

April 10, 2009

**EX PARTE PRESENTATION**

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

Re: Transfer of Control of Embarq Corp. to CenturyTel, Inc., WC Docket No. 08-238

Dear Ms. Dortch:

CenturyTel, Inc. (“CenturyTel”) and Embarq Corporation (“Embarq”) (collectively the “Applicants”) jointly submit this letter to respond to letters filed by other parties since the Applicants’ submitted their reply comments on January 23, 2009.<sup>1</sup> The Applicants encourage the Commission to approve this transaction promptly and without the various conditions sought by those other parties.

As CenturyTel and Embarq have explained in the Application and in the reply comments, this transaction is in the public interest.<sup>2</sup> It is good for the consumers and communities that the Applicants serve. The combined company will be a stronger service provider and network investor. The combination will promote investment and the availability of broadband, advanced, and new services. It will promote greater fiber backbone competition. It will allow use of more efficient back office systems. It will bring about operational efficiencies that will help reduce costs and benefit consumers. The transaction will improve service for consumers.

At the same time, it poses no anti-competitive harm.<sup>3</sup> The Federal Trade Commission found the CenturyTel/Embarq transaction raises no antitrust concerns and warranted no further investigation.<sup>4</sup> The Applicants have no history of competitive abuse that would warrant denial or condition of the transaction. Competition will not be diminished by the combination, and there will be no harm in the very few places where both companies provide services.

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<sup>1</sup> Joint Reply Comments of CenturyTel, Inc. and Embarq Corporation, WC Docket No. 08-238, at 20-28 (Jan. 23, 2009)(“CenturyTel/Embarq Joint Reply”). The facts contained in this letter are supported by declarations of CenturyTel and Embarq officers, which are attached.

<sup>2</sup> CenturyTel/Embarq Joint Reply at 4-12.

<sup>3</sup> *Id.* at 12-23.

<sup>4</sup> Federal Trade Commission, *Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules*, 73 Fed. Reg. 75117 (Dec. 10, 2008).

Parties previously uncertain about the merger have already withdrawn their opposition. The Communications Workers of America and the International Brotherhood of Electrical Workers had initially sought conditions on the transaction, but they dropped any opposition to the transaction, concluding they were satisfied by “the resources devoted to local telephone infrastructure and operations” by the Applicants.<sup>5</sup> Similarly, the New Jersey Division of Rate Counsel, which at first filed a request for conditions at the Commission, entered into a stipulation before the New Jersey Board of Public Utilities that urged approval of the transaction without any conditions.<sup>6</sup>

The only parties in this proceeding continuing to raise objections or seek conditions are the Applicants’ direct competitors. Understandably, those customers hope to secure commercial advantage through their participation in the Commission’s merger Application review process. Embarq and CenturyTel recognize that these competitors are their valued wholesale customers, however, and wholesale service is an increasingly important part of their business going forward. The Applicants have every reason to deal fairly and reasonably with their wholesale customers.

The Commission should recognize that parties seeking conditions are raising claims that largely have already been adjudicated at the state level. Their claims are exaggerated and unrelated to the merger. The Applicants nevertheless have committed that they will adopt the best practices of either company for the merged entity. This commitment is a major benefit to the public interest, as well as to interconnector’s own private interests. To further address interconnectors’ concerns, the Applicants make the following further commitments:

- For Embarq companies, the merged company will maintain substantially the service levels that Embarq has provided for wholesale operations, subject to reasonable and normal allowances for the integration of CenturyTel and Embarq systems.
- CenturyTel will integrate, and adopt for CenturyTel CLEC orders, the automated Operation Support Systems (“OSS”) of Embarq within fifteen months of the transaction’s close.
- In the interim, CenturyTel will devote additional resources to its existing manual CLEC order processing system to ensure that all local number portability requests are promptly processed.
- The Applicants are willing to negotiate multiple contracts in a state at the same time in most circumstances when such consolidated negotiations will aid in addressing common issues.

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<sup>5</sup> Letter from Debbie Goldman, Communications Workers of America, & Edwin D. Hill, International Brotherhood of Electrical Workers, to Marlene Dortch, FCC, WC Docket No. 08-238, at 1 (filed Mar. 5, 2009).

<sup>6</sup> Joint Stipulation and Agreement Between United Telephone Co. of New Jersey, Inc., and the New Jersey Division of Rate Counsel, BPU Docket No. TM08111017 (N.J. Bd. Pub. Utils., Jan. 29, 2009). On April 3, 2009, The New Jersey Board of Public Utilities voted to approve the joint stipulation.

These significant commitments simply add to the public interest benefits of the merger. To the extent parties seeking conditions cited problems with either Applicant, those issues existed before the merger. They are not caused by the merger and, consistent with Commission practice, do not justify conditions. Accordingly, the Applicants urge the Commission to approve this transaction without conditions, and to do so as expeditiously as possible.

**I. THE CLAIMS MADE BY COMPETITORS ARE OVER-STATED AND UNRELATED TO THE MERGER.**

**A. General Allegations**

Competitors have raised some new claims in their ex parte letters, virtually all of which relate to allegations about the Applicants' provision of interconnection and related services.<sup>7</sup> Some of these parties claim that CenturyTel's wholesale systems are generally inferior to Embarq's, and assert that CenturyTel will deliberately downgrade the performance of Embarq's systems.

The Applicants take complaints about wholesale provisioning seriously, because the wholesale business is very important to the merged company's future. Most of the claims expressed involve manual processes used by CenturyTel. CenturyTel has used manual processes because it has not previously had sufficient scale or order levels to justify the high cost of installing automated systems. The Applicants are committed to working with their wholesale customers to rectify problem issues, and they intend to upgrade CenturyTel's wholesale systems to reduce costs and improve wholesale provisioning after consummation of the merger. However, most of the claims raised by these competitors about wholesale processes are misplaced, or they involve genuine disputes about what the law requires.

