

April 3, 2009

**VIA ECFS**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: ***Ex Parte Letter*** - 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 08-238

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Dear Secretary Dortch:

COMPTEL, DeltaCom, NuVox, Socket Telecom, LLC and Sprint (collectively “Commenters”) respectfully submit this letter to respond to various assertions contained in the joint reply comments previously filed by CenturyTel and Embarq (the “Applicants”) in the above-captioned docket. As the comments and replies filed in the docket by the Commenters and the Applicants make clear, the core issue to be decided in this docket is whether: (a) the Applicants have met their burden of demonstrating that *verifiable* public interest benefits will in fact result from the proposed merger and that those benefits outweigh potential harms associated with the transaction, as the Applicants assert; or (b) conditions/commitments are necessary to create *verifiable* benefits significant enough to offset potential public interest harms, so that the Commission can approve the merger consistent with its precedents, as Commenters assert. The following discussion lends additional support for the latter conclusion that conditions or commitments are indeed required to satisfy the public interest standard applicable to the proposed transaction.

Commission precedent requires that the Applicants demonstrate “verifiable merger-specific public interest benefits,”<sup>1</sup> including concrete ways in which the proposed transaction will have the effect of “**affirmatively advancing competition throughout the region**” served by the Applicants.<sup>2</sup> The Applicants’ initial filings did not accomplish this task, nor do their subsequent reply comment and *ex parte* filings.<sup>3</sup> Indeed, the record to this date

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<sup>1</sup> See NuVox/Socket Comments at 8 (citing *Bell Atlantic/GTE Merger Order*).

<sup>2</sup> See *id.* at 7 (citing *SBC/Ameritech Merger Order* and *Bell Atlantic/NYNEX Merger Order*) (emphasis added); see also *SBC/Ameritech Merger Order*, ¶ 328.

<sup>3</sup> See Joint Reply Comments of CenturyTel, Inc. and Embarq Corp., WC Docket No. 08-238 (filed Jan. 23, 2009) (“Applicants’ Reply Comments”) and Letter to Marlene H. Dortch, Secretary, FCC from John E. Benedict, Director, Embarq, WC Docket No. 08-238 (filed Feb 17, 2009) (including *ex parte* presentation entitled “CenturyTel & Embarq: A Stronger Service Provider...” (“Applicants’ *Ex Parte*”)) and subsequent *ex parte*

contains no evidence of verifiable public interest benefits that will result directly from this merger – let alone benefits of significant enough magnitude to offset likely public interest harms. Commission precedent is clear on this point: vague claims of financial strength, synergies and improvements in service offerings (even when dressed with the terms “advanced services” or “broadband”) are not verifiable public interest benefits and they cannot form the basis upon which the Commission can conclude that the proposed transaction serves the public interest by producing such benefits in a manner that outweighs harms likely to result from the merger.<sup>4</sup>

**1. Applicants Ignore Facts and Precedents – There Are Significant Competitive Harms Associated with the Proposed Transaction**

In reply comments, Applicants continued to assert that “there are no competitive harms associated with the instant transaction.”<sup>5</sup> That statement is incompatible with facts on the record and with Commission precedent. First, Applicants have yet to explain why their combined network map suggests greater actual and potential competition than they discuss in their pleadings.<sup>6</sup> In particular, Applicants barely acknowledge the fiber-rich LightCore competitive access provider (“CAP”) and competitive LEC operations that will be folded into the combined entity. These operations are significant sources of potential competition, if not more. Applicants also ignore the fact that CenturyTel’s 700 Mhz wireless licenses could be used to expand CAP operations in overlapping Embarq territories. With respect to the proposed transaction’s impact on competition from competitive LECs, Applicants’ offering of proof appears to be little more than the statement that competitive LECs are an “active factor” in cities served by CenturyTel and Embarq and that there is “no evidence” that this will change.<sup>7</sup> More important, however, is the fact that there is no evidence that this will not change or that the merger will advance competition throughout the Applicants’ combined footprint.

As discussed in prior submissions by the Commenters,<sup>8</sup> Commission precedents make clear that this merger will create competitive harms. The Commission repeatedly has recognized that combinations of incumbent LECs result in an increased incentive and ability to discriminate against competitive LECs.<sup>9</sup> For example, post-merger, discriminatory activity by CenturyTel in Missouri would not only raise NuVox’s costs in the St. Louis market, but would also detrimentally impact NuVox’s ability to compete in Embarq markets such as Orlando.

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submissions by the Applicants filed on February 18 and 19, 2009 and March 11 and 19, 2009.

<sup>4</sup> See, e.g., NuVox/Socket Comments at n.30 (citing *Bell Atlantic/GTE Merger Order*).

<sup>5</sup> Applicants’ Reply Comments, at 12.

<sup>6</sup> See NuVox/Socket Comments at 10.

<sup>7</sup> Applicants’ Reply Comments at 15.

<sup>8</sup> See, e.g., NuVox/Socket Comments at 8-15; COMPTTEL Comments at 2-5; Sprint Reply Comments at 4-5; DeltaCom Reply Comments at 2-4.

<sup>9</sup> See NuVox/Socket Comments at 10-11 (quoting and citing *SBC/Ameritech Merger Order*) and 14-15 (citing *SBC/Ameritech Merger Order*).

Absent appropriate conditions to mitigate and limit the opportunities for discriminatory conduct, Applicants' incentive and ability to discriminate against rivals will rise considerably. Moreover, in this case, the level of these potential harms is elevated due to the comparatively low levels of competition in the Applicants' service areas and the stark differences between the Applicants' demonstrated commitment to wholesale provisioning and support.<sup>10</sup>

Notably, the Commission has recognized that when pre-merger companies have different practices, those practices of the acquiring company typically prevail post-merger.<sup>11</sup> In this case, these potential harms include electronic OSS giving way to manual processes, provisioning intervals being extended and loop provisioning "hot cut" processes being discontinued, arbitrary limits on number porting being imposed, and more.<sup>12</sup> Applicants thus far have failed to make any commitment that these things – which could have a significant and detrimental impact on competition and consumer choice throughout the Applicants' service footprint – will not happen. The Commission has found that inadequate wholesale provisioning and support will deter entry and deny customers in affected areas the benefits of competition.<sup>13</sup> Thus, in order to ensure that the proposed merger is fully consistent with the pro-competitive objectives of the Act and so that it bolsters competition rather than burdens it, the Commission must adopt conditions or accept enforceable commitments – such as those proposed by the Commenters – not only to mitigate harms but also to affirmatively advance competition throughout the merged entity's enlarged footprint.<sup>14</sup>

**2. Applicants Are Forming a "Leading National Service Provider" With Nearly 8 Million Lines and a Contiguous 33-State Footprint**

Miraculously, Applicants assert that it is the Commenters who have ignored Commission precedent, because in other mergers involving "mid-sized" telephone companies, the Commission granted mergers without attaching any conditions.<sup>15</sup> It is instantly evident,

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<sup>10</sup> See *id.* at 11.

