. Ewing, CenturyTel, ¶ 3 ("Ewing Decl.").

IPTV deployment. CenturyTel can leverage its experience to expand the service in both CenturyTel and Embarq territories.<sup>26</sup>

Furthermore, consumers will benefit in many other ways from the shared resources of the two companies and from the adoption of best practices. For example, CenturyTel has acquired 700 MHz radio spectrum licenses that will be available to the combined company for offering enhanced wireless broadband and voice services.<sup>27</sup> Since neither company today operates a major wireless carrier, and CenturyTel offers virtually no wireless services at all, the merger in conjunction with the use of the new spectrum will provide greater competition for new wireless services. Additionally, Embarq is more advanced in bringing to market Internet Protocol products for business customers. These services can be increasingly offered to the customers of CenturyTel. In short, the combined company will be able to offer consumers a better array of services than either CenturyTel or Embarq could offer on its own. The FCC has recognized the enormous public benefits in approving mergers that will promote availability of broadband and other new services.<sup>28</sup>

**D. The Combined Entity Can Utilize CenturyTel's LightCore Fiber Backbone for Advanced Services against More Entrenched Providers.**

CenturyTel currently has a regional fiber optic network that it utilizes to provide Internet, data, and video communications, as well as voice communications. Embarq has no such facilities. LightCore facilities abut existing Embarq wire centers in Florida, Indiana, Missouri,

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<sup>26</sup> The FCC has not mandated that new services be provided in any specific time period or to particular geographic locations in the past. *See, e.g., Verizon Communications Inc. and MCI Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, 20 FCC Rcd. 18433, ¶¶ 217-18 (2005) ("*Verizon/MCI Order*") (broadband).

<sup>27</sup> Ewing Decl., ¶ 6.

<sup>28</sup> *Verizon/FairPoint Order*, ¶ 30.

Minnesota, and Kansas.<sup>29</sup> Starting in these adjacent exchanges, the merged company can leverage this network into providing higher-quality services to customers in Embarq territories. Today, Verizon and AT&T dominate the provision of Internet backbone facilities. The merger of CenturyTel and Embarq will provide a strong, alternative provider of backbone services. That will promote competition and the aid deployment of advanced services.<sup>30</sup>

**E. The Combined Entity Will Serve Customers With More Efficient Back-Office Systems.**

Embarq currently has quality and modern operation support systems (“OSS”) that it uses to provide wholesale communications services, and it continues to improve these systems to make them more efficient and accessible to users. For example, for many years, Embarq has had an automated ordering system for both access orders and local service requests (“LSRs”). In addition to Embarq’s proven IRES system for LSRs, Embarq recently introduced a system, called EASE, that permits wholesale carriers to submit access ordering and related information online, which reduces errors and improves order cycle times. Embarq is also expanding EASE to include other order types. Competitors use these same OSS to provide their own services to their end users. CenturyTel on the other hand, has older, more manual systems, which comply with FCC and state interconnection rules but cannot provide as rapid and efficient processing as the Embarq systems.<sup>31</sup> Embarq has received numerous awards in the past for its customer provisioning processes.<sup>32</sup> Once the merger is approved, these same systems can be used to

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<sup>29</sup> See Domestic 214 Application, Exhibit 6.

<sup>30</sup> *Verizon/MCI Order*, ¶ 136 (market share redacted); *SBC Communications, Inc. and AT&T Corp., Applications for Approval of Transfer of Control*, WC Docket No. 05-65, FCC 05-183, ¶ 135 (2005)(40 percent market share) (“*SBC/AT&T Order*”).

<sup>31</sup> Declaration of Melissa L. Closz, Embarq, , ¶¶ 2-3 (Jan. 23, 2009), attached as Appendix A (“Closz Decl.”).

<sup>32</sup> For instance, Embarq Wholesale received three awards each in 2007 and 2008 from Atlantic-ACM, based on customer quality reviews. J.D. Power & Associates awarded Embarq

upgrade CenturyTel's capabilities in this area, providing better services to wholesale customers of the combined company.<sup>33</sup> These upgraded back-office systems can be used to improve services to retail, business and wholesale customers.

**F. The Combined Entity Will Be Able to Achieve Operational Efficiencies That Will Reduce Costs and Benefit Consumers.**

As explained in the initial applications, the transaction is expected to generate substantial efficiencies and cost savings.<sup>34</sup> Key drivers of these synergies include the adoption of best practices and capabilities from each company, such as customer care, operational support, and retail billing systems, as well as the reduction of corporate overhead, elimination of duplicate functions, realization of enhanced revenue opportunities, and achievement of increased operational efficiencies.<sup>35</sup> These integration efforts will occur over time, as operations are able to accommodate such integration efficiently. Consumers will benefit from these efficiencies in the form of improved services at competitive prices. The Commission has previously recognized the important public benefits of similar merger-specific efficiency gains.<sup>36</sup>

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Business Markets its top award for enterprise service nationwide in 2007. All of these awards reflect Embarq's commitment to customer support services and provisioning.

<sup>33</sup> Thus, the complaint of NuVox and Socket that the merger should be denied because of inadequate CenturyTel back-office systems therefore has it backwards. NuVox Comments at 4. Since the merger can be expected to improve existing CenturyTel systems, these parties should be promoting the merger, not contesting it. At the very least, the Applicants will not downgrade Embarq's systems as a result of this transaction, and thus NuVox and Socket's complaints about CenturyTel's systems raise no merger-specific concerns.

<sup>34</sup> Ewing Decl., ¶ 12.

<sup>35</sup> *Id.*; Declaration of Jeffrey S. Glover, CenturyTel, ¶ 5 (Jan. 23, 2009), attached as Appendix B ("Glover Decl.").

<sup>36</sup> *See, e.g., In re Applications of Nextel Communications, Inc. and Sprint Corp. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd. 13,967, ¶ 140 (2005) ("*Sprint/Nextel Order*") (recognizing the "merger specific efficiencies in information technology, billing, customer care, sales and marketing systems").

In sum, there are substantial, tangible benefits that will occur from the merger and commenters have provided no real arguments to the contrary.