Those competitors have raised a number of issues before state public utility commissions between CenturyTel and interconnecting Competitive Local Exchange Carriers ("CLECs"). The contested issues asserted are largely unique to Missouri, and CenturyTel has not experienced the same level of complaints elsewhere. CenturyTel believes these complaints are part of the normal process whereby parties genuinely dispute the meaning of regulations and contractual terms, and are fairly advocating positions in their corporate interests. Both CenturyTel and interconnecting parties win some of these issues and lose others when they are arbitrated by state commissions. State commissions have been fully engaged in helping to resolving these issues, and the arbitration process is working as the Communications Act intended. No one has alleged otherwise.

The Applicants respond to each of the additional issues raised in ex parte letters in turn.

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<sup>7</sup> See, e.g., Letter from Thomas Jones, Attorney for Charter Communications, Inc. to Marlene H. Dortch, FCC, WC Docket No. 08-238, at 2 (filed Feb. 27, 2009)("Charter Ex Parte"); Letter from Charles W. McKee, Sprint-Nextel Corp., et al., to Marlene H. Dortch, FCC, WC Docket No. 08-238 (filed Apr. 3, 2009)("COMPTTEL Ex Parte").

## B. Specific Issues

### 1. Directory Listings

Charter Communications, Inc. (“Charter”) alleges that both CenturyTel and Embarq discriminate in the administration of directory information.<sup>8</sup> Specifically, Charter complains that the Applicants require Charter to deal directly with third-party directory publishers and directory assistance providers or else pay fees to have the Applicants themselves handle directory information changes. Charter asserts that these practices violate 47 U.S.C. § 251(b)(3) and 47 C.F.R. § 51.217(a)(2). Charter is mistaken.

As Charter itself makes clear, the Commission’s rules define “nondiscriminatory access . . . to directory listing” under Section 251(b)(3) as “access . . . that is *at least equal to the access that the providing local exchange carrier (LEC) itself receives.*”<sup>9</sup> Neither CenturyTel nor Embarq publish directories or maintain a directory assistance database, but rather both have entered into contracts with third parties to perform these functions. The directory publishers and directory assistance providers are nationwide companies that provide listing and database services nationwide for a number of companies.<sup>10</sup>

By having Charter deal directly with these third-party vendors, the Applicants are providing access that is precisely “equal” to what the Applicants receive. CenturyTel and Embarq themselves must interface and provide directory listing information to the third party directory providers. Charter and other interconnectors have the exact same access.

Charter appears to want *superior* access to directory services—to have an agent (here, one of the Applicants) work with the third-party provider and to ensure the accuracy of information. Such superior access is not required by statute or Commission rules. Moreover, even though such superior access is not required, both CenturyTel and Embarq do offer this superior access for a fee, as Charter acknowledges.<sup>11</sup> CenturyTel

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<sup>8</sup> Charter Ex Parte at 7-10 (quoting 47 C.F.R. § 51.217(a)(2))(emphasis supplied by Charter)).

<sup>9</sup> *Id.* at 8.

<sup>10</sup> CenturyTel’s directory publisher is LM Berry and its directory assistance provider is AT&T. Embarq’s directory publisher is RR Donnelley & Sons.

<sup>11</sup> Charter criticizes CenturyTel for a change made by CenturyTel’s former directory assistance provider without CenturyTel’s knowledge in early 2007. As one result of the issues with that former directory assistance provider, CenturyTel contracted with a new vendor in late 2007, and Charter has admitted in written testimony that there have been no problems since the change of providers. Direct Testimony of Amy Hankins, Case No. TO-2009-0037, at 13-14 (Mo. Pub. Serv. Comm. Sept. 30, 2008). CenturyTel’s practices have been recently approved by the Missouri Commission. *Petition of Charter Fiberlink-Missouri, LLC for Arbitration of Interconnection Rates,*

and Embarq are thus in full compliance with federal and state requirements, as state commissions have concluded.<sup>12</sup>

In any case, like other claims, these allegations have nothing to do with the transaction before the Commission. Charter has and could in the future raise these issues in the states pursuant to dispute resolution or Section 251 clarification petitions or before the Commission in a generic proceeding applicable to similarly situated parties. Those are the appropriate vehicles for such disputes, not this merger review proceeding.<sup>13</sup>

## 2. Single Point of Interconnection

Charter also complains that CenturyTel requires Charter to establish a separate point of interconnection (“POI”) for each CenturyTel ILEC, and asserts that where multiple CenturyTel ILECs operate within a single LATA, Charter should be allowed to use a single POI for all of them.<sup>14</sup>

CenturyTel requires separate POIs for different local operating companies where they are not contiguous. CenturyTel does not typically own a tandem switch or transport

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*Terms, Conditions and Related Arrangements with the CenturyTel of Missouri, LLC Pursuant to 47 U.S.C. § 252(b), Arbitrator’s Report, Case No. TO-2005-0037, at 104-05 (Jan. 6, 2009), adopted by Order Adopting Final Arbitrator’s Report (Mo. Pub. Serv. Comm. Feb. 25, 2009)(“Charter Fiberlink-Missouri Arbitration Order”).*