<sup>11</sup> See *id.* (citing *SBC/Ameritech Merger Order*).

<sup>12</sup> See, e.g., *id.* at 12 and 13; see also Walsh/Cadieux Declaration and Kohly Declaration (attached to NuVox/Socket Comments); Mastando/Sharp Declaration (attached to DeltaCom Reply Comments); Kohly Supplemental Declaration (attached hereto).

<sup>13</sup> See *id.* at 13-14 (citing *SBC/Ameritech Merger Order*).

<sup>14</sup> See, e.g., *SBC/Ameritech Merger Order*, ¶ 49.

<sup>15</sup> Applicants' Reply Comments, at 12-13 (citing *Alltel/Valor Notice* and *Consolidated/North Pittsburgh Notice*). Applicants' reliance on the Commission's *Verizon/FairPoint* and *Verizon/America Movil* precedents is similarly misplaced. Applicants' Reply Comments at 13 (citing the Commission's *Verizon/FairPoint* and *Verizon/America Movil* merger orders). At issue in those cases were Verizon transactions involving its incumbent LEC properties in Puerto Rico and Northern New England and in each case the large incumbent LEC was divesting properties – not consolidating them. Moreover, in the Northern New England case in particular was decided against a backdrop of state commissions adopting extensive conditions, which is not the case here.

however, that the two merger cases cited by Applicants in support of this assertion are distinguishable in a number of material respects.<sup>16</sup> First, in terms of access lines, the proposed merger surely dwarfs those involved in each of the two cases cited by the Applicants. The Applicants here are large incumbent LECs looking to become a very large incumbent LEC. Second, in terms of footprint, the Applicants here propose to create an entity vastly larger than those involved in the cases cited. Indeed, the Applicants loudly tout that they are forming “**A Leading National Service Provider**”<sup>17</sup> with operations across a contiguous 33-state footprint. That is a bigger and more contiguous footprint than that which has resulted from any other merger of incumbent LECs. After consummating multiple conditioned mergers, AT&T has contiguous incumbent LEC operations in 20 states – and Verizon has them in far fewer states than that.

Taking a more granular view, this merger will result in combined incumbent LEC operations that appear in terms of footprint to be comparable or more significant than those of the Bells in at least 11 states (Arkansas, Colorado, Florida, Louisiana, Missouri, North Carolina, Ohio, Oregon, Virginia, Washington and Wisconsin). Finally, in terms of ubiquity of the combined entities’ service footprint – which is dispersed in some respects (*e.g.*, Embarq’s very large Las Vegas market is not contiguous with other markets served by the combined entity) and quite concentrated in others (*e.g.*, in the northwest, Florida, Missouri and Wisconsin), this merger looks more like the Bell Atlantic-GTE merger than it does those involving Valor and North Pittsburgh Telephone (as the Applicants suggest). In the Bell Atlantic-GTE merger, despite the somewhat dispersed and somewhat rural nature of GTE’s properties, the Commission’s approval was conditioned.<sup>18</sup>

Applicants’ attempt to distinguish the numerous Commission merger orders in cases involving other larger incumbent LECs is not persuasive.<sup>19</sup> The Commission has adopted

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<sup>16</sup> Other merger cases cited by Applicants are also distinguishable. Indeed, many do not involve combinations of incumbent LECs and even those that do involve much smaller transactions. For example, in the *Citizens/Frontier Merger Order*, cited by Applicants, Applicants’ Reply Comments at n.58, the Commission approved without condition the merger of much smaller incumbent LECs based on a very different record. Indeed, only one competitive LEC opposed the merger and only one (rather small) large market was involved. Here, COMPTTEL, an industry association representing approximately 100 competitive LECs have challenged the merger, along with individual carriers such as Sprint, DeltaCom, NuVox and Socket, who collectively compete against the Applicants in hundreds of markets, including in numerous large metropolitan areas such as Albany, Charlottesville, Ft. Myers, Kansas City, Las Vegas, Naples, Orlando, San Antonio, Seattle, Springfield and St. Louis. The *TDS/Chorus Merger Order* cited by Applicants, Applicants’ Reply Comments at n.61, also involves a much smaller merger, no large market and no competitive LEC opposition.

<sup>17</sup> Applicants’ *Ex Parte* at 3.

<sup>18</sup> *Bell Atlantic/GTE Merger Order*, ¶¶ 179-208 (enhanced incentive and ability to discriminate) ¶¶ 242-375 (conditions).

<sup>19</sup> Applicants’ Reply Comments at 15-17.

merger commitments/conditions in nearly all mergers involving the combination of larger incumbent LECs.<sup>20</sup> The need for a comprehensive set of conditions in these cases was not premised on the fact that one or more of the merging entities was a Bell or was subject to section 271, as the Applicants appear to suggest.<sup>21</sup> Instead, the Commission adopted conditions because the public interest standard required tangible proof that the benefits of those transactions would outweigh competitive harms and the conditions mitigated the harms to the extent necessary to tip the scale in favor of approval.<sup>22</sup>