**IV. THERE WILL BE NO COMPETITIVE HARMS ASSOCIATED WITH THE TRANSACTION AND NO REASON TO IMPOSE ANY CONDITIONS ON THE TRANSACTION.**

While the merger's benefits are virtually uncontested, there are no competitive harms associated with the instant transaction. The proposed merger will combine two mid-size ILECs that have operated in different geographic, and largely rural, territories. Neither of the parties have any plans to operate outside their current service territories, and no substantial history of such competitive operations, and commenters do not suggest otherwise.<sup>37</sup> The competitive significance of this transaction is so inconsequential in response to the parties' Hart-Scott-Rodino filings the antitrust authorities did not send a second request for information but instead promptly sent the companies an early termination letter announcing that they would not challenge the transaction.<sup>38</sup> The Commission too should promptly conclude that the transaction will not adversely affect competition in any market, and therefore that no conditions are warranted.

Commenters ignore the relevant Commission precedent, no doubt because in other mergers involving mid-size telephone companies, the Commission promptly granted the mergers

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<sup>37</sup> CenturyTel has a very few CLEC properties that operate in Embarq territories that it inherited through acquisition of associated ILEC properties. For instance, CenturyTel purchased Madison River Telecommunications, which had been operating CLECs in the Cincinnati market. Because this operation did not meet with CenturyTel's ability to adequately respond to customer needs and its network build out plans, it recently sold those CLEC operations to Cincinnati Bell. Public Notice, *Notice of Domestic Section 214 Authorization Granted*, WC Docket No. 08-47, DA 08-1101 (Wir. Comp. Bur., May 9, 2008). Embarq provides only very limited services outside its ILEC territories. These include inmate payphone and some traditional payphone services and a handful of national business accounts.

<sup>38</sup> FTC Letter at 1.

without attaching any conditions.<sup>39</sup> Indeed, the Commission has approved without condition mergers between large Bell companies and smaller providers, such as the Verizon/FairPoint and Verizon/América Móvil transactions.<sup>40</sup> There is nothing about this merger which should lead to any different treatment, and certainly the few comments have raised no substantial concerns.<sup>41</sup>

**A. There is No Evidence That Competition Will Be Diminished By Grant of the Applications.**

Commenters point to no evidence or to any economic analysis that suggests competition will be diminished as a result of the merger. Rather, they only present theoretical arguments that have been raised in other, much larger mergers.<sup>42</sup> Those concerns have no bearing on this merger. This is a merger between two companies suffering substantial line loss that need to merge simply in order to retain the same economies of scale they enjoyed in their recent pasts. Over the past few years, CenturyTel and Embarq, like many other local providers, have experienced line loss as a result of evolutions in the communications industry, including greater reliance by consumers on wireless services and increased competition from cable companies. Embarq, for example, lost slightly over 6 percent of its switched access lines annually in 2006

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<sup>39</sup> *E.g., Alltel/Valor Notice at 1; Consolidated/North Pittsburgh Notice at 1.*

<sup>40</sup> *Verizon/FairPoint Order, ¶ 2; Verizon Communications, Inc., Transferor and América Móvil, S.A. De C. V, Transferee Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc.(TELPRI), 22 FCC Rcd. 6195, at ¶ 22 (2007) (“Verizon/América Móvil Order”)* (América Móvil conditions only related to standard foreign ownership and Homeland Security concerns raised by the federal government).

<sup>41</sup> The authorities cited by commenters involved vigorous oppositions, and the Commission found serious potential harms that needed to be addressed. *See, e.g., AT&T Inc. and BellSouth Corporation Application for Transfer of Control, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd. 5662 (2007) (“AT&T/BellSouth Order”); SBC/AT&T Order; Applications of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries, File No. NSD-L-96-10, Memorandum Opinion and Order, 12 FCC Rcd. 19985 (1997) (“Bell Atlantic/NYNEX Order”).*

<sup>42</sup> NuVox Comments at 9, 14.

and 2007, and lost 8.6 percent on a year-over-year basis as of September 30, 2008.<sup>43</sup> In fact, Embarq's access line count at the end of 2003 was greater than the combined number of access lines served by the combination of Embarq and Century Tel today. Similarly, excluding its acquisition of Madison River's access lines, CenturyTel has experienced line loss of roughly 5 to 6 percent annually since 2006.<sup>44</sup> The combined entity will serve approximately 7.3 million access lines, fewer access lines than served by Embarq alone in 2003.

The line losses result from the fact that the companies have faced growing competition from much larger competitors. There are now more wireless phones in CenturyTel and Embarq service territories than landline phones. Customers have been disconnecting their wireline phones at an increasing rate, and that rate is accelerating in today's recession. Applicants estimate that approximately 17 percent of all households are now wireless-only subscribers for voice communications in Embarq territories.<sup>45</sup> Cable TV companies have been gaining customers at a rapid rate in the company's territories, providing strong facilities-based competition in CenturyTel's and Embarq's traditional service territories. In Embarq territories at least 75 percent of all customers are capable of receiving voice services from cable TV companies, and about 14 percent currently do so.<sup>46</sup> Similar competitive inroads are being experienced in many CenturyTel properties, with telephone number porting increasing by over

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<sup>43</sup> See Embarq Corporation, Quarterly Report (Form 10-Q) (filed on Oct. 30, 2008); Embarq Corporation, Annual Report (Form 10-K) (filed on Feb. 29, 2008). As of September 30, 2008, Embarq has lost 1.5 million access lines out of the 7.4 million lines it serviced on December 31, 2005. This amounts to a loss of approximately 20 percent of its access lines during the three-year period. Closz Decl., ¶ 4.

<sup>44</sup> See CenturyTel, Inc., Quarterly Report (Form 10-Q) (filed on Oct. 31, 2008); CenturyTel, Inc., Annual Report (Form 10-K) (filed on Feb. 29, 2008). CenturyTel expects access line loss to be between 5.5 and 6.5 percent for the full year 2008. Glover Decl., ¶ 2.

<sup>45</sup> Closz Decl., ¶ 5.

<sup>46</sup> Closz Decl., ¶ 5.

22 percent in 2008.<sup>47</sup> CLECs also target high-value customers and are an active factor in the cities served by CenturyTel and Embarq. Commenters point to no evidence that the instant combination will diminish this growing competition.