<sup>12</sup> *Petition of Comcast Phone of Central Indiana, LLC for Arbitration of an Interconnection. Agreement with United Telephone Company of Indiana, Inc. d/b/a/ Embarq Pursuant to Section 252 of the Federal Telecommunications Act of 1934, as Amended, and Applicable State Laws, Cause No. 43462 INT 01, at 15-16 (Ind. Util. Reg. Comm. Nov. 6, 2008). The FCC has not addressed the issue of nondiscrimination in the use of a third-party directory listing database provider. Nevertheless, its entire rationale for mandating access rested on the monopoly control over a directory listing database, a fact which is not present with respect to either CenturyTel or Embarq. See, e.g., Provision of Directory Listing Information under the Communications Act of 1934, as Amended, CC Docket No. 99-273, First Report and Order, 16 FCC Rcd 2736 (2001) (rationale for competitive access to directory listings based on a LECs monopoly control over directory listing database).*

<sup>13</sup> NuVox also raises the issue of inaccurate directory listings. Comments of NuVox and Socket Telecom, WC Docket No. 08-238, at 3 (filed Jan. 8, 2009)(“NuVox Comments”). The parties do not attempt to quantify the issue and CenturyTel believes that is due to the statistically minimal number of actual instances. Inaccuracies affect both the ILEC and interconnectors alike. Inaccuracies in directory lists are simply clerical accidents that must be resolved as the inaccuracy is identified, and they are not caused by any intent to undermine competitive service providers. CenturyTel and Embarq have only limited control over the accuracy of the third party database providers’ listings, and they are constantly vigilant in seeking that the listings are accurate. CLECs are permitted to review galley proofs of directory listings to ensure their accuracy before publication, and they should take advantage of this procedure.

<sup>14</sup> Charter Ex Parte at 13-14.

facilities that connect the separate ILECs. In such instances, requiring a single POI for multiple ILECs would require CenturyTel to purchase transport and tandem switching from a third party, such as a Bell Operating Company (“BOC”), which is something the interconnecting carrier is equally capable of doing for itself. CenturyTel thus requires the interconnecting carrier—the cost-causer—to bring traffic to a POI on the CenturyTel ILEC’s network. CenturyTel’s policy is consistent with Commission rules and has been upheld by state commissions.<sup>15</sup> In fact, Charter itself agreed to use multiple POIs in an interconnection agreement in Wisconsin.

Moreover, some interconnectors, including Sprint, have sought to establish a POI for one or more CenturyTel ILECs that are not even on CenturyTel’s network. Instead, Sprint has requested the POI to be established at a distant BOC tandem, which would require CenturyTel to arrange and pay for transport to CenturyTel’s network. CenturyTel cannot be expected to provide this service because it does not own all of the facilities that would be used to connect the distant POI in one part of the state to CenturyTel’s facilities in another part of the state.<sup>16</sup> The Commission has made clear that there is currently no requirement for an ILEC to accept such a POI.<sup>17</sup>

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<sup>15</sup> The Missouri Commission specifically noted that CenturyTel’s exchanges are of substantially different sizes, ranging from 100 to 50,000 access lines, and therefore a “one size fits all” solution would be inappropriate. *Petition of Socket Telecom, LLC for Compulsory Arbitration of Interconnection Agreements with CenturyTel of Missouri, LLC and Spectra Communications, LLC, pursuant to Section 251(b)(1) of the Telecommunications Act of 1996*, Case No. TO-2006-0299, at 16-17 (Mo. Pub. Serv. Comm. Jun. 27, 2006)(“*Socket Missouri Arbitration Order*”). Michigan, Arkansas, Oregon, and Colorado have ruled similarly, preventing Sprint from establishing a POI at a location outside of the ILEC’s network. *See, e.g., Petition of Sprint Communications Company LP for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with CenturyTel Midwest-Michigan, Inc.*, Case No. U-15534, at 7-8 (Mich. Pub. Serv. Comm. Jul. 1, 2008)(“*Michigan Arbitration Order*”). These states also found that CenturyTel should not have to interconnect in a way that would prevent them from recovering transport costs from a third party. *See also Petition for Arbitration By Sprint Communications Company L.P. vs. CenturyTel of Mountain Home, Inc.*, Docket No. 08-031-U, Order No. 6, at 8-9 (Ark. Pub. Serv. Comm. Jul. 18, 2008)(“*Arkansas Arbitration Order*”).

<sup>16</sup> Michigan, Arkansas, Oregon, and Colorado have each ruled that Sprint cannot establish a POI at a location outside of the ILEC’s network. *See, e.g., Michigan Arbitration Order* at 7-8; *Sprint Communications Company, L.P. Petition for Arbitration of an Interconnection Agreement with CenturyTel of Oregon, Inc*, ARB 830, Order No. 09-109, at 4-5 (Or. Pub. Util. Comm. Mar. 31, 2009)(“CenturyTel is not required, however, to provide interconnection to Sprint that is superior in quality than that provided to CenturyTel itself, to its affiliates, or to other carriers. Given the unique structure and geography of CenturyTel’s network, there is no single point in any Oregon LATA where CenturyTel has facilities linking all of the CenturyTel end offices in the LATA. Under the terms of the ICA as adopted by the Arbitrator, Sprint

It is true that in some adjudications dealing with BOCs, the Commission has referred to a “single POI per LATA.”<sup>18</sup> While such a statement makes sense for BOCs, which are organized by LATA boundaries and own largely contiguous exchanges, it makes no sense for independent telephone companies like CenturyTel. The LATA concept is a BOC term that originated in the Modified Final Judgment in the break-up AT&T in 1982.<sup>19</sup> In contrast, independent telephone companies are only rarely arranged by LATAs. Indeed, in most states there are no LATA boundaries for independents.

At most, this issue arises from a legitimate business dispute with Charter about cost recovery and cost externalization by the interconnector, not because of any

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cannot require CenturyTel to build these links. If Sprint wants to directly interconnect with CenturyTel's entire network within a LATA, then multiple POIs may be necessary.”). These states also found that CenturyTel should not have to interconnect in a way that would prevent them from recovering transport costs from a third party. *See also Arkansas Arbitration Order* at 8-9.

