

VIA ECFS

EX PARTE

March 12, 2009

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *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 Dkt. No. 08-238*

Dear Ms. Dortch:

On March 11, 2009, Megan Delany, Vice President and Senior Counsel, Federal Government Relations, Charter Communications, Inc. and the undersigned met separately with Scott Bergmann, legal advisor to Commissioner Jonathan Adelstein, and with Nick Alexander, legal advisor to Commissioner Robert McDowell, regarding the above-captioned proceeding.

Consistent with its previous filings in this docket, Charter urged the Commission to impose conditions on the proposed transaction to ensure that the merged firm adopts the best, rather than worst, wholesale practices among the Applicants. A copy of the presentation document on which this discussion was based is attached. Please do not hesitate to contact me if you have any questions or concerns about this submission.

Respectfully submitted,

/s/ Thomas Jones

Thomas Jones

Attorney for Charter Communications, Inc.

Attachment

cc (via email): Scott Bergmann
Nick Alexander

**EX PARTE PRESENTATION OF CHARTER COMMUNICATIONS REGARDING
HARMS POSED BY THE PROPOSED CENTURYTEL-EMBARQ MERGER
WC Docket No. 08-238**

- I. The Public Interest Standard of Review Grants the FCC Sufficient Authority to Impose Conditions Designed to Ensure that the Merged Firm Adopts the Best, Rather than Worst, Wholesale Practices Among the Applicants.

- II. Applicants, Especially CenturyTel, Have Shown a Pattern of Anticompetitive and Discriminatory Conduct.
 - A. Number Portability
 1. CenturyTel refuses to process port requests in excess of an artificial limit of 50 per day from Charter throughout the CenturyTel territory.
 - *Violation of CenturyTel’s duty to provide number portability under Section 251(b)(2) of the Act and of the Commission’s requirement, adopted by reference in 47 C.F.R. § 52.26, that CenturyTel issue an FOC within 24 hours and complete a port within three business days of receiving the request.*
 2. CenturyTel has disrupted and delayed the porting process by requiring that Charter include Personal Identification Numbers as one of the four fields for simple port requests.
 - *Violation of (a) CenturyTel’s duty to provide number portability under Sections 251(b)(2) and 3(30) of the Act; and (b) the Commission’s prohibition against “demanding from the porting-in entity information in excess of the minimum information needed to validate the customer’s request” (2007 LNP Order ¶ 16).*
 3. CenturyTel arbitrarily recovers its carrier-specific costs of providing number portability from Charter by charging Charter for processing port requests.
 - *Violation of the requirement that CenturyTel recover carrier-specific costs associated with providing number portability only through tariffed end-user charges under 47 C.F.R. § 52.33.*
 - B. Directory Assistance and Directory Listing
 1. CenturyTel refuses to accept Charter customer listing information for inclusion in databases CenturyTel maintains for directory assistance and directory publishing. CenturyTel instead requires that Charter establish a separate business relationship with CenturyTel’s third-party directory assistance providers and directory publishers.

➤ *Violation of CenturyTel’s duty to provide competitors with “nondiscriminatory access to” the “directory listing” function under Section 251(b)(3) of the Act as modified by 47 C.F.R. § 51.217(a)(2).*

2. CenturyTel has failed to ensure that Charter customers’ listing information is available to those dialing 411 and has insisted that Charter address such issues directly with CenturyTel’s third-party directory assistance provider.

➤ *Violation of CenturyTel’s duty to provide competitors with “nondiscriminatory access to” the “directory listing” function under Section 251(b)(3) of the Act as modified by 47 C.F.R. § 51.217(a)(2).*

3. Embarq has attempted to impose unreasonable charges on Charter for storage and maintenance of Charter’s directory listings in Embarq’s directory assistance database and for processing Directory Service Requests.

➤ *Violation of (a) Embarq’s duty to provide competitors with “nondiscriminatory access to” the “directory listing” function under Section 251(b)(3) of the Act as modified by 47 C.F.R. § 51.217(a)(2); and (b) the prohibition against unreasonable charges in connection with a communication service under Section 201(b) of the Act.*

C. Interconnection Agreements and Points of Interconnection

1. CenturyTel has imposed substantial unnecessary costs on Charter by forcing Charter to establish interconnection agreements with multiple CenturyTel incumbent LECs in the same state and by slow rolling interconnection agreement negotiations.

➤ *Violation of CenturyTel’s duty to negotiate in good faith under Section 251(c)(1) of the Act.*

2. CenturyTel has imposed substantial unnecessary costs on Charter by forcing Charter to interconnect with multiple CenturyTel incumbent LECs in the same LATA.

➤ *Violation of CenturyTel’s duty to provide interconnection at any technically feasible point on its network under Section 251(c)(2)(B) of the Act and 47 C.F.R. § 51.305(a)(2).*

III. The FCC Should Condition its Approval of the Proposed Merger on the Applicants’ Compliance With Post-Merger Requirements that Ensure the Spread of Best, not Worst, Practices.