As the Commission has recognized, broadband competition also continues to grow.<sup>48</sup> Therefore, it has allowed providers to deregulate broadband services to end user customers.<sup>49</sup> Broadband competition has in particular been robust in CenturyTel and Embarq service territories and can be expected to accelerate in the future with new sources of broadband services from wireless and satellite carriers. In response to this competition, Embarq has deployed DSL to approximately 87 percent of its customers and 10 Mb broadband service to 35 percent.<sup>50</sup> CenturyTel similarly has achieved an 87 percent penetration rate for DSL services in its territories.<sup>51</sup> No commenter suggests that broadband competition, and the broadband deployment it has spurred, would in any way be undermined by this merger. To the contrary, as we have just described, this merger will promote more rapid deployment of broadband services.

Some commenters point to merger conditions voluntarily undertaken by Bell companies in earlier Bell mergers and argue, based on that precedent, that the Commission should impose similar or identical conditions upon this merger. But those arguments make no sense. Large international ILECs compete with each other across the full panoply of telecommunications services—local, interexchange, wireless, wholesale, backbone, broadband and managed services. For instance, Verizon owns large ILECs, the former MCI, a facilities-based interexchange

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<sup>47</sup> Glover Decl., ¶ 3.

<sup>48</sup> *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, CC Docket No. 02-33, 20 FCC Rcd. 14853 (2005) (“*Wireline Broadband Order*”).

<sup>49</sup> *Wireline Broadband Order*, at ¶¶ 50-56, 76.

<sup>50</sup> Closz Decl., ¶ 6.

<sup>51</sup> Glover Decl., ¶ 4.

carrier, substantial Internet backbone facilities, as well as the largest wireless carrier in the country. AT&T is the largest ILEC in the country, and owns the former AT&T, another facilities-based interexchange carrier, substantial Internet backbone facilities, as well as the second largest wireless carrier in the country. Both Verizon and AT&T have been uniquely subjected to stringent federal regulation because they were once part of the monopoly Bell system,<sup>52</sup> and prior to that these companies were subject to restrictions resulting from a series of anti-trust consent decrees.<sup>53</sup>

CenturyTel and Embarq, on the other hand, are far smaller, and were created through the acquisition of much smaller independent ILECs over the years.<sup>54</sup> Neither of them owns any wireless carriers.<sup>55</sup> Neither owns substantial long-distance facilities, and neither provides facilities-based long distance services. CenturyTel's fiber optic network is regional, and is dwarfed in size by the backbones of the major providers, and Embarq has no backbone facilities. Neither of the merging carriers has ever been subject to Section 271 obligations or a Justice Department consent decree. CenturyTel and Embarq have never competed with each other, and even absent a merger there is no prospect that they ever will compete with each other.<sup>56</sup> The merger of these two companies therefore is entirely unlike mergers of large Bell operating

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<sup>52</sup> 47 U.S.C. § 271.

<sup>53</sup> *United States v. American Tel. & Tel. Co.*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub. nom. Maryland v. United States*, 460 U.S. 1001 (1983).

<sup>54</sup> For example, Embarq's Las Vegas market was originally served by Centel Corporation, and its North Carolina properties were served by Contel Corporation. CenturyTel began as a small independent ILEC in Oak Ridge, Louisiana. Its Gulf Shores, Alabama property was acquired from Madison River Communications.

<sup>55</sup> Embarq resells some wireless services and CenturyTel essentially operates no wireless facilities, though it did purchase substantial 700 MHz spectrum in the recent FCC auction.

<sup>56</sup> Ewing Decl., ¶ 9; Domestic 214 Application, Declaration of Dennis G. Huber, Embarq, ¶ 2 ("Huber Decl.").

companies, and it raises none of the competitive issues raised by those large Bell mergers.<sup>57</sup>

Therefore, the commenting parties are simply wrong to compare this transaction to the large Bell mergers and to rely on conditions agreed to in those mergers as precedent here, without any explanation as to why those conditions would advance the public interest here or make the merger more procompetitive.

The most the commenters have to say on this point is that all mergers by definition result in a larger merged entity. But the FCC has repeatedly rejected the view that mergers that result in larger, more efficient carriers are inherently anticompetitive.<sup>58</sup> NuVox and COMPTTEL both assert that the merged entity has the incentive to discriminate against rivals. But NuVox and COMPTTEL offer nothing to show how the proposed transaction could increase the combined firm's incentive or ability to engage in such conduct. Moreover, even assuming their allegation were true, it would be equally true of the two companies premerger, and the relevant question is whether there is anything about the merger that makes it more difficult for federal and state regulators to police and adjudicate claims of misconduct. On this point the commenters are silent. If NuVox fears that the parties may engage in unreasonably high pricing or price discrimination,<sup>59</sup> this behavior is already prohibited by law, and there are sufficient remedies at the federal and state level to remedy any unlawful behavior.<sup>60</sup> With geographically dispersed and largely rural markets, there is nothing about the combined entity that could be characterized as having more significant market power than the separate entities did before the merger.

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<sup>57</sup> See, e.g., *Bell Atlantic/NYNEX Order*, ¶ 8.

<sup>58</sup> *Alltel/Valor Merger Notice* at 1; *Citizens/Frontier Order*, ¶ 5.

<sup>59</sup> 47 U.S.C. §§ 201(b), 202(a).

<sup>60</sup> 47 U.S.C. §§ 204, 208.

**B. There Would Be No Harm to Competition in the Few Areas Where Both Companies Provide Services.**

As explained in the initial applications, the proposed transaction will result in a small number of adjacent and overlapping exchanges affecting a relatively limited number of access lines. Under established Commission precedent, the adjacencies and overlaps involved in this merger pose no threat of consumer harm.<sup>61</sup>

CenturyTel and Embarq have adjacent exchanges in less than 3 percent of their exchanges nationwide. These exchanges involve only a tiny fraction of the Applicants' operations and customer base. Specifically, out of the 4,341 incumbent local exchanges served by the merging companies, CenturyTel CLEC service areas overlap with only three Embarq ILEC exchanges, and only 54 Embarq ILEC exchanges are adjacent to 59 CenturyTel ILEC exchanges.<sup>62</sup> These adjacencies affect a mere 281,000 out of the more than 7.3 million customer access lines served by the Applicants (i.e., less than 4 percent of the access lines).<sup>63</sup>

Additionally, an examination of the particular adjacent exchanges involved in this merger makes it clear that they pose no anticompetitive danger. Nearly all of these exchanges are located in low-density, rural, and less-populated areas that the Commission has recognized "are less attractive

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<sup>61</sup> See, e.g., *In re Joint Applications 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*, 16 FCC Rcd. 15,293, ¶¶ 8-9 (CCB/WTB 2001) ("TDS/Chorus Order").