<sup>17</sup> *See Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 99-203, Further Notice of Proposed Rulemaking, 16 FCC Rcd 9610, ¶ 113 (2001)(“*Inter-carrier Compensation NPRM*”) (seeking comment on the following question: “If a carrier establishes a single POI in a LATA, should the ILEC be obligated to interconnect there and thus bear its own transport costs up to the single POI when the single POI is located outside the local calling area?”).

<sup>18</sup> The FCC has not adopted a general rule regarding the number of POIs in a LATA and has not specifically addressed that issue for independent telephone companies. For instance, in deciding whether to grant SBC authority to provide interLATA services pursuant to Section 271 of the Communications Act, the Commission indicated that an interconnection agreement that SBC had entered into that included a single POI per LATA complied with the 47 U.S.C. § 251(c)(2). *See Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-57, Memorandum Opinion & Order, 15 FCC Rcd 18354, ¶ 80 (2000)(“*SBC Texas 271 Order*”). The Wireline Competition Bureau relied on the *SBC Texas 271 Order* when it ordered that Verizon include “one POI per LATA” in an interconnection contract in an arbitration conducted pursuant to Section 252(e)(5) of the Communications Act. *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, and for Expedited Arbitration*, CC Docket No. 00-218, Memorandum Opinion & Order, 17 FCC Rcd 27039, ¶ 52 (2002). Notwithstanding, neither of these orders address POIs for independent companies, which as discussed in the text, differ from BOCs in important ways. The FCC does have a pending rulemaking proceeding on this issue. *Inter-carrier Compensation NPRM*, ¶¶ 112-14.

<sup>19</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).

anticompetitive motive of CenturyTel. If the transaction is approved, the legal requirements with respect to POI locations will not change, and this issue has nothing to do with the merger.<sup>20</sup>

### **3. Operations Support Services**

Several parties criticize CenturyTel's unbundled network element ("UNE") provisioning processes. In particular, they allege that they are slower than Embarq's processes and that CenturyTel maintains a limit of 50 orders per day for each requesting carrier.<sup>21</sup> These parties suggest that, after this transaction is completed, CenturyTel will downgrade Embarq's systems, which parties acknowledge provide excellent performance today.

As stated above, the Applicants take provisioning responsibilities very seriously. The wholesale business is important to both companies and will only become more so. The Applicants have said that they plan to institute the best practices of each company for the merged entity, including adopting Embarq's more automated service order processing system utilized by wholesale customers.<sup>22</sup> As part of this upgrade process, the Applicants further commit that, for Embarq companies, they will, at the very least, maintain the service levels that Embarq has provided for wholesale operations, subject of course to the process of integration, which can involve temporary adjustments and changes in the procedures and scheduling of ordering activity.

Moreover, over the past several years, CenturyTel has been automating many of its OSS processes for the benefit of wholesale customers. This merger will provide the necessary level of wholesale order volumes and business justification to further accelerate that process, enabling CenturyTel to utilize Embarq's processes for wholesale applications, thus improving order processing and fulfillment and other operational requests. The Applicants are committed to working with their wholesale customers as system upgrades and integration occur.

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<sup>20</sup> Socket claims that CenturyTel is skirting the rules because a transport network is owned in the State of Missouri by LightCore, a separate corporation from the operating company, CenturyTel of Missouri. NuVox Comments, Kohly Declaration, ¶ 31. This claim is false. CenturyTel has acquired various parts of its networks in Missouri from a variety of companies, and they all have various regulatory requirements applicable to those entities. The Missouri Commission has thoroughly examined these complex legal and network factual issues, and has determined the way in which CenturyTel should be providing interconnection and at what rates. *See, e.g., Socket Missouri Arbitration Order* at 6. Socket now seeks to have the FCC overturn this Missouri decision. In any event, in many of CenturyTel's service territories in Missouri, no CenturyTel ILEC owns the tandem switch or the transport facilities that Socket seeks to use, and therefore Socket should not be allowed to obtain third-party facilities for free, while CenturyTel is forced to pay.

<sup>21</sup> Charter Ex Parte at 3-4.

<sup>22</sup> CenturyTel/Embarq Joint Reply at 10-11.

CenturyTel's solution to handling the volume of CLEC orders lies with integrating its processing with Embarq's more automated processes. CenturyTel commits to such integration within fifteen months of the closing of this transaction. This solution will satisfactorily address competitor's reasonable concerns. In the interim, CenturyTel will take other steps to address concerns raised by competitors about CenturyTel's OSS. Specifically, within thirty days of the date of this letter CenturyTel will voluntarily devote additional processing capability to improve order flows and ensure prompt processing of local number portability orders.<sup>23</sup>

While the Applicants make these commitments to demonstrate their dedication to the wholesale business, Applicants emphasize that competitors' concerns about CenturyTel's current processes should not interfere with the merger approval process. Particularly in light of the Applicants' commitment to maintain Embarq's service levels for wholesale operations, subject to reasonable and normal allowances for the integration of CenturyTel and Embarq systems, and CenturyTel's commitment to improve its current processes, this merger will not negatively impact performance. As explained below, many of these complaints are based on a misunderstanding of CenturyTel's processes

CenturyTel's current system was originally developed based on small order volumes and largely rural operations. CenturyTel has grown by joining a number of smaller, predominantly rural telephone companies. These smaller exchanges were never of sufficient size to justify establishing a fully automated OSS for all CLEC orders. Consequently, CenturyTel necessarily has utilized some legacy manual processes to handle interconnection requests such as orders for facilities, repairs, and ports of local numbers.<sup>24</sup>

CenturyTel has not downgraded the performance of its OSS to thwart competition, as some commenters allege. To be sure, the CenturyTel exchanges that were purchased from GTE in Missouri and several other states did have automated processes when they were owned by GTE. However, GTE retained the automated systems when the exchanges were sold to CenturyTel, as GTE used these systems for multiple states. CenturyTel had no choice but to use its existing manual processes to provide OSS for these exchanges.