### 3. Each and Every Proposed Condition Is “Merger-Related”

Applicants’ assertion that Commenters have relied on Commission merger condition precedents “without any explanation as to why those conditions would advance the public interest here or make the merger more procompetitive” is simply wrong.<sup>23</sup> And their assertion that commenters “offer nothing to suggest that the merger would make interconnection and provisioning worse in CenturyTel areas” misses the point entirely.<sup>24</sup> As the filed declarations make clear, it is hard to imagine interconnection and provisioning getting worse in CenturyTel areas.<sup>25</sup> Conversely, it is easy to predict that interconnection and provisioning will get worse in Embarq areas. Commission precedent says so.<sup>26</sup> Past experience with CenturyTel also says so.<sup>27</sup> Moreover, Applicants to date have made no firm commitment that it will not. Although they allude to better Embarq OSS and provisioning intervals prevailing over time, they studiously avoid making any commitments.<sup>28</sup> Absent firm and enforceable commitments,

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<sup>20</sup> See, e.g., *Bell Atlantic/NYNEX Merger Order*, ¶¶ 192-200 and Appendix C: Conditions; *SBC/Ameritech Merger Order*, ¶¶ 348-518 and Appendix C: Conditions; *Bell Atlantic/GTE Merger Order*, ¶¶ 246-372 and Appendix D: Conditions for Bell Atlantic/GTE Merger; *MCI/Verizon Merger Order*, ¶ 222 and Appendix G: Conditions; *AT&T/SBC Merger Order*, ¶ 213 and Appendix G: Conditions; and *AT&T/BellSouth Merger Order*, ¶ 226 and Appendix F: Conditions.

<sup>21</sup> *Id.* at 15-16.

<sup>22</sup> E.g., *Bell Atlantic/GTE Merger Order*, ¶ 247.

<sup>23</sup> *Id.* at 17.

<sup>24</sup> *Id.* at 20.

<sup>25</sup> See Walsh/Cadieux Declaration and Kohly Declaration (attached to NuVox/Socket Comments); Mastando/Sharp Declaration (attached to DeltaCom Reply Comments); Kohly Supplemental Declaration (attached hereto).

<sup>26</sup> See, e.g., *SBC/Ameritech Merger Order*, ¶¶ 157-155.

<sup>27</sup> NuVox/Socket Comments at 30 and Kohly Declaration, ¶ 8 (attached to NuVox/Socket Comments) (describing past post-merger conduct wherein CenturyTel dismantled automated Verizon systems in favor of its own less efficient and less effective processes).

<sup>28</sup> On this point, it is necessary to point out that Applicants are mistaken when they assert that CenturyTel’s DS1 loop provisioning interval is [a woeful] 9 business days and not [an egregious] 15 business days. Socket’s CenturyTel ICAs contain a 15 business day interval. When Socket asked CenturyTel to amend to incorporate the 9 business day

Commission precedent suggests that interconnection, provisioning and a whole host of other important pillars supporting local competition will get worse not only in Missouri but throughout the merged entity's 33-state footprint, as the combined entity adopts those practices of the controlling incumbent LEC merger partner – which, in this case is CenturyTel.

Applicants' claim that they "plan to make improvements to the wholesale provisioning process by adopting the best practices of both companies" is worthless without verifiable and enforceable commitments that establish meaningful time frames and adopt a view of "best practices" as those that facilitate competition and not frustrate it. For example, CenturyTel's management evidently believes that imposing arbitrary conditions on the number of ports a carrier can request and complete in a single day is a best practice. It is a best practice for hindering competition and frustrating consumer choice. To this end, Commenters seek to address the merger-related harm that this practice will likely spread by proposing a condition – the OSS condition – which will ensure that it will not. Similarly, the OSS condition also is intended to address other concerns directly related to the merger and the potential harm that would result if CenturyTel's OSS, Directory Listing and 911 Records platforms/systems/methods/procedures were exported to the Embarq incumbent LEC operations.<sup>29</sup> Similarly, the proposed Billing Platform condition seeks to ensure that the more advanced, reliable and accurate wholesale billing system is not jettisoned in favor of a lesser system.

All other conditions proposed are also "merger-related" and address merger-specific harms.<sup>30</sup> For example, the proposed Order Intervals condition ties directly to the merger-related concern that much longer provisioning intervals currently employed by the acquiring party, CenturyTel, will prevail. The proposed Hot Cuts condition ties directly to the merger-related concern that the Embarq hot cut process will be discontinued to bring the acquired company's processes in line with CenturyTel's competitor- and consumer-unfriendly no hot cut policy.<sup>31</sup> The proposed Number Portability condition ties directly to the merger-related

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interval claimed in Applicant's Reply Comments, CenturyTel declined to do so. Kohly Supplemental Declaration, ¶¶ 14-17 (attached hereto). Moreover, Socket's experience with CenturyTel is that it never meets a 9 business day interval – which makes the CenturyTel claim of consistently meeting a 9 business day interval suspect at best. Again, it appears that Applicants are attempting to talk of improvements but are unwilling to provide verifiable proof of any by offering firm commitments.

<sup>29</sup> Note that CenturyTel previously has replaced electronic wholesale support systems with manual ones. NuVox/Socket Comments at 30 and Kohly Declaration, ¶ 8 (attached to NuVox/Socket Comments) (describing past post-merger conduct wherein CenturyTel dismantled automated Verizon systems in favor of its own less efficient and less effective processes). So, the concern raised here is particularly acute.

<sup>30</sup> Applicants' categorical assertion that the proposed conditions do not address merger-related harms ignores the record and Commission precedent. *See* Applicants' Reply at 23 and n.82 (citing a random series of FCC decisions having little to no relevance to that issues presented in this docket).

<sup>31</sup> *See* Kohly Supplemental Declaration, ¶¶ 5-13 (attached hereto).

concern that CenturyTel's refusal to comport with industry standard number porting processes will be exported across the combined company's footprint. And the proposed Opting-Into Existing Interconnection Agreements condition is intended to curb the spread of dilatory CenturyTel practices regarding opt-ins.

