

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

**In the Matter of**  
EMBARQ CORPORATION,  
**Transferor,**

**and**  
CENTURYTEL, INC.  
**Transferee.**

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

JOINT COMMENTS IN OPPOSITION TO  
MERCER OF EMBARQ CORPORATION AND CENTURYTEL, INC.

WC Docket No. 08-238

Accelerated Data Works, Inc.  
Dba Acceleration  
January 23<sup>rd</sup>, 2009

Acceleration is a small Internet Service Provider (ISP) based in Gainesville, Florida and primarily services high-speed Internet connections to business customers throughout the Southeastern United States. Our capability to service business users is via vendor relationships like Embarq (LEC), AT&T (LEC), Verizon (LEC), New Edge Networks (CLEC), Covad Communications (CLEC), among others. We purchase the line-share ADSL connection or other similar high-speed product from the local phone company or competitive local exchange carrier and have it delivered back to our network via an interconnection circuit with that same vendor. So there are two components that constitute our ability to provision high-speed Internet or high-speed private data services to customers in a specific LEC footprint such as Embarq. Access to a suite of ADSL services (usually just the ADSL signal provisioned on a phone line the customer already pays for) and the physical interconnection that delivers those ADSL services back to our network. These two components constitute the end-to-end availability of high-speed data (whether Internet or private data) between our network and a customer we wish to service.

Embarq at one point several years ago, in the beginning of the provision of ADSL services, showed some interest in working with ISP's, including negotiating a contract with an ISP association called FISPA which we are a member. Embarq provided pricing that was truly "wholesale", which infers it's provided at a lower cost than Embarq would sell through a retail channel and at the time, it was. Embarq also provided the ability to interconnect via ATM technology (now outdated, but still used by them) and although on the high side of port pricing when compared to their LEC and CLEC peers, it at least it provided an end-to-end wholesale ADSL offering for an ISP to participate. This provided the earliest forms of competition within broadband, speeding up the availability to consumers and keeping the pricing affordable to most residential and small business users.

Over the last couple of years, the relationship between ISP's and Embarq has changed. While Embarq has become considerably more competitive with its retail rates, they have done little to lower wholesale rates, creating a situation where a retail rate to an end-user of ADSL service direct with Embarq is actually less than the ADSL wholesale rate to an ISP. Keep in mind, the wholesale rate to an ISP is ONLY for the actual ADSL signal on the phone line and nothing more. So somehow, Embarq is able to build an ADSL line for a retail customer that includes the ADSL signal component (the part sold to wholesale normally), interconnection and facilities component, all the personnel necessary to support and maintain the service and related facilities, their own upstream Internet, and the other administrative costs of running a business; cheaper than the cost of supplying only the ADSL signal component to an ISP. It is obvious that Embarq at that time had every intention of pushing the ISP out of its markets and that has been largely successful. Another method of anti-competition was to limit the newer, faster ADSL speeds like 10Mb ADSL to only the retail side of Embarq. We're going on two-years now with the

10Mb product being held from our use while their retail sells it in just about every market. Not one ISP has been allowed to touch that service when it is probably a simple ordering system change to affect that.

I'd argue that in Embarq footprints, we see most businesses about two-years behind in technology relating to broadband, private networks, even software applications. Compare a law office in an AT&T area against one in an Embarq area and you might be surprised at how far behind the office in the Embarq area is. Why? Because there aren't many ISP's left, using the ADSL lines to supply newer technologies, like VOIP or advanced web applications. Nothing in an Embarq service territory is ever cutting edge and now you have CenturyTel stepping in, which apparently requires ADSL qualifications and ordering procedures done manually and by paper! I don't work with CenturyTel directly, but I have heard from my ISP peers that they are farther back than even Embarq is, so if anything, I can only see this dragging Embarq down even farther.

It's worth mentioning that although most of the LEC's have allowed their wholesale programs to die a slow death, there is one recent exception. AT&T Southeast recently began to open back up its wholesale ADSL program, making the higher speed products such as 6Mb ADSL available to ISP's. Granted, this was at the end of a long wait of nearly two-years with many ISP's going out of business awaiting changes like this, but they deserve a mention as a LEC that no longer feels a threat by ISP's and is at least trying to reinvigorate some of their wholesale program and see where it leads. I believe Embarq would eventually come to this same conclusion as well if it weren't for the fact they are so far behind the rest of the industry. Watching Embarq is like raising a promising young son or daughter with great intellect and watching them fail out of college. To draw the analogy to the CenturyTel take over of Embarq, it's like them then ending up in jail. Embarq should be the cutting-edge LEC out there, at least in their larger markets. Instead, they are a bumbling mess from their management, to their software systems for ordering/processing, to their lack of product development and facilities planning/building. Now you would have CenturyTel take that over and do what? Make it better when their systems and products are even more ancient?