CenturyTel's manual processes have greatly improved, and competitors' complaints are exaggerated. For example, Socket argues that CenturyTel's provisioning time intervals for enhanced extended loop and DS-1 loop orders is 15 days, which it

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<sup>23</sup> Current FCC local number portability requirements are that simple port orders ordinarily should be processed within four business days. 47 C.F.R. § 52.26 (incorporating by reference 1997 North American Numbering Council Recommendations). The FCC is considering modifying the porting interval for simple ports, but this issue is still pending. *Telephone Number Requirements for IP-Enabled Services Providers*, WC Docket No. 07-243, Report & Order, 22 FCC Rcd 19531, ¶ 59 (2007) (“*Four Field LNP Order*”).

<sup>24</sup> CenturyTel uses a centralized location in Alabama to process many of its CLEC orders, such as Local Service Requests (“LSRs”).

believes is too long.<sup>25</sup> However, Socket itself agreed to a 15-day period in its interconnection agreement. Moreover, CenturyTel's actual time intervals now stand at 9 days.<sup>26</sup>

While a number of commenters have complained of a 50-order limit, they misunderstand CenturyTel's system and purpose: to avoid one carrier's unanticipated order volume peak to negatively impact other carrier orders. At the existing average daily order volume, CenturyTel's current manual process allows it to process approximately 50 orders per day from each individual interconnector while maintaining parity of treatment for all submitting carriers. CenturyTel has therefore instituted a trigger point, 50 orders, that brings attention to an unexpectedly high volume from a single carrier. When this trigger point is reached, CenturyTel has often responded by enlisting additional personnel and resources to complete the orders as quickly as possible. On any given day, more than 50 orders are routinely handled for any individual interconnector. In the overwhelming majority of cases, exceeding 50 orders does not impact the timeliness of responding to orders. Carriers can also address any potential problems for volumes of more than 50 orders by giving CenturyTel advance notice of an expected spike, so that CenturyTel can ensure the resources are ready to process the orders quickly. CenturyTel routinely employs this kind of project management for carriers that provide advance notice.

It is difficult to evaluate Charter's vague allegations. Nevertheless, CenturyTel invites Charter to raise these issues with CenturyTel management so that it may evaluate the issues and work out a solution. As indicated, there are a number of steps that can be taken, such as coordinating expected large order volumes, to alleviate any potential customer disruption. CenturyTel's commitment to add processing capabilities no later than thirty days from the date of this letter should also address Charters' concerns, but do not replace the need to coordinate with CenturyTel a larger than expected order volume so that a processing solution can be arranged for the spike in orders.

In any event, completion of this merger will enable CenturyTel to automate these systems and substantially upgrade their performance. The combined company will have the scale to justify the significant costs of upgrading the manual processes, and CenturyTel will be able to use Embarq's award-winning OSS to do so. In addition, Embarq's current wholesale management team will take over management of the combined entity's wholesale operations. CenturyTel has committed to integrate such systems for the combined entity within fifteen months of closing. Thus, in addition to maintaining the service quality levels provided by the Embarq companies at those companies, the service quality of CenturyTel company processes will be upgraded in the interim.

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<sup>25</sup> NuVox Comments at 3.

<sup>26</sup> In a further comment, Socket attempts to undermine the 9-day figure, not by admitting that it had its original facts wrong, or by disputing the 9-day figure, but rather arguing that it was unable to obtain a change in the existing agreement to reflect the 9-day interval. COMPTTEL Ex Parte, Kohly Supplemental Declaration, ¶ 16. Socket is free to raise this issue at the time of contract renewal.

While some parties have sought firm timelines for these upgrades to take place, the Commission should not impose its own timeline on this integration and conversion effort. Since the companies are making a commitment to convert to an automated system within fifteen months of close and to provide additional resources to wholesale customers in the interim, the Commission should be extremely cautious about becoming embroiled in these kinds of operational issues. The Applicants already have every incentive to make upgrades as promptly as they can, because they are among the efficiencies necessary to realize the cost savings from the merger. The companies will need operational flexibility to undertake integration carefully, to avoid unnecessary costs and to ensure there are no disruptions for the Applicants and their wholesale customers.

#### 4. Local Number Portability

Commenters challenge two of CenturyTel's practices relating to porting numbers, requiring a pass code for number porting and charging a fee for LSRs, including LSRs for number porting.<sup>27</sup>

CenturyTel has stated that it will require a customer pass code from a requesting carrier to validate that the carrier has permission from the customer in order to port a telephone number, a requirement Charter acknowledges has not yet been put into effect.<sup>28</sup> Charter argues that this requirement is unlawful based on the Commission's statement in its recent number portability order that "no entities obligated to provide local number portability ("LNP") may obstruct or delay the porting process by demanding from the porting-in entity information in excess of the minimum information needed to validate the customer's request."<sup>29</sup>

Charter, however, omits the very next sentence in the Commission's order, which states explicitly that carriers may require "pass codes": "In particular, we conclude that LNP validation should be based on no more than four fields for simple ports, and that those fields should be: (1) 10-digit telephone number; (2) customer account number; (3) 5-digit zip code; and (4) *pass code* (if applicable)."<sup>30</sup> The pass code<sup>31</sup> enables CenturyTel to ensure customer privacy, protects against identity theft, and prevents unauthorized service changes, whenever a customer makes inquiries to CenturyTel, whether the access is online or by telephone. Inclusion of the customer's pass code on a porting order is but one aspect of this larger customer privacy issue.