Other conditions relate to the fact that CenturyTel has a history of using its mergers to its own benefit – by effectively operating as a single incumbent LEC, and to the detriment of competitors – by holding itself out as multiple and completely separate incumbent LECs.<sup>32</sup> Confirming the likelihood that these sorts of harms will result and be further compounded by the merger, Applicants' reply comments tout efficiencies and synergies of the proposed merger in one breath (claiming benefits)<sup>33</sup> and claim in another breath that being forced to operate as one under an ICA applicable through porting to any of the Applicants' LECs in any state "would be affirmatively harmful" in the context of a merged carrier made up of many incumbent LECs.<sup>34</sup>

Commission precedent makes clear that a merger applicant should not be able to have its cake and eat it in this way. Indeed, that precedent provides that the merger must provide tangible benefits to competition.<sup>35</sup> Accordingly, several proposed conditions require the Applicants to effectively pass on the benefits they will derive by operating as one large incumbent LEC by removing the barriers maintained through CenturyTel's practice of maintaining separate incumbent LEC operating entities. These conditions include the proposed Interconnection Agreement Portability condition which would allow a competitive LEC to use the same interconnection agreement ("ICA") for all CenturyTel/Embarq incumbent LECs by porting any ICA to any CenturyTel/Embarq incumbent LEC, whether operating in the same state or not. Similarly, the proposed UNE Rate Rationalization and Discount provision is intended to offset CenturyTel's unified for our benefit/Balkanized to their detriment approach to its incumbent LEC operations by unifying UNE rates on a state-by-state basis and then applying a discount to share cost savings and to spur competition, in a manner entirely consistent with Commission precedent.<sup>36</sup> The proposed Special Access Circuit and Plan Portability condition

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<sup>32</sup> *E.g.*, NuVox/Socket Comments at 32; Kohly Declaration, ¶¶ 30-32 (attached to NuVox/Socket Comments); Sprint Reply Comments at 7-8.

<sup>33</sup> Applicants' Reply Comments at 7 ("combining the financial strength...").

<sup>34</sup> *See* Applicants' Reply Comments at 24 (demonstrating that imposition of an ICA Porting condition would be "affirmatively harmful" to CenturyTel's ability to maintain and export barriers to competition). Applicants' assertion that "cross-state opt-ins would deprive the companies of obtaining compensatory pricing and potentially could obligate a company to deploy facilities and systems where none are available today" is baseless. Applicants' Reply Comments at 24-25. The proposed condition, like those from Commission precedents upon which it is based, states "with the exception of state-specific rates" and contains no language that addresses facilities deployment obligations. *See* NuVox/Socket Comments at 22; *see also* Proposed Conditions (attached hereto).

<sup>35</sup> *See* Bell Atlantic/NYNEX Merger Order, ¶ 11; SBC/Ameritech Merger Order, ¶ 49.

<sup>36</sup> *See* Bell Atlantic/GTE Merger Order, ¶ 309; SBC/Ameritech Merger Order, ¶¶ 390, 393. The discount proposal also is supported by the fact that Applicants' UNE rates are high

shares the same merger-related premise and intended mitigating effect. Likewise, the proposed Dedicated Interoffice Facilities and Single Point of Interconnection conditions seek to offset CenturyTel's practice of refusing to offer a single point of interconnection per LATA and interoffice dedicated transport facilities between its offices on a UNE basis.

A final group of proposed conditions are merger-related in accordance with a long line of Commission precedents affirming the principle that conditions such as those proposed here are needed to mitigate the Applicants' increased market power and increased ability and incentive to discriminate and to spur competition and the deployment of advanced services, especially to less densely populated areas.<sup>37</sup> Indeed, in every case involving the merger of two larger incumbent LECs since SBC/Ameritech in 1997, the Commission has adopted verifiable and enforceable merger commitments/conditions based on this premise.<sup>38</sup> Proposed conditions that are merger-related in this manner include the Extension of Interconnection Agreements and Negotiation of Interconnection Agreements<sup>39</sup>, which like the Portability and Opt-In conditions discussed above, seek to reduce transaction costs associated with ICAs and to limit opportunities for discriminatory conduct. The Affiliate Transactions condition also seeks to curb opportunities for discriminatory conduct while mitigating some of the harm caused by eliminating LightCore as a potential source of competitive special access services.<sup>40</sup> The ADSL Transmission Service condition likewise seeks to discourage discriminatory conduct and to firm-up the foundation for the provisioning of competitive ISP advanced services – a step that is particularly important in light of the U.S. Supreme Court's recent *Linkline* decision.<sup>41</sup> The UNE Availability Freeze, Special Access/Broadband Forbearance Freeze, Forbearance Freeze, Transit Service Rate Cap and Special Access Rate Cap conditions seek to provide regulatory stability so that competition, which has been very slow to develop in CenturyTel areas in particular, can establish a firm foundation capable of supporting and spurring investment and broadband deployment by wireline competitors.<sup>42</sup> Proposed UNE Performance Plan and Special Access Performance Plan

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and include non-industry standard charges such as Embarq's DS1 conditioning charges. See Kohly Declaration, ¶¶ 19-21 (attached to NuVox/Socket Comments) and Kohly Supplemental Declaration, ¶ 18 (explaining that Embarq wants to impose additional charges for providing an explanation of non-industry standard charges and describing how the charges result in missed provisioning intervals).

<sup>37</sup> *E.g.*, *Bell Atlantic/GTE Merger Order*, ¶¶ 251, 309.

<sup>38</sup> See n.20 *infra*.

<sup>39</sup> Applicant's claim that they allow competitive LECs to use existing ICAs as the baseline for negotiations of new ICAs today. See Applicants' Reply Comments at n.88. If this is the case, there should be no objection to the proposed condition.

<sup>40</sup> See NuVox/Socket Comments at 10 (describing the Applicants' CAP and competitive LEC operations).

<sup>41</sup> See *Pacific Bell Tel. Co. dba AT&T California, et al. v. Linkline Communications, Inc., et al.*, No. 07-512, slip op. at 15 (U.S. Feb. 25, 2009) (holding that a "price squeeze" claim under Section 2 of the Sherman Act was unavailable with respect to DSL service).

<sup>42</sup> See *AT&T/BellSouth Merger Order*, Appendix F. Notably, the Commission adopted conditions in this order despite rejecting various arguments parties to that proceeding

conditions will ensure that the Applicants' post consummation merger-related integration projects do not divert resources from wholesale support functions in a manner that diminishes performance.

Attached to this letter is the list of conditions that the Commenters urge be imposed on any grant of the Applicants' pending merger. Consistent with Commission precedent, these conditions are designed to address merger-specific harms so as to mitigate them and to produce verifiable benefits significant enough to offset the harms likely to result from the proposed transaction.