<sup>62</sup> Ewing Decl., ¶ 7; Domestic 214 Application, Declaration of Gary L. Kepley, Embarq, ¶ 2 ("Kepley Decl.").

<sup>63</sup> Ewing Decl., ¶ 7; Kepley Decl., ¶ 2. The 7.3 million access line figure excludes all company official lines and business trunks. Thus, the percentage of access lines affected is even smaller when accounting for all access lines served by the two companies (approximately 8 million).

to new entrants” and, thus, concerns relating to the loss of potential competition are less acute.<sup>64</sup> Moreover, the Applicants had no plans to compete in these areas, and no evidence suggests that the merger will create any greater opportunity than already existed for the companies to act on their supposed incentive to frustrate the competition they face in their exchanges. For that reason, the Commission has consistently approved transactions, involving a limited number of adjacent exchanges affecting a limited number of access lines.<sup>65</sup>

As to exchanges in which one company’s CLEC operations overlap with another’s ILEC operations, COMPTTEL wrongly claims that the applicants have “conceded” that there will be actual competition lost due to the merger.<sup>66</sup> In fact, there are only three exchanges nationwide where CenturyTel and Embarq have CLEC operations that operate in the other’s ILEC territories, namely, Chaska, Minnesota, and exchanges bordering Fayetteville and Rocky Mount, North Carolina. In these three exchanges, CenturyTel serves a grand total of 130 business customers, and, after the merger is completed, a substantial number of competitors will remain in each market.<sup>67</sup> In Chaska, the merged company will face competition from Level 3, ITC Deltacom, Paetec, Verizon, AT&T, ALEC, and Bandwidth.com, among others.<sup>68</sup> Similarly, in Fayetteville/Rocky Mount it faces competition from XO, Integra, Paetec, and AT&T, among

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<sup>64</sup> See *Citizens/Frontier Order* (approving a merger involving 71 adjacent exchanges varying in size from a couple hundred to 300,000 access lines); *Alltel/Valor Notice* (approving a transaction between Alltel Corporation and Valor Communications Group involving 39 adjacent exchanges varying in size from 104 to 19,216 access lines).

<sup>65</sup> *Citizens/Frontier Order*, ¶ 7.

<sup>66</sup> COMPTTEL Comments at 3.

<sup>67</sup> Ewing Decl., ¶ 8.

<sup>68</sup> *Id.*

others.<sup>69</sup> As a general matter, the Commission has repeatedly found that anticompetitive risk to business customers is limited because businesses generally have more communications options than residential consumers and are more attractive to CLECs.<sup>70</sup> Here, where competition between the merging parties is *de minimis*, and where a significant number of competitors will remain in these areas after the transaction is consummated, the merger poses no risk of competitive harm.

**C. There is No History of Competitive Abuse That Would Justify Denying or Conditioning the Merger.**

NuVox and Socket point to certain interconnection disputes with CenturyTel in the State of Missouri and assert that there is a history of abuse by CenturyTel which must be remedied before allowing the instant merger to take place. In particular, NuVox makes sweeping statements that CenturyTel has delayed providing interconnection facilities, that it has unreasonably long provisioning intervals, that it has deficient and manual OSS, neglectful maintenance practices, error prone billing and directory listings, and an “obstructive” opt-in process.<sup>71</sup> At the same time, NuVox makes clear its strong preference for Embarq’s for its relatively superior interconnection contracts and practices.<sup>72</sup> They offer nothing to suggest that the merger would make interconnection and provisioning worse in CenturyTel areas. To the contrary, the merger is likely to improve provisioning in those areas, a fact that gives no basis for a remedial condition, and in the absence of a public interest harm, it would be arbitrary and

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<sup>69</sup> *Id.*

<sup>70</sup> *See, e.g., 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*, Memorandum Opinion and Order, 15 FCC Rcd. 14,032, ¶ 121 (2000).

<sup>71</sup> NuVox Comments at 12-13.

<sup>72</sup> *Id.* at 13.

capricious for the Commission to impose a remedy. Similarly, the commenters do not allege that the merger will in any way degrade Embarq's provisioning.

These allegations are all based on affidavits of a NuVox executive and one from Socket Telecom. All of these allegations are applicable only to the State of Missouri by their own admission.<sup>73</sup> Even if they had merit, these allegations would not warrant denying or conditioning the merger. But, in any event, these allegations are one-sided, exaggerated and omit important facts that, ultimately, are a distraction from reviewing the requirements necessary in approving this transaction. For instance, Socket erroneously claims that it is CenturyTel's largest UNE-based competitor and claims that it is forced to spend time and expense in submitting bill disputes. While CenturyTel acknowledges that certain billing corrections were needed, Socket fails to point out that it has not sent CenturyTel a bill dispute since May of 2008.<sup>74</sup> Likewise, NuVox claims that CenturyTel's provisioning of DS1s takes on average 16 days, while Embarq takes seven. That is false. CenturyTel consistently meets a nine business day interval.<sup>75</sup> NuVox also claims that it had difficulty in opting into the Socket Telecom interconnection contract in Missouri, although Walsh admits that NuVox was successful in obtaining a contract in two months.

Moreover, CenturyTel employs a mixture of automated and manual OSS in all territories that is based upon the most efficient use of existing systems and in light of the quantity of CLEC order volumes that CenturyTel receives. In Missouri, CenturyTel also has slower, although not unreasonable, provisioning of large business customer circuits because of its rural operations in

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<sup>73</sup> Walsh Affidavit at ¶ 4; Kohly Affidavit at ¶ 2.

<sup>74</sup> Glover Decl., ¶ 8.

<sup>75</sup> *Id.*

that state. However, CenturyTel has made improvements in this area in recent years.