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<sup>27</sup> Charter's concerns about the volume of number porting orders CenturyTel can process is addressed above. Moreover, the vast majority of port orders CenturyTel receives contain requested due dates well beyond the FCC porting guidelines interval and are not impacted in any way by CenturyTel's project management.

<sup>28</sup> Charter Ex Parte at 3-4.

<sup>29</sup> *Four Field LNP Order*, ¶ 16.; see Charter Ex Parte at 5.

<sup>30</sup> T-Mobile and Sprint themselves advocated that the FCC include the pass code field in its four field validation requirement. *Four Field LNP Order* ¶ 16 (emphasis added); see also *id.* ¶¶ 2, 15, 48 (same).

<sup>31</sup> See *id.* ¶ 15.

Charter's suggestion that CenturyTel's motives are anticompetitive in establishing the pass code at the initiation of service is baseless. In a related context, the Commission has actually encouraged the use of pass codes or passwords to protect customer privacy that are established precisely in this manner: "For new customers, carriers may request that the customer establish a password at the time of service initiation because the carrier can easily authenticate the customer at that time."<sup>32</sup> CenturyTel values the privacy of its customers and has been engaged in significant efforts to comply with FCC policy. CenturyTel requires use of a pass code for online account access, customer service center inquiries and is planning to expand the requirement to all access to customer proprietary network information, such as that used in the number porting process. That is fully consistent with federal law and policy.

Additionally, as many local exchange carriers do, CenturyTel imposes a modest service order charge on all LSRs", whether or not the LSR includes a number porting request. This charge is not for number porting, but is to recover the costs of the administrative processes used to handle all orders.<sup>33</sup> Charter has previously raised this issue before the Missouri Public Service Commission, and CenturyTel prevailed.<sup>34</sup> The Missouri Commission found that the charge was reasonable, and did not constitute a violation of the cost recovery rules associated with LNP. In any case, legitimate disputes concerning changing the number portability rules show no anticompetitive animus by CenturyTel, and such issues fall outside the scope of this merger proceeding.<sup>35</sup>

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<sup>32</sup> *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Report & Order & Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, ¶ 15 (2007) ("CPNI Pretexter Order"). Charter's complaint that customers may have a difficult time remembering this pass code does not alter the analysis. Customers sometimes have difficulty remembering a pass code no matter how the code is provided, and customer misplacement of such codes is an endemic problem throughout the industry. It occurs no matter when or in what circumstance the customer or the carrier may establish the information. The customer may retrieve or reset his or her password by calling customer service and answering security questions that validate identity. *See CPNI Pretexter Order*, ¶¶ 22, 24. If Charter believes its concerns are of greater weight than the privacy concerns underlying the pass code requirement, it should advocate a change in existing rules, not attempt to impose new law in a merger proceeding.

<sup>33</sup> The Commission has permitted that carriers be able to recover administrative costs. *Telephone Number Portability, BellSouth Corporation Petition for Declaratory Ruling and/or Waiver*, CC Docket No. 95-116, Order, 19 FCC Rcd 6800, at ¶ 10 n.49 (2004).

<sup>34</sup> *See Charter Fiberlink-Missouri Arbitration Report*, at 94-96. *See Arkansas Arbitration Order* at 12-13 (LSR charges permitted, subject to true up after conducting a cost study).

<sup>35</sup> Socket's complaints involving number porting stem from disputes between Socket and CenturyTel over geographic number porting. Socket has argued that CenturyTel

## 5. Negotiation of Interconnection Agreements

Charter complains that CenturyTel requires a separate contract for different types of operating companies and that CenturyTel raises too many issues in state arbitration proceedings, allegedly in order to slow interconnection.<sup>36</sup>

With respect to the need to negotiate agreements with both rural and nonrural CenturyTel operating companies, the Applicants have previously explained that this stems from no anticompetitive motive, as Charter suggests. Rather, CenturyTel is made up of many small carriers, which operate in wide variety of areas with different costs and operational characteristics. Key terms and conditions of interconnection agreements thus necessarily vary between types of operating companies. Nevertheless, CenturyTel does not require interconnectors to negotiate agreements with different companies one-before-another. CenturyTel routinely negotiates multiple agreements simultaneously in an attempt to make the process as efficient as possible. The Applicants expect to continue this practice in most circumstances after the merger in order to ease the burden on interconnectors, and to include similar terms and conditions where appropriate in the various contracts. As with other situations raised by interconnectors, this complaint has nothing to do with this merger.

Similarly, complaints that CenturyTel raises multiple issues in interconnection arbitrations are a complete distortion and show no anticompetitive animus. It is in fact the CLECs who have raised large numbers of issues for arbitration at state commissions. CenturyTel objects to CLEC arbitration issues where it has genuinely has different views on the issue, and CenturyTel often prevails on these issues before state commissions.

Charter's claims to the contrary are extremely vague, providing no specific examples. NuVox cites only one example of a delay in obtaining an opt-in agreement, an opt-in which it apparently obtained within two months. And even after entering the opt-in agreement, CenturyTel did not receive an order for interconnection facilities for months thereafter. There simply is no evidence of a pattern by CenturyTel of noncompliance with the law that disadvantages interconnectors. CenturyTel has a long history of entering into multiple interconnection contracts without arbitrations in a reasonable period of time. The Commission should not interfere with these processes based on the vague allegations of CenturyTel's most aggressive competitors.<sup>37</sup>

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must port numbers to locations at great distances from CenturyTel's network, without paying any transport charges. Socket has prevailed on this argument before the Missouri Public Service Commission, and CenturyTel has honored the agreement arbitrated by the state commission. CenturyTel and Socket continue to engage on the issue before the State Commission and the LNPA-Working Group of the North American Numbering Council. *See CenturyTel/Embarq Joint Reply at 27-28.* These fora, rather than this merger proceeding, are the appropriate venues to resolve these disputes.