PROPOSED CONDITIONS

For purposes of the conditions listed below, the term “carrier” includes any competing provider of telephone service, including any cable operator that provides telephone service in competition with the merged CenturyTel/Embarq entity, regardless of whether such telephone service is classified as a telecommunications service. The phrase “merged CenturyTel/Embarq entity” is defined as the combined CenturyTel/Embarq entity and all of its affiliates as defined in Section 3(1) of the Communications Act. *See* 47 U.S.C. § 153(1).

Use of Embarq OSS

Within 120 days after the Merger Closing Date, the merged CenturyTel/Embarq entity shall, subject to the exceptions described below, utilize the Embarq OSS and Embarq’s platforms/systems, methods and procedures for Maintenance and Repair, Directory Assistance, Directory Listings, 911 Records, and Billing throughout the merged entity.

Number Portability

Beginning 30 days after the Merger Closing Date, the merged CenturyTel/Embarq entity:

Shall comply with the requirements set forth in the North American Numbering Council Local Number Portability Administration Selection Working Group’s reports and recommendations except as such reports and recommendations have been or shall in the future be modified by the FCC.

Shall not limit the number of simple port requests that the merged CenturyTel/Embarq entity shall process from any individual carrier or group of carriers.

Shall not demand from a requesting carrier information, such as a customer’s Personal Identification Number, in excess of the minimum information needed to validate the customer’s port request.

Shall not assess charges of any kind on other carriers for the recovery in whole or in part of any “carrier-specific costs directly related to providing number portability” as that phrase is defined in *Telephone Number Portability*, Third Report and Order, 13 FCC Rcd. 11701 (rel. May 12, 1998), including but not limited to administrative costs associated with processing port requests or Local Service Requests submitted for the purpose of porting telephone numbers.

Directory Listings and Directory Assistance

Beginning 30 days after the Merger Closing Date, the merged CenturyTel/Embarq entity:

Shall treat carriers' submission of carriers' customer listing information and updates to such information in a manner that is nondiscriminatory as compared to submission and updates of the merged CenturyTel/Embarq entity's customers' listing information. In order to comply with this condition, the merged CenturyTel/Embarq entity must, among other things, accept and place carriers' customer listing information and updates to such information, including information submitted via directory service requests ("DSRs"), in the merged CenturyTel/Embarq entity's directory assistance database(s) and published directories. In addition, the merged entity shall provide carriers' customer listing information and updates to such information to third-party directory assistance vendor(s) and third-party directory publishers in the same manner as it provides its own customers' listing information to such third parties.

Shall not charge carriers for electronic storage or maintenance of carriers' customer listing information.

Shall not charge carriers for processing of DSRs.

Shall not list or publish the telephone numbers or other directory listing information of carriers' customers that have requested non-listed and/or non-published status.

Shall ensure that customers of the merged CenturyTel/Embarq entity that dial 411 are provided access to carriers' customer listing information on a nondiscriminatory basis as compared to the customer listing information of the merged CenturyTel/Embarq entity's customers. In order to comply with this condition, the merged CenturyTel/Embarq entity or its third-party directory assistance vendor(s) must, among other things, query all databases in which carriers' customer listing information resides.

Extension of Interconnection Agreements ("ICAs")

Effective as of the Merger Closing Date, carriers that are parties to interconnection agreements with any of the CenturyTel or Embarq entities or subsidiaries may extend their agreements, regardless of whether the initial term has expired, for a period of up to thirty-six (36) months. During this period, the interconnection agreements may be terminated only via the carrier's request.

ICA Portability

Effective as of the Merger Closing Date, and for a period of thirty-six (36) months, the merged CenturyTel/Embarq entities will permit any requesting entity to port an entire interconnection agreement (with the exception of state-specific rates) from one state to any other state within the CenturyTel/Embarq operating territory and from any CenturyTel/Embarq incumbent LEC to any other CenturyTel/Embarq incumbent LEC.

Negotiation of ICAs

Effective as of the Merger Closing Date, CenturyTel and Embarq will permit carriers to utilize existing interconnection agreements as the basis for negotiating new or successor interconnection agreements.

Opting-Into Existing ICAs

Effective as of the Merger Closing Date, carriers will be permitted to opt into existing interconnection agreements and CenturyTel and Embarq will not be permitted to deny those opt-ins on the grounds that the agreement has not been amended to reflect current changes in the law. A carrier opting into an interconnection agreement must agree to negotiate in good faith, immediately after entering into the agreement, an amendment to reflect the change of law. Opt-ins shall be effective no later than thirty (30) days after receipt by the merged CenturyTel/Embarq entity of a formal notice of opt-in by any carrier certified to do business in the relevant state.

Single Point of Interconnection (“POI”)

Beginning thirty (30) days after the Merger Closing Date, and for a period of forty-eight (48) months from the Merger Closing Date, the merged CenturyTel/Embarq entities shall permit requesting carriers to establish a single POI per LATA and that POI shall serve as the POI for all interconnection between the requesting carrier and any CenturyTel/Embarq entities operating in the LATA.