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offered in support of them. For example, although the Commission found the "big footprint" to be "theoretically valid," it nevertheless determined based on the record before it that the theory did not justify the imposition of conditions in that case. *Id.* ¶ 185. The Commission did so because (1) commenters did not present a "rigorous theoretical model" of the "merger's incremental impact on AT&T's incentive to discriminate," (2) commenters presented "no convincing empirical evidence" that mergers of other large incumbent LECs led to increased post-merger discrimination against rivals, and (3) because the big footprint theory assumes that the merging parties are not major competitors in each other's service territory. *Id.* This case is clearly different. First, the Commission can squarely rely on its precedents and expertise to affirm the validity of the theory that an enlarged footprint increases merged entities' incentive and ability to discriminate without the need for a "rigorous theoretical model" which is not required and otherwise would be challenged as being too speculative (the only post-merger conduct the Commission can be sure of is that which the Commission requires through conditions or an order incorporating voluntary commitments subject to swift and efficient enforcement). Second, the Commission can easily conclude that any lack of evidence with regard to prior large incumbent LEC mergers leading to increased discriminatory conduct is attributable to its consistent and effective approach of imposing conditions on such mergers. Third, in contrast to the AT&T/BellSouth merger, the Commission can easily discern that the Applicants pre-merger are not major competitors in each other's service territory today. In its *AT&T/BellSouth Merger Order*, the Commission also found arguments regarding the spread of "worst practices" to be "unpersuasive" based on the record before it. *Id.* ¶ 186. In that case, the Commission reasoned that commenters had not presented "a clear and persuasive explanation as to why the merger will cause the merged entity to adopt *worse practices* than the Applicants had prior to the merger." *Id.* (emphasis added). Again, this case is distinguishable. First, relying on Commission precedent, Commenters have in this case provided a clear and persuasive explanation of why the merger likely will result in the merged entity adopting a series of well documented anti-competitive CenturyTel practices throughout the CenturyTel-controlled merged company's footprint thereby diminishing the prospects for effective competition rather than improving them. Moreover, as explained herein, all proposed conditions are clearly merger related. Second, Commenters have not raised the prospect of the merged entity adopting "worse practices" than the Applicants had prior to the merger, but, consistent with Commission precedent, the focus has been on the likely post-merger adoption of existing worst practices of the prevailing incumbent LEC. Thus, the Commission's merger conditions analysis from its *AT&T/BellSouth Merger Order* is distinguishable and the Commission reasonably can rely on a long line of precedents in combination with the particular facts established on the record of this case to find that the public interest requires the imposition of the conditions proposed by the Commenters.

Ms. Marlene H. Dortch  
April 3, 2009  
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Please do not hesitate to contact the undersigned, if you have any concerns or questions.

Respectfully submitted,

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**Supplemental Declaration of R. Matthew Kohly**  
**on behalf of Socket Telecom, LLC**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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In the Matter of )	
)	
Application to )	
Transfer of Control of Domestic )	
Authorizations Held by Embarq )	WC Docket No. 08-238
Corporation to CenturyTel, Inc. )	DA 08-2681
Under Section 214 of the )	
Communications Act )	
_____ )	

**SUPPLEMENTAL DECLARATION OF R. MATTHEW KOHLY  
ON BEHALF OF SOCKET TELECOM, LLC**

1. My name is R. Matthew Kohly. I am the Director of Government and Carrier Relations for Socket Telecom, LLC (“Socket”). My business address is 2703 Clark Lane, Columbia, MO 65201. My primary job responsibilities include managing all matters that affect Socket before federal and state regulatory agencies and legislative bodies. I am responsible for federal regulatory and legislative matters, state regulatory proceedings and complaints, including interconnection negotiations and arbitrations. I am also responsible for negotiating and maintaining Socket’s interconnection agreements with incumbent local exchange carriers as well as contracts with other telecommunications carriers and service providers.
2. Socket is a privately held company headquartered in Columbia, MO. Socket competes with two CenturyTel incumbent LECs, CenturyTel of Missouri, LLC and Spectra Communications Group LLC, Embarq, as well as AT&T (formerly SBC) in the state of Missouri.
3. Socket provides facilities-based competitive local, long distance, internet and integrated communications services to business and residential customers in the state of Missouri. Socket also provides telecommunications services to Internet Service Providers, including

its affiliate, Socket Holdings Inc d/b/a Socket Internet. In addition to these integrated services, Socket also provides stand-alone or naked DSL to both business and residential users. Socket competes primarily in the non-metro areas of Missouri. In many instances, Socket is the only competitive alternative available in some of the more rural areas. It is our belief that Socket is CenturyTel's largest UNE customer in its entire service territory.

4. Socket's network is primarily loop and transport from collocations and, in order to reach most of its customers, Socket combines its own facilities with those leased from incumbent local exchange carriers ("ILECs"). In order to serve business customers, Socket relies upon Extended Enhanced Loops ("EELs"), unbundled network element ("UNE") loops such as DS3, DS1, and xDSL-capable loops, and Special Access Services. In limited circumstances, Socket also serves business customers through resale arrangements. Socket provides services to residential customers primarily through xDSL-capable loops and subloops.

#### **Loop Hot Cut Process**

5. To date, CenturyTel lacks any kind of loop hot cut process much less one available at cost-based rates. Socket's ability to effectively compete in the local exchange market is hampered by this lack of a loop hot cut process available at cost-based rates. A loop hot cut process is a process requiring incumbent LEC technicians to manually disconnect the customer's loop, which was hardwired to the incumbent LEC switch, and physically re-wire it to the competitive LEC switch, while simultaneously reassigning (*i.e.*, porting) the customer's original telephone number from the incumbent LEC switch to the competitive LEC switch<sup>1</sup>. The move from the incumbent LEC switch to the competitive LEC switch is done by redirecting the cross-connects in the central office or serving wire center. As the provisioning work is performed in the central office or serving wire center, incumbent LEC personnel are rarely required to visit the customer premise to install the loop on behalf of Socket. With a loop hot cut process, the loop serving the customer does not

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<sup>1</sup> *Triennial Review Order*, 18 FCC Rcd at 17266, para. 465 n. 1409.

change when the customer changes service providers, avoiding unnecessary deployment of local copper plant and engineering resources.