CenturyTel is in compliance with all federal and state rules with respect to this provisioning.<sup>76</sup>

More importantly, virtually all of the issues raised in the NuVox comments and accompanying affidavits pertain to interconnection contracts, UNE loop rates and local services, which historically have all been subject to jurisdiction of the Missouri Public Service Commission pursuant to Section 252 of the Communications Act. Many of these same issues have been fully litigated or are subject to exclusive state commission oversight, approval and jurisdiction.<sup>77</sup> The FCC has routinely refused to consider allegations that are unrelated to the merger before it,<sup>78</sup> and in particular has refused to consider claims raised by existing contractual disputes,<sup>79</sup> especially where procedures are available at state commission to address such issues.<sup>80</sup> NuVox has offered no reason for the FCC to depart from that precedent here.

NuVox and Socket attempt to tie these disputes to the merger by claiming that absent conditions the combined entity will adopt the worst practices of each company—for example, NuVox claims that Embarq will tear out its functioning electronic OSS where it now exists and replace it with inadequate manual processing. This suggestion is absurd. The companies have stated that they plan to make improvements to the wholesale provisioning process by adopting the best practices of both companies.

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<sup>76</sup> *Id.*, ¶ 9.

<sup>77</sup> Glover Decl., ¶ 6.

<sup>78</sup> *See, e.g., Verizon/ América Móvil Order*, ¶ 25; *Verizon/MCI Order*, ¶ 191.

<sup>79</sup> *See, e.g., Verizon/MCI Order*, ¶108 n.327 (citing *S.A. Dawson d/b/a Dawson Associate, Assignment of Licenses for 900 MHz Specialized Mobile Radio Station WNVE296 at Bithlo City, Florida*, File No. 9512R106102, 17 FCC Rcd. 472 ¶ 7 (2002); *Listeners' Guild, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987).

<sup>80</sup> *See, e.g., Applications for Consent to the Assignment and/or Transfer of Control of Licenses of Adelphia Communications Corporation to Time Warner Cable Inc. and Comcast*, MB Docket No. 05-192, 21 FCC Rcd. 8203, ¶ 240 (2006); *Verizon/América Móvil Order*, ¶ 29; *Verizon/MCI Order*, ¶ 191 n.517.

#### **D. No Merger Conditions Are Warranted.**

As the forgoing discussion makes clear, there are no harms which justify the imposition of conditions on a grant of the transaction. The proposed merger would bring substantial public interest benefits, and there are no countervailing public interest harms. Commenters' conditions read like a "wish list" of items that competitors desire to be in the Commission rules. Leaving aside whether the proposed "rules" are justified—which they are not—new rules should not be adopted for one company outside of a rulemaking proceeding. Because the commenters have not demonstrated any harms which are caused by the instant merger, each of these merger conditions proposed by the commenters should be rejected in accordance with past precedent.

Moreover, NuVox's claim to the contrary notwithstanding, the FCC has not imposed conditions even in all large mergers in the recent past and has rarely imposed conditions in transactions like this one, particularly those involving largely rural carriers.<sup>81</sup> Indeed, regardless of the size of the transaction, the FCC routinely refuses to add conditions if they are unrelated to the merger or if they do not address transaction specific harms.<sup>82</sup> All of the conditions proposed here fail for this reason.

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<sup>81</sup> NuVox Comments at 16. Every one of the cited cases involved Verizon or AT&T in one acquisition or another.

<sup>82</sup> See *Applications of Rocky Mountain Radio Co., LLP, Assignor and AGM-Rocky Mountain Broadcasting I, LLC, Assignee for Assignment of Licenses of Seven Colorado Radio Stations and Moss Entertainment Licensee, Inc., Assignor and Salisbury Broadcasting Colorado, LLP, Assignee for Assignment of Licenses of Five Colorado Radio Stations*, 15 FCC Rcd. 7166 (1999); *Applications of KOLA, Inc., Assignor and Ray M Stanfield, Receiver, Assignee; Ray M Stanfield, Receiver, Assignor and Inland Empire Broadcasting Corp., Assignee for Assignment of the License of Radio Station KOLA(FM), San Bernardino, California*, 11 FCC Rcd. 14297 (1996) (citing *Beaumont Branch of NAACP v. FCC*, 854 F.2d 501,507 (D.C. Cir. 1988)); *Application Texas RSA 1 Limited Partnership for Facilities in the Domestic Cellular Telecommunications Service on Frequency Block B in Market No. 652, Texas 1 - Dallam RSA*, 7 FCC Rcd. 6584, 6585 (1992).

## 1. Interconnection Conditions.

COMPTEL and NuVox ask for a variety of special conditions related to interconnections contracts. Specifically, COMPTEL asks that an interconnection contract made in one state, should be made available, on an opt-in basis, in any other state.<sup>83</sup> COMPTEL also asks that an interconnector be able to demand only one price per state.<sup>84</sup> COMPTEL and NuVox ask that current interconnection contracts be renewable for three years following expiration at the interconnector's option.<sup>85</sup>

None of these requested procedures is required under the existing FCC interconnection rules<sup>86</sup> or under the rules of any state. In addition, none of the parties have alleged any facts which would be caused by the merger that would justify such extraordinary procedures.<sup>87</sup> The disputes involving NuVox would not have been avoided were these conditions adopted, and in any event the existence of these disputes evidently has nothing to do with the merger.

Moreover, a multi-state opt-in procedure would be affirmatively harmful in the context of a merged carrier made up of many small, largely rural carriers. These carriers operate in a wide variety of areas with different cost and operational characteristics. Therefore, cross-state opt-ins would deprive the companies of obtaining compensatory pricing as the rules require and

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<sup>83</sup> COMPTEL Comments at 6.

<sup>84</sup> *Id.* at 8.

<sup>85</sup> *Id.* at 6; NuVox Comments at 22.

<sup>86</sup> 47 C.F.R., Part 51.