<sup>36</sup> Charter Ex Parte at 12-13.

<sup>37</sup> Some ISPs complain of CenturyTel and Embarq's wholesale pricing for DSL transport. Wholesale DSL transport pricing has been largely deregulated by the

## 6. Hot Cuts

Socket alleges that CenturyTel lacks “a loop hot cut process available at cost-based rates.”<sup>38</sup> It alleges that it has difficulty coordinating the simultaneous disconnection of CenturyTel service, connection of Socket service, and port of a customer’s number. Any problem Socket faces in such a coordinated process, however, is actually a problem of Socket’s own choosing.

What Socket does not tell the Commission is that CenturyTel does have in place a coordinated process for the smooth transition of customer services. Such a process is provided for in the interconnection contracts between Socket and CenturyTel, approved by the Missouri Commission. However, Socket refuses to pay the price provided in its negotiated, approved contract, and so declines to follow an approved procedure that would avoid the inconveniences it now raises.<sup>39</sup> CenturyTel cannot be faulted for failing to utilize a procedure that is available, but Socket does not use.

In addition, the Applicants both have a low volume of coordinated order requests, so there has not been much need to date to establish a different process. As these order volumes increase, the combined company would consider and adopt different procedures that are conducive to the efficiency of its own and its competitor’s operations. As with other issues, this issue is not related to the merger regardless.

## II. THE CONDITIONS PROPOSED BY COMPETITORS ARE UNWARRANTED.

Competitors have also asked the Commission to impose upon CenturyTel and Embarq a litany of conditions based on the assertion they are necessary to demonstrate public benefit in conjunction with the approval of the merger. Most of these conditions

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Commission, based in part on the dominance of cable competitors in the market. *See Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, CC Docket No. 02-33, Report & Order & Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005), *petition for rev. denied, Time Warner Telecom, Inc. v. FCC*, 507 F.3d 205 (3d Cir. 2007). No commenter has raised any basis for finding the Applicants’ practices unlawful, and a complaint proceeding—not a merger review—would be the appropriate venue to do so. Moreover, since CenturyTel and Embarq do not compete in providing DSL transport, this transaction can have no impact whatsoever on the Applicants’ practices.

<sup>38</sup> COMPTTEL Ex Parte, Kohly Supplemental Declaration, ¶ 5. Embarq has a detailed hot cut process in place to handle coordinated changes to an end user customer’s services. No party has complained in this proceeding about Embarq’s hot cut process.

<sup>39</sup> *Id.*, ¶ 9. At least in one circumstance, Socket apparently has ported a customer’s number to a mobile phone while its service order is worked at CenturyTel, then ports the number back to the provisioned line. In addition, although Socket claims CenturyTel has refused to respond to its request to establish a hot cut process, Socket’s request demanded procedures that were not feasible and at rates that were not cost compensatory.

are identical to those addressed in the Applicants' reply comments.<sup>40</sup> For example, some parties continue to press for pricing conditions on special access and UNEs. Yet no commenter has alleged that any CenturyTel or Embarq prices are unlawful or discriminatory or explained why this transaction is even relevant to such prices. Indeed, as the Applicants have explained, Embarq and CenturyTel do not compete with each other in providing special access or UNEs, and this merger will have no impact whatsoever on their pricing.<sup>41</sup>

Similarly, some commenters continue to press conditions based entirely on BOC precedent,<sup>42</sup> which as the Applicants have previously explained, is completely inapposite. Indeed, these commenters' case for conditions rest on the proposition that this transaction presents more risk of competitive harm than the AT&T-BellSouth merger<sup>43</sup>—the largest wireline merger in history, between two BOCs that directly competed with each other in numerous markets. First, as explained in the Applicants' reply comments, there is no basis in the record for such conditions in this case.<sup>44</sup> Second, competitors are seeking to impose brand new obligations upon the combined entity which should be addressed, if at all, in a generally applicable rulemaking proceeding. Third, COMPTTEL and others do not demonstrate that the proposed conditions are reasonable.

The Commission has not applied these types of conditions in merger transactions similar to this one. There is no justification for doing so here either. First, the proposed conditions at most relate to circumstances that would exist even without the merger. The Commission's precedent is to refuse to adopt unrelated conditions. Second, the commenters have not demonstrated that the conditions are necessary to remedy a specific harm caused by the merger. Third, virtually all of the interconnection issues have been, or are capable of being, raised in interconnection negotiations and before state commissions in the arbitration process under Section 251 and 252 of the Communications Act.<sup>45</sup> Therefore, the Commission should not accede to attempts to get the Commission to wade into ongoing interconnection negotiations and contracts, thereby preempting state commission authority and, in some cases, improperly overturning state commission decisions.

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<sup>40</sup> CenturyTel/Embarq Joint Reply at 23-28.

<sup>41</sup> *Id.* at 12, 25-26.

<sup>42</sup> COMPTTEL Ex Parte at 8-9.

<sup>43</sup> *Id.* at 8 n.42.

<sup>44</sup> CenturyTel/Embarq Joint Reply at 23-28. Other conditions have been proposed that have no basis whatsoever in fact or law. For example, T-Mobile urges the Commission to order the merged entity's reciprocal compensation rate immediately to be set at \$.0007. Letter from Kathleen O'Brien Hamm, T-Mobile to Marlene H. Dortch, FCC, WC Docket No. 08-238, at 2 (filed Mar. 27, 2009). Reciprocal compensation rates, of course, are set in interconnection agreements arbitrated, where necessary, by state commissions.