That brings me to my point. I believe if you really care about promoting technology adoption by these entities and fair pricing for consumers, one way to do that is to force these entities to provide a strong wholesale offering. It would appear Embarq has absolutely no intention of working with ISP's or at least intends to allow CenturyTel to have full decision making power over their ISP relationships. This was obvious in the letter I received from Embarq in December that said, "DSL Commercial Agreement terminated effective January 8<sup>th</sup>, 2009". It goes on to say they have developed a draft agreement for review, most terms do not change from what they are currently, with the notable exception that this contract is only for 3-months, after which it goes month-to-month. That is simply an unworkable arrangement. How can I sell ADSL in an Embarq territory and look my client in the face and tell them they are in good hands, when my ability to service them could end at any moment? That I could be walking them into a situation where they could be down and without Internet for days or weeks in the event Embarq decides one Friday afternoon that they don't want to service ISP's starting

immediately. It's absolutely ridiculous. What is more ridiculous is that I followed the directions on the paperwork sent to me, emailing [negotiation.request@embarq.com](mailto:negotiation.request@embarq.com) and cc'ing my rep, to request this renewal contract by December 15<sup>th</sup> so I'm not shut down. I did this and nothing. I contacted my rep and asked about status. He said status on what? I explained I sent this document in they requested and I hadn't heard anything back and was concerned. He said he didn't think he got it, but maybe he did. This is the ISP national rep or so I'm told. I'm not making this stuff up, this is how they treat ISP's. Having said that, these are usually nice enough people, but they can never get anything done. Upper management I'm continually told doesn't care for the ISP relationship and my assumption is they are trying to kill it by giving it little or no attention. What better way to kill off your ISP partner than to send them a letter that says there is no more Commercial DSL agreement, request this renewal by a certain date or else, then they ignore your request(s). Even if I received the contract, the best they could do would be a three-month term, month-to-month thereafter. There may as well not even be a contract! In essence, they've already killed the ISP program, removed all competition from their infrastructure, while somehow convincing the FCC that they haven't done such a thing. I don't understand how these LEC's get away with what they do. I watch as you, the FCC makes mandates for these providers when they merge or request special provisions from you, then the operations side of their business never actually delivers to the ISP or wholesale company what they promised the FCC they would do in order to get what they wanted. These companies have free reign it would appear and I'm all about free markets and limited regulation, but why offer the regulation if it's not thoroughly enforced and is just words?

Acceleration wishes to continue offering a high-level ADSL product to our customers in Embarq areas and beyond. If Embarq wishes to keep providing vanilla ADSL services, companies like us will take that ADSL service and make it cookies n' cream because that's what the people want and Embarq and the other LEC's simply don't have the granularity to offer such services. If the independent ISP is shut out of these markets, you absolutely will see businesses in those areas suffer. In my opinion, an active wholesale program is a great way to ensure these companies don't fail the consumer. Some issues you may want to address with Embarq / CenturyTel might include;

- 1) Must provide a wholesale program for ADSL that provides for a cost at or below what these services would be sold for retail. In addition, all speeds should be made available to the wholesale ISP that are made to their retail end-users. Nuvox makes a good argument concerning pricing in their comments on pages 39 and 40 if you wish to see examples of actual pricing.
- 2) Provision of ADSL without phone service, i.e. naked ADSL. This is available in most other LEC markets.
- 3) Special access pricing should be given some protections and again I'd refer you to Nuvox's statements on pages 33 and 34.
- 4) UNE and Interconnection – I believe these combined entities should still need to supply UNE DS1 access along with co-location in their central offices to CLEC's. We are not a CLEC, but we can appreciate the value a CLEC can bring to a

service area, especially in Embarq and CenturyTel markets which are typically considered “behind the times” in many regards. CLEC’s help bring up the rear.

If you have questions, please feel free to contact me.

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