<sup>87</sup> For instance, NuVox has said nothing that would justify singling out the combined entity and forcing it to freeze existing UNE provisioning or to not seek forbearance from regulation of some services. NuVox Comments at 26. These requirements would be inconsistent with the current law, and therefore should not be adopted.

potentially could obligate a company to deploy facilities and systems where none are available today, whether for interconnecting carriers or for CenturyTel or Embarq themselves.<sup>88</sup>

## 2. Pricing Conditions

Although no commenter has alleged that any current CenturyTel or Embarq prices are unlawful or discriminatory, or demonstrated that such pricing would likely develop become so as a result of the merger, they nonetheless ask for price freezes, rate discounts, or pricing conditions of various types.<sup>89</sup> The Commission has refused to mandate such price terms when there is no showing that the transaction will cause an increase in prices.<sup>90</sup>

Additionally, requiring discounts from UNE pricing would violate the Commission's rules on UNE pricing<sup>91</sup> and would impinge on a state commission's authority to arbitrate interconnection pricing.<sup>92</sup> Any concerns about UNE pricing can be dealt with in the current interconnection negotiation process, and, if necessary, state arbitration proceedings.

Equally important, no commenter has alleged that CenturyTel or Embarq special access prices are unlawful or unreasonably high. CenturyTel and Embarq do not compete with each other for special access, and the merger will have no impact on special access pricing. The

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<sup>88</sup> COMPTTEL asks that existing interconnection agreements be used as a baseline for new agreements. COMPTTEL Comments at 6. This occurs today, and in any event, CLECs already have opt-in rights pursuant to federal law. 47 U.S.C. § 252(i). NuVox argues that CenturyTel should be required to move to Embarq OSS systems within 120 days of the merger. NuVox Comments at 27. As stated previously, the ability of the combined entity to employ more advanced back office systems is a clear benefit to customers. *See* page 10, *supra*. The Applicants plan to consolidate operations to take advantage of the best practices of each company at the appropriate time, together with the other efficiencies to be gained from the transaction. There is no basis for requiring the parties to accomplish such efficiencies on any particular time table.

<sup>89</sup> COMPTTEL Comments at 8; NuVox Comments at 25. To the extent that Socket has concerns with specific prices, there are remedies available at the state and in federal forums in which to raise those concerns.

<sup>90</sup> *Verizon/FairPoint Order*, ¶ 39.

<sup>91</sup> 47 C.F.R. §§ 51.501, *et seq.*

<sup>92</sup> 47 U.S.C. § 252(d).

Commission has an open proceeding on special access issues. Any general concerns about special access or special access pricing should be addressed in that industry-wide proceeding, not in this merger proceeding.<sup>93</sup>

### 3. Reporting Conditions

The New Jersey Rate Counsel argues that the combined entity should have to file ARMIS reports for five years after the merger.<sup>94</sup> Other comments also argue that there should be performance standards conditions placed on the merger.<sup>95</sup> Again, the commenters fail to identify any merger-specific harm that would justify imposition of such reporting conditions. The FCC has already eliminated some ARMIS or other reporting for price cap carriers,<sup>96</sup> and is currently considering the circumstances in which ARMIS reporting should be continued for telecommunications companies.<sup>97</sup> In addition, the FCC has repeatedly refused to impose performance conditions on merged entities without justification.<sup>98</sup> Because these matters are

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<sup>93</sup> *Special Access Rates for Price Cap Local Exchange Carriers*, Order and Notice of Proposed Rulemaking, WC Docket No. 05-25, 20 FCC Rcd. 1994 (2005). The Commission should not adopt COMPTEL's condition that special access pricing be nondiscriminatory, since that is already an obligation imposed by law, and is therefore unnecessary. *See* 47 U.S.C. § 202(a).

<sup>94</sup> New Jersey Rate Counsel Comments at 30. In addition, its request that the combined entity be required to continue to report information separately for both companies is unjustified, unnecessary, and would eliminate some of the efficiencies which can be expected because of the transaction. Therefore, this proposed condition should be rejected.

<sup>95</sup> NuVox Comments at 32. New Jersey Rate Counsel Comments at 24-25 praises both CenturyTel's and Embarq's rising performance quality.

<sup>96</sup> *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, WC Docket No. 08-190, 23 FCC Rcd. 13647, at ¶¶ 18, *et seq.* (rel. Sept. 6, 2008). Both CenturyTel and Embarq have argued in that proceeding that current ARMIS requirements are duplicative of other information that is available and are unnecessary in today's competitive environment.

<sup>97</sup> *Id.* at ¶ 1. The FCC is also considering performance standards in a rulemaking proceeding. *Performance Measurements and Standards for Interstate Special Access Services*, Notice of Proposed Rulemaking, 16 FCC Rcd. 20896 (2001).

<sup>98</sup> *See, e.g., Verizon/América Móvil Order* at ¶ 28 ("We also conclude that it is not necessary or appropriate for the Commission to impose performance measures on various wholesale and retail services . . . ."); *Applications of Puerto Rico Telephone Authority, Transferor, and GTE*

being considered in other forums, and are not necessary to address allegedly caused by the merger, no reporting conditions are warranted.

#### **4. Broadband Service Conditions**

New Jersey Rate Counsel argues that there should be a broadband deployment condition placed on the merger.<sup>99</sup> Both CenturyTel and Embarq have been committed to deploying broadband services to rural America. The combined entity, which is largely rural, will cover approximately 87 percent of its geographic territory with broadband services this year and can be expected to further deploy broadband as economic conditions and capital expenditure plans dictate.<sup>100</sup> There is no plausible argument that the merger would slow down broadband deployment, and every reason to believe to the contrary that the merger will lead to a more robust broadband competitor. There is thus no basis to impose such a condition here.<sup>101</sup>

#### **5. Local Number Portability Conditions**

Before the Missouri Public Service Commission<sup>102</sup> and in the LNP-Working Group of the North American Numbering Council,<sup>103</sup> Socket has argued for a particular kind of geographic location porting for telephone numbers so that it can allow one of its ISP customers to retain a local number from one rate center, while the customer ports to Socket, which provides service to

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*Holdings (Puerto Rico) LLC, Transferee*, Memorandum Opinion and Order, 14 FCC Rcd. 3122, ¶ 29 (1999) (“*GTE/PRTC Order*”).

<sup>99</sup> New Jersey Rate Counsel Comments at 20.

<sup>100</sup> Cloz Decl., ¶ 6.

<sup>101</sup> *Verizon/FairPoint Order*, ¶¶ 29-32 (declining to impose broadband conditions).