6. Without a loop hot cut process, an entirely new loop must be provisioned out of existing facilities and the customer then migrated to that loop. As CenturyTel's process for provisioning a UNE loop stands today, when Socket orders an unbundled loop to a customer location, the order is passed to CenturyTel's "assignments" department. This department is responsible for determining whether there are sufficient duplicate facilities available to provision a loop to the customer premise. If that department determines there are sufficient loop facilities available, the order is forwarded on within CenturyTel so that a "new" circuit can be designed and provisioned, which may require a premise visit.<sup>2</sup> Once the loop is in place, the customer's service can be changed so that the customer is served via the new duplicate loop facilities. This will require a premise visit by Socket's installation service group since the customer's inside wire or customer premise equipment must be disconnected from the incumbent LEC's original loop and connected to the competitive LEC's new loop. Also, in many cases the customer will need to call on their PBX vendor to assist in the cutover, causing further unnecessary expense and inconvenience. Additionally, the trouble rates on new DS1s and xDSL-capable loops are higher than services using established facilities causing additional quality issues with the customer and unnecessary resources with the incumbent LEC.
7. If there are not sufficient duplicate facilities available to provision a new circuit for Socket, Socket's order will be placed into "jeopardy" status and the order will not be completed on the original due date<sup>3</sup>. Instead, Socket will be required to accept additional charges as a condition of getting the order installed or have to choose not to serve the

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<sup>2</sup>CenturyTel Service Guide, pgs. 32 – 33,  
<http://business.centurytel.com/business/Wholesale/InterconnectionServices/Library/CenturyTelServiceGuide.pdf>

<sup>3</sup> In Socket's experience, if an order is placed into "jeopardy" status for a lack of facilities, it is usually placed into that status on due date giving no advance notice to Socket.

customer<sup>4</sup>. There are a number of problems with this process. First, when a potential customer considers a switch between carriers, the ability to migrate that customer with minimal disruption to the customer's service is critical to establishing the credibility of competitive carriers. When the order is placed into jeopardy status, Socket has to contact the customer and inform them that, even though Socket sold the customer a service, it cannot deliver the service on the promised due date and, even worse, there are additional expenses that will apply if the customer still wants the service. That is just not a credible way to begin a business relationship with a new customer. It also means that there will be customers that Socket cannot serve because they do not want to wait for additional facilities to be provisioned or it is simply not economical for a new entrant like Socket to serve that customer because of the cost of adding facilities to CenturyTel's network.

8. Socket encounters a lack of facilities on a significant number of orders. During the month of January 2009 for example, Socket encountered a lack of facilities on 24% of its xDSL loop orders that were submitted and not cancelled for other reasons such as the customer location not being served out of the wire center where Socket was collocated.<sup>5</sup>

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<sup>4</sup> For example, Socket recently attempted to serve a business customer through a two-wire loop. After submitting the order and even receiving a firm order confirmation back from CenturyTel, Socket's order was placed into "jeopardy" status on the due date and Socket was notified that the customer's drop only had a single copper pair, which was currently in use by the customer. Following the current process, Socket then sent an e-mail to our account representative to inquire about the cost of adding the additional facilities. Several weeks later, we were informed that a second drop needed to be provisioned and that CenturyTel would install that second drop for \$878.30. That is just economically infeasible for service that Socket sells for \$25.00 per month. It is also problematic in that CenturyTel would have to make no similar financial outlay to serve the customer in the event they won that customer back since there would be facilities available for CenturyTel to serve the customer. This entire "problem" would have been avoided if CenturyTel had a loop hot cut process in place.

<sup>5</sup> As I explained in my initial declaration filed in this proceeding on January 8, 2009, CenturyTel provides no information about which areas are served by a particular wire center where Socket has collocated or intends to collocate. Absent such information, Socket is forced to submit an order and see whether it can be served from Socket's collocation. In sharp contrast, Embarq has provided this information upon requested from Socket.

9. As a “work around” on the residential side, Socket has begun offering a process where Socket ports a customer’s phone number and forwards all calls to another phone number chosen by the customer, such as the customer’s cell phone. Once the number is ported, the customer’s service with CenturyTel is cancelled and the customer’s existing loop is no longer in use. Socket will then place an order for an unbundled loop with the intention of using the facilities freed when the customer canceled the incumbent LEC service. While this may work in some situations, it results in the customer being without landline service for 7 business days, assuming no additional delays such as CenturyTel not promptly removing the customer’s dial tone or rejecting Socket’s loop order because it does not realize the facilities are no longer in use. This length of an outage to change providers is not acceptable to most customers and is certainly not a substitute for an efficient loop hot cut process at cost-based rates. Instead, it shows the desperation that some customers have for a competitive service alternative to CenturyTel. Socket has not offered this process to business customers because it is simply not fathomable that any business would be willing to be out-of-service for over a week in order to change telecommunications providers.
10. Even when there are additional loop facilities available and Socket is able to obtain a loop to a customer premise, there are still operational concerns as the customer is now being served over a newly provisioned loop that has no service history. In Socket’s experience, if a customer is going to have service affecting issues, those are most likely to appear within the first thirty-days of service as any issue with the customer’s loop are worked out.
11. A loop hot cut process would avoid these problems since the customer is served by the same loop even after changing service providers. By re-using the same loop, there would not be any “lack of facilities” and there should be no service issues associated with “breaking in” a new loop.
12. On numerous occasions, Socket has attempted to obtain a loop hot cut process from CenturyTel. On July 8, 2008, I sent a letter to our CenturyTel account representative with a copy to his manager asking for a collaborative process to establish a loop hot cut process

to address the lack facilities issue<sup>6</sup>. I also submitted a bona-fide request (BFR) seeking to develop a loop hot cut process. Socket submitted the original BFR on October 10, 2008. After an initial acknowledgement of the request, CenturyTel has not provided any additional response. Even before these two inquiries, I have previously requested a hot cut process on a more informal basis and even shared information with CenturyTel about the processes used by other incumbent local exchange carriers.

13. In contrast, it is Socket's understanding that Embarq has a loop hot cut process in place. However, Socket is unfamiliar with that process. The rates associated with that process are also unknown at this time, but Socket would expect them to be cost-based rates for the actual work performed.