<sup>45</sup> *See* CenturyTel/Embarq Joint Reply at 20-28.

CenturyTel also addresses each one of these types of conditions in the attached chart.

### III. CONCLUSION

The CenturyTel/Embarq transaction is in the public interest. It will benefit consumers, promote investment, and improve services. It poses no competitive harms and raises no antitrust concerns. The concerns raised by competitors' ex parte letters do not change those facts. Many of their claims are exaggerated. Many have already been addressed by state commissions. All of their claims—and their proposed conditions—are unrelated to the merger. Most of those parties' concerns arise from CenturyTel's largely manual back office processes. Those will be addressed by the systems integration efforts that are among the many benefits of the merger. The Applicants also have made additional commitments to address these concerns both before and after the transaction closes. Given this record and Commission practice, the Commission should approve this transaction expeditiously and without conditions.

Respectfully submitted,

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Of Counsel

Counsel for Embarq Corporation

Enclosures

**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 Letter from Gregory J. Vogt and Samuel L. Feder to Marlene H. Dortch, FCC, WC Docket No. 08-238, and I declare, under penalty of perjury, that the facts with respect to CenturyTel are true and correct to the best of my information and belief.

  
Jeffrey S. Glover

Executed on April 9, 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 William E. Check**

I, William E. Check, hereby declare as follows:

1. I am President - Wholesale Markets of Embarq Corporation. ("Embarq"). As an officer 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 Letter from Gregory J. Vogt and Samuel L. Feder to Marlene H. Dortch, FCC, WC Docket No. 08-238, and I declare, under penalty of perjury, that the facts with respect to Embarq are true and correct to the best of my information and belief.



William E. Check

Executed on April 10, 2009.

### Merger Condition Responses

Proposed Merger Conditions	Evidence Provided to Support Adoption	Reasons Condition Should be Rejected
<p>Carriers should be allowed to port an entire interconnection contract from one state to any other state.</p>	<p>Allegation of delays in obtaining contract</p>	<p>CenturyTel and Embarq affiliates have been subject to different interconnection and regulatory requirements among the states.                      No precedent exists for the Commission to impose a condition over a parties' objections which allows interconnectors to pick a contract in one state and make it applicable to another.                      Parties are free to negotiate common terms for entities in the same state, preserving separate rate issues applicable to each operating company based on that company's costs and circumstances.</p>
<p>Beginning 30 days after merger closing and for a period of 48 months, the merged entities shall make available as UNEs dedicated DS1 and DS3 interoffice facilities connecting tandems, end offices, and other switch locations of CTL/EQ entities with adjacent operating territories in the same LATA or subtending end offices/switches.</p>	<p>CenturyTel requires one POI per LATA per operating company</p>	<p>Condition would require CenturyTel to provide transport where it does not have facilities.                      Condition ignores the authority of state commissions and attempts to set aside applicable law and regulation.                      Federal law requires negotiated contract with each incumbent local exchange carrier under 251(c).                      No precedent exists for requirement applicable to independent telephone companies.</p>
<p>The merged entities shall port the entirety of an existing special access plan or commercial agreement (except for state specific rates) from one operating company to another state.                      Parties should be able to replace existing plans and move or port circuits within and between plans and ILECs without penalty or additional cost.</p>	<p>None</p>	<p>The condition would overturn existing contracts.                      No facts have been set forth demonstrating that either CenturyTel or Embarq pricing, plans, or contracts are unreasonable.</p>
<p>Carriers can extend their interconnection contracts, regardless of whether the initial term is expired, for up to 36 months.                      During this period, ICAs may only be terminated by the CLEC.</p>	<p>None</p>	<p>Condition violates the negotiation and state approval requirements of Section 252.                      Condition ignores that existing contracts may need to be updated for changes in law or operational circumstances.</p>

Proposed Merger Conditions	Evidence Provided to Support Adoption	Reasons Condition Should be Rejected
<p>Carriers can opt into existing ICAs and CTL/EQ will not deny those opt-ins on the grounds that the selected ICA has not been amended to reflect current changes in law.</p> <p>Opt-ins shall be effective no later than 30 days after receipt of a CLEC opt-in notice.</p>	<p>Delay in signing opt in agreements</p>	<p>Interconnectors are not entitled to use existing contracts where changes in law make specific provisions inapplicable. The FCC has already required prompt opt ins, but has not established a specific deadline.</p> <p>Condition undermines state authority including some state approval processes.</p> <p>Any specific deadline should be established, if at all, in a generally applicable rulemaking.</p> <p>Anecdotal statements of delays are not sufficient to justify condition.</p>
<p>Within 120 days of merger closing, the merged entity will implement and make available to CLECs TELRIC-compliant coordinated loop and bulk loop hot cut processes for use with UNE loops, xDSL-capable UNE loops and x-DSL capable UNE subloops.</p>	<p>Alleged inability to negotiate hot cut arrangement in Missouri</p>	<p>Condition undermines state authority and negotiation process.</p> <p>Parties have not demonstrated a need for establishing the condition.</p> <p>Small number of hot cut orders per month and lines affected make elaborate hot cut process unworkable and cost prohibitive for all parties.</p>
<p>Beginning 30 days after merger closing, the merged entities shall comply with industry best practices regarding number portability.</p>	<p>Disputes regarding porting legal requirements</p>	<p>Term “industry best practices” is ambiguous, and arguably includes NANC working group document which NANC director denies are industry standards practices.</p> <p>Potentially allows nonrepresentative groups to establish rules.</p> <p>Carrier should only have to comply with FCC or state rules that are established through due process.</p> <p>Existing FCC