<sup>102</sup> The District Court recently issued an order in this proceeding upholding the decision of the Missouri Commission. Order, *CenturyTel of Missouri LLC v. Missouri Pub. Ser. Comm.*, Case No. 08-41-6-CV-C-NKL (W.D. Mo., rel. Jan. 12, 2009).

<sup>103</sup> Letter from Gregory J. Vogt, Counsel for CenturyTel, to North American Number Council (Oct. 25, 2007)(appeal of LNP-WG decision), *as modified*, Minority Report of CenturyTel, Inc. on PIM-60, attached to Letter from Gregory J. Vogt, to North American Number Council, (Feb. 8, 2008). Socket initiated that proceeding at the LNP-WG level and has been actively litigating that case at NANC.

the customer from a distant location and rate center. CenturyTel has opposed this rule change in part because it violates the Commission's current rule against location number porting and would enable Socket to avoid transport charges.<sup>104</sup>

NuVox now proposes to bypass these industry forums, current FCC rules, and the Missouri Commission by requesting the FCC impose this rule as a condition here.<sup>105</sup> The FCC should decline to impose such a condition. This number porting issue was pending prior to the transaction, is unrelated to the merger, and there are other forums which can and have addressed this issue. The FCC has already addressed local number portability requirements in a number of rulemaking orders,<sup>106</sup> and those orders should govern CenturyTel's obligations.

## **6. Miscellaneous Conditions**

Finally, the New Jersey Rate Counsel has proposed a laundry list of miscellaneous conditions<sup>107</sup> that bear no relation to the particulars of this merger, but instead appear to be general policy recommendations that the Counsel evidently would like to see enacted into law. For example, the Rate Counsel would require both companies to guarantee minimum levels of employment<sup>108</sup> and further subsidize services to Lifeline customers. These conditions have nothing to do with the instant proceeding and should be rejected.

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<sup>104</sup> *Telephone Number Portability*, CC Docket No. 95-116, 11 FCC Rcd. 8352, ¶ 182 (1996) (“*LNP First Report & Order*”).

<sup>105</sup> NuVox Comments at 36-37.

<sup>106</sup> See *LNP First Report & Order* and its progeny.

<sup>107</sup> New Jersey Rate Counsel Comments at 30-31.

<sup>108</sup> The Commission has routinely refused to adopt conditions with respect to the levels of employment at a company. *GTE/PRTC Order*, ¶ 58; *Verizon/FairPoint Order*, ¶ 38. Notwithstanding, the company is committed to maintaining sufficient personnel to continue to provide excellent quality service to customers and to provide quality customer contact functions. Both companies have been reducing employee levels even prior to the merger because of declining wireline businesses. It is the hope and expectation of the companies that the transaction can provide the stability necessary to prevent this contraction of the business, to retain current qualified employees in order to serve its subscribers.

**V. CONCLUSION**

For all the reasons stated here and in the initial applications, the Commission should approve the applications without conditions. CenturyTel and Embarq have met their burden of proving that the transaction will produce tangible, public interest benefits. The commenters have failed to prove specific issues that are related to the transaction that could justify placing conditions on the approvals.

Respectfully submitted,

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Of Counsel

Counsel for Embarq Corporation

January 23, 2009

## Certificate of Service

I, Gregory J. Vogt, do hereby certify that I have on this 23d day of January 2009 caused a copy of the foregoing "Joint Reply Comments of CenturyTel, Inc. and Embarq Corporation" to be served by electronic mail upon the following:

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/s/ Gregory J. Vogt  
Gregory J. Vogt

**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. )  
)  
Application for Transfer of Control of )  
Domestic Authorizations Under Section 214 )  
of the Communications Act, as Amended )

**Declaration of Melissa L. Closz**

I, Melissa L. Closz, hereby declare as follows:

1. I am Melissa Closz of Embarq Corp. (“Embarq”). As Director of Wholesale Operations, and as an executive of Embarq, I am very familiar with the activities of the company and the markets in which it provides service to customers. I have read the Joint Reply Comments of Embarq and CenturyTel, and attest that the facts alleged therein are true to the best of my information and belief.

*Embarq Operation Support Systems*

2. Embarq generally receives high marks for its provisioning and provisioning systems from interconnectors in its territories, particularly as compared to others in the industry. Embarq has its own wholesale business with dedicated sales and support personnel. Embarq has

developed modern, efficient back office systems that can be used by competitors in their provision of service to their customers. Embarq Wholesale received three awards each in 2007 and 2008 from Atlantic-ACM, based on customer quality reviews. J.D. Power & Associates awarded Embarq Business Markets top award for enterprise service nationwide in 2007. All of these awards reflect Embarq's commitment to customer support services and provisioning.

3. Embarq continues to improve these systems to make them more efficient and accessible to users. For example, for many years, Embarq has had an automated ordering system for both access and local service requests. In addition to Embarq's proven IRES system for LSRs, Embarq recently introduced a system, termed EASE, that permits wholesale carriers to submit access ordering and related information online, which reduces errors and improves order cycle times. Embarq is also expanding EASE to include other order types. Embarq expects that such high quality systems ultimately will be used in CenturyTel territories after the merger to improve operations in those territories.

#### *Competition in Embarq service areas*

4. Over the past few years, Embarq, like many other local providers, has experienced significant line loss as a result of evolutions in the communications industry, including greater reliance by consumers on wireless services and increased competition from cable companies. Embarq, for example, lost slightly over 6% of its switched access lines annually in 2006 and again 2007, and it lost 8.6% on a year-over-year basis as of September 30, 2008.<sup>1</sup> In fact, Embarq's

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<sup>1</sup> See Embarq Corporation, Quarterly Report (Form 10-Q) (filed on Oct. 30, 2008); Embarq Corporation, Annual Report (Form 10-K) (filed on Feb. 29, 2008). As of September 30, 2008, Embarq has lost 1.5 million access lines out of the 7.4 million lines it serviced on December 31, 2005. This amounts to a loss of approximately 20% of its access lines during the three-year period.

access line count at the end of 2003 was greater than the combined number of access lines served by the combination of Embarq and CenturyTel today. These losses have resulted in decreased economies of scale.