#### **Standard Interval for DS1 Loop Installation**

14. In my initial declaration filed in this docket, I addressed CenturyTel's 15 business day installation interval for UNE DS1 loops and Extended Enhanced Loops ("EELs"). In its response, CenturyTel stated, "CenturyTel consistently meets a nine business day interval."<sup>7</sup> That claim is inconsistent with every other CenturyTel representation made to Socket regarding the standard interval for a DS1 loop or EEL. Our Interconnection Agreement with CenturyTel contains a 15 business day standard interval for DS1 loops and EELs. This interval is based upon CenturyTel representations that 15 business days is the standard interval for retail DS1 loops. Mr. Glover's statement is also inconsistent with Socket's experience, which is that CenturyTel installs DS1 loops and Extended Enhance Loops (EEL) in 15 business days.
15. This past summer, Socket's sales agents reported repeatedly encountering bid situations where CenturyTel's retail representatives were telling retail customers they could have DS1 retail services installed in less than fifteen business days. Based upon being told this

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<sup>6</sup> That same letter also requested to establish a process or means for identifying which areas within an exchange are served by a particular wire center, office, or hut. As I previously explained, CenturyTel provides no information about which areas are served by a particular wire center or hut where Socket has collocated or intends to collocate. Absent such information, Socket is forced to submit an order and see whether it can be served from Socket's collocation. In sharp contrast, Embarq has provided this information when requested by Socket.

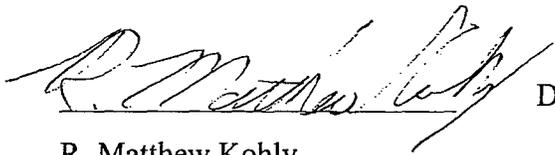
<sup>7</sup> Declaration of Jeffrey S. Glover, pgs. 3 – 4.

on multiple occasions, I inquired whether CenturyTel's standard interval had changed. As recently as July 2008, it was reiterated to me that 15 business days was the standard interval for a DS1 loop. In fact, it was our understanding that an order submitted with a due date of less than fifteen business days would be rejected. Mr. Glover's statement is simply inconsistent with CenturyTel's prior representations and Socket's experience with CenturyTel.

16. Looking at Mr. Glover's statement as a way to make progress, I contacted CenturyTel about the new interval and sought to amend the interconnection agreement to reflect the new, shorter interval. It was explained that the nine business day interval was an interval that CenturyTel would try to hit but could make no guarantees. As they could make no guarantees, I was told the standard interval remained fifteen business days and the interconnection agreement did not need to be amended. This meant that the standard interval and related performance measures set forth in our interconnection agreement, and for which Socket could hold Century accountable, would remain tied to the longer interval.
17. As a practical matter, having a shorter interval with no real guarantee of meeting that interval is of little or no value. Absent a commitment to meet the 9 business day installation interval, Socket cannot rely upon meeting that interval when scheduling a retail customer's installation date. Having a degree of certainty is just as important, if not more important, than possibly being able to shave a few days off an installation interval. As a new entrant, Socket believes that it is important to instill customer confidence. That is done by meeting installation commitments not scheduling a shorter interval and then missing it. Simply put, the competitive nature of our business requires us to meet our customer expectations. It is our experience that customers are tired of suppliers over promising and under delivering.
18. It is Socket's understanding that Embarq's standard interval is six business days. Embarq generally met a five business day interval until last year. Embarq began missing this interval when it began applying "conditioning" charges on almost every single DS1 loop ordered by Socket. When conditioning charges are applied, Embarq will notify Socket that additional conditioning charges are required in order to have the loop installed. These charges range from \$100 to \$400. Socket either has to accept the charges or choose to not

serve the customer. If Socket accepts the charges, Embarq will reset the installation interval and the loop will be installed in five business days from when Socket accepted the charges. Ironically, when Socket has inquired about the details of the conditioning work that Embarq asserts is necessary, Socket is told that it must request a loop pre-qualification inquiry in order to find out what work will be done. A loop pre-qualification inquiry has a non-recurring charge of \$41.54. It does not seem reasonable that Embarq is attempting to charge Socket for conditioning work but is unable to tell Socket exactly what work it believes is necessary unless Socket submits an inquiry.

I assert under penalty of perjury that the foregoing is true and correct to the best of my information and belief. This concludes my declaration.

A handwritten signature in black ink, appearing to read "R. Matthew Kohly", written over a horizontal line.

Dated: April 1, 2009

R. Matthew Kohly

**PROPOSED CONDITIONS**

## PROPOSED CONDITIONS

### 1. **Conditions to Reduce Transaction Costs Associated with Interconnection Agreements**

**Extension of Interconnection Agreements** – 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 only be terminated at the competitive LEC's request.

**Interconnection Agreement 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 Interconnection Agreements** – 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 Interconnection Agreements** – 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 of 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 competitive LEC certified to do business in the relevant state.

## PROPOSED CONDITIONS

### 2. **Conditions Related to Unbundled Network Elements**

**UNE Rate Rationalization and Discount** – Within thirty (30) days of the Merger Closing Date, the merged CenturyTel/Embarq entity(ies) shall file with each state in its incumbent LEC operating territory a tariff to offer section 251 network elements at a twenty-five percent (25%) discount from lowest UNE rate offered by any CenturyTel/Embarq incumbent LEC as of January 1, 2009. Non industry-standard Rate elements such as loop conditioning for DS1 circuits shall be waived or eliminated without any increase to standard nonrecurring charges. The discounted UNE rates will be available to competitive LECs serving any of the Applicants' markets in a state and shall stay in effect for a period of thirty-six (36) months from the date such rates become effective. Interconnection agreement amendments, to the extent required by change-of-law provisions, or otherwise, will be deemed effective as of the effective date of the tariff and the parties will true-up accordingly.

**UNE Availability Freeze** - For a period of forty-eight (48) months, beginning on the Merger Closing Date, the merged CenturyTel/Embarq entities shall not seek a ruling, including through the filing of a forbearance petition under section 10 of the Act or any other petition, altering the status of any facility currently offered as a loop or transport UNE under section 251(c)(3) of the Act.

**Use of Embarq OSS** - Within one hundred and twenty (120) days after the Merger Closing Date, the merged CenturyTel/Embarq entity shall utilize the Embarq OSS and Embarq's platforms/systems, methods and procedures for Maintenance and Repair, Directory Listing, 911 Records, and Number Porting throughout the merged entity.