5. The companies have faced growing competition from much larger competitors. There are now more wireless phones in Embarq service territories than landline phones. Customers have been disconnecting their wireline phones at an increasing rate, and it is accelerating in the current recession. Embarq estimates that approximately 17 percent of all households are now wireless-only subscribers for voice communications in Embarq territories, a percentage that is higher in some markets, such as Las Vegas, Nevada. Cable TV companies have been gaining customers at a rapid rate in the company's territories, providing strong facilities-based competition in Embarq's traditional service territories. At least 75 percent of all customers are capable of receiving voice services from cable TV companies, and about 14 percent currently do so in Embarq territories. CLECs target high-value customers and are an active factor in the communities served by Embarq. Facilities-based cable TV companies cover more than three quarters of Embarq's service territories.

6. Embarq has deployed broadband services to some 87 percent of the geographic territories it serves at speeds exceeding 200 kbps in both directions. It can provide speeds of greater than 10 Mb to roughly 35 percent of its access lines. Embarq faces considerable broadband competition from cable TV companies in its territories, as well as from other telecommunications service providers.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my information and belief.

  
Melissa L. Cloz

Executed on January 23, 2009.

**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.	)	
	)	
Application for Transfer of Control of	)	
Domestic Authorizations Under Section 214	)	
of the Communications Act, as Amended	)	

**Declaration of Jeffrey S. Glover**

I, Jeffrey S. Glover, hereby declare as follows:

1. I am Vice President, External Relations of CenturyTel, Inc. (“CenturyTel”). As an officer of CenturyTel, I am very familiar with the activities of the company and the markets in which it provides service to customers. I have read the Joint Reply Comments of Embarq and CenturyTel, and attest that the facts alleged therein are true to the best of my information and belief.

*Competition in CenturyTel service areas*

2. Over the past few years, CenturyTel, like many other local providers, have experienced line loss as a result of evolutions in the communications industry, including greater reliance by consumers on wireless services and increased competition from cable companies.

Excluding its acquisition of Madison River's access lines, CenturyTel has experienced line loss of roughly 5 to 6 percent annually since 2006. In fact, the Embarq's access line count at the end of 2003 was greater than the combined number of access lines served by the combination of Embarq and CenturyTel today.<sup>1</sup> These losses have resulted in decreased economies of scale.

3. The companies have faced growing competition from much larger competitors. There are now more wireless phones in CenturyTel service territories than landline phones. Customers have been disconnecting their wireline phones at an increasing rate, and it is accelerating in today's recession. CenturyTel estimates that approximately 17 percent of all households are now wireless-only subscribers for voice communications in CenturyTel territories. Cable TV companies have been gaining customers at a rapid rate in the company's territories, providing strong facilities-based competition in CenturyTel's traditional service territories. At least 75 percent of all customers are capable of receiving voice services from cable TV companies. The volume of telephone number porting increasing by over 22 percent in 2008 for CenturyTel. CLECs target high-value customers and are an active and growing factor in the cities served by CenturyTel and Embarq. Facilities-based cable TV companies cover 45 percent of CenturyTel's service territories.

4. CenturyTel has deployed broadband services to some 87 percent of the geographic territories it serves at speeds, substantially exceeding 200 kbps in both directions. CenturyTel faces considerable broadband competition from cable TV companies in its territories, as well as from other telecommunications service providers.

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<sup>1</sup> See CenturyTel, Inc., Quarterly Report (Form 10-Q) (filed on Oct. 31, 2008); CenturyTel, Inc., Annual Report (Form 10-K) (filed on Feb. 29, 2008). CenturyTel expects access line loss to be between 5.5 and 6.5 percent for the full year 2008.

### *Merger Efficiencies*

5. The transaction is expected to generate substantial cost savings. Key drivers of these synergies include the adoption of best practices and capabilities from each company, such as customer care, operational support, and retail billing systems, as well as the reduction of corporate overhead, elimination of duplicate functions, realization of enhanced revenue opportunities, and achievement of increased operational efficiencies. These integration efforts will occur over time, as operations are able to accommodate such integration efficiently. The Applicants expect that Consumers will benefit from these efficiencies in the form of improved services at competitive prices.

### *Procompetitive Impact of Merger*

6. NuVox and Socket attempt to elevate certain interconnection disputes in the State of Missouri to prove its self-serving assertion that there is a history of abuse by CenturyTel which must be remedied before allowing the instant merger to take place. These allegations are all based on affidavits of a NuVox executive and one from Socket Telecom. These allegations are one-sided, exaggerated and omit important facts that, ultimately, are a distraction from reviewing the requirements necessary in approving this transaction. For instance, Socket erroneously claims that it is CenturyTel's largest UNE-based competitor and claims that it is forced to spend time and expense in submitting bill disputes. While CenturyTel acknowledges that occasional billing disputes have occurred between the companies in the ordinary course of business, Socket fails to point out that it has not sent CenturyTel a bill dispute since May of 2008. Likewise, NuVox claims that CenturyTel's provisioning of DS1s takes on average 16 days, while Embarq takes seven. This is false. CenturyTel consistently meets a nine business

day interval. NuVox also claims that it had difficulty in opting into the Socket Telecom interconnection contract in Missouri, although Walsh admits that NuVox was successful in obtaining a contract in two months.

7. Moreover, CenturyTel employs a mixture of automated and manual OSS in all territories that is based upon the most efficient use of existing systems and in light of the quantity of CLEC order volumes that CenturyTel receives. In Missouri, CenturyTel has slower, although not unreasonable, provisioning of large business customer circuits because of its rural operations in that state. However, CenturyTel has made improvements in this area in recent years. CenturyTel is in compliance with all federal and state rules with respect to this provisioning. CenturyTel continues to improve its processes and it expects that the instant merger will enable it to make greater strides in this area, a result which should redound to the benefit of NuVox and Socket, as well as other customers.

8. CenturyTel does not have the frequency and aggressiveness of interconnector complaints in any other state in which it operates. CenturyTel follows the law with respect to provision of network services to competitors and interconnection contracts under Sections 251 and 252 of the Communications Act. CenturyTel is able to negotiate contracts with competitors in the vast majority of cases. When a state commission arbitrates interconnection issues, CenturyTel wins some issues and loses others, just like the history of other ILECs and interconnectors. These limited Missouri complaints cannot be taken as a pattern or practice of CenturyTel's approach to interconnection in general.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my information and belief.

  
Jeffrey S. Glover

Executed on January 23, 2009.