**Order Intervals** – Within sixty (60) days after the Merger Closing Date, and for a period of forty-eight (48) months, the merged CenturyTel/Embarq entity shall adhere to the shortest ordering and provisioning intervals for wholesale service orders in place at any CenturyTel/Embarq incumbent LEC as of January 1, 2009.

## PROPOSED CONDITIONS

**Dedicated Interoffice Facilities** – Beginning thirty (30) days after the Merger Closing Date, and for a period of forty-eight (48) months, the merged CenturyTel/Embarq entities shall make available as UNEs dedicated DS1 and DS3 interoffice facilities connecting tandems, end offices and other switch locations of CenturyTel/Embarq entities with adjacent operating territories within the same local access transport area (“LATA”) or with subtending end offices/switches.

**UNE Loop Hot Cuts** – Beginning within one-hundred and twenty (120) days after the Merger Closing Date, the merged CenturyTel/Embarq entity shall implement, throughout the merged entity, and make available to competitive LECs Total Element Long Run Incremental Cost (“TELRIC”) -compliant coordinated loop and bulk loop Hot Cut processes for use with UNE loops, UNE subloops, xDSL-capable UNE loops and xDSL-capable UNE subloops.

**UNE Performance Plan** – Beginning within forty-five (45) days after the Merger Closing Date, and continuing for a period of forty-eight (48) months, the combined CenturyTel/Embarq will prepare and file quarterly performance metrics related to their provision of unbundled network elements.

### **3. Conditions Related to Special Access and Other Wholesale Services**

**Affiliate Transactions** – With regard to the provision of special access services, and for a period of forty-eight (48) months from the Merger Closing Date, no CenturyTel/Embarq entity or affiliate, as defined in 47 U.S.C. § 153(1), shall (i) provide any of its affiliates with rates, terms and conditions that are not available to other entities; (ii) favor itself or its affiliates in the provisioning, maintenance, customer care, OSS functionalities and grooming of special access circuits.

**Special Access Rate Cap** - For a period of forty-eight (48) months after the Merger Closing Date, the merged CenturyTel/Embarq entities shall continue to offer and provide all special access services at rates no higher than those in effect, whether by application of a tariff or contract, as of January 1, 2009.

## **PROPOSED CONDITIONS**

**Special Access Circuit and Plan Portability** - The merged CenturyTel/Embarq entities shall permit a requesting telecommunications provider to port the entirety of an existing special access plan or commercial agreement (except for state specific rates) from one CenturyTel/Embarq incumbent LEC to another and from a state where it currently is effective to another state in its territory. Parties with these plans should be able to replace existing plans and move or port circuits within and between plans and CenturyTel/Embarq incumbent LECs without penalty or additional cost.

**Special Access/Enterprise Broadband Forbearance Freeze** – Beginning on the Merger Closing Date, and continuing for a period of forty-eight (48) months, the merged CenturyTel/Embarq entities shall not seek a ruling, including through the filing of a forbearance petition under section 10 of the Act or any other petition, seeking further deregulation of any special access services, including “enterprise broadband” services.

**Special Access Service Performance Plan** – Beginning within forty-five (45) days from the Merger Closing Date and continuing for a period of forty-eight (48) months, the combined CenturyTel/Embarq entity will prepare and file quarterly performance metrics related to their provision of special access services.

#### **4. Other Conditions**

**Number Portability** – Beginning thirty (30) days after the Merger Closing Date, the merged CenturyTel/Embarq entities shall comply with industry best practices regarding number portability, including the Local Number Portability Administration – Working Group’s Industry Best Practices.<sup>1</sup>

**Single Point of Interconnection** – Beginning thirty (30) days after the Merger Closing Date, the merged CenturyTel/Embarq entities shall permit requesting entities to establish a single

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<sup>1</sup> See Local Number Portability Administration – Working Group, Industry Best Practices Document *available at* [www.npac.com/cmas/LNPA](http://www.npac.com/cmas/LNPA).

## PROPOSED CONDITIONS

point of interconnection (“POI”) per LATA and that POI shall serve as the POI for all interconnection between the requesting entity and any CenturyTel/Embarq entities operating in the LATA.

**Cap on Transit Service Rates** – Beginning thirty (30) days after the Merger Closing Date, and continuing for a period of forty-eight (48) months from the Merger Closing Date, neither CenturyTel nor Embarq will increase the rates paid by competitive LECs as of January 1, 2009 for transit tandem services<sup>2</sup> provided by CenturyTel or Embarq in the combined CenturyTel/Embarq region.

**ADSL Transmission Service** – CenturyTel/Embarq will offer to Internet service providers (“ISPs”), for their provision of broadband Internet access service to ADSL-capable retail customer premises, ADSL transmission service in the combined CenturyTel/Embarq territory that is functionally the same as any retail ADSL service offered by CenturyTel/Embarq to the same retail customer premises. Such wholesale offering shall be at a price not greater than the retail price in a state for ADSL service that is purchased by customers who also subscribe to CenturyTel/Embarq local telephone service whether purchased separately or in bundled service offerings.

**Use of Most Advanced Billing Platform** – Beginning within one hundred and twenty (120) days after the Merger Closing Date, the merged CenturyTel/Embarq entity will utilize the most advanced and reliable platforms/systems, methods and procedures in place throughout the merged entity for billing of wholesale services.

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<sup>2</sup> “Tandem transit service” is as defined by the Commission in the *AT&T/BellSouth Merger Order* – “Tandem transit service means tandem-switched transport service provided to an originating carrier in order to indirectly send intraLATA traffic subject to § 251(b)(5) of the Communications Act of 1934, as amended, to a terminating carrier, and includes tandem switching functionality and tandem switched transport functionality between an AT&T/BellSouth tandem switch location and the terminating carrier” *AT&T/BellSouth Merger Order*, Appendix F: Conditions at 153, n.11.

## **PROPOSED CONDITIONS**

**Forbearance Freeze** – Beginning on the Merger Closing Date, and continuing for a period of forty-eight (48) months, the merged CenturyTel/Embarq entities shall not file any forbearance petition under section 10 of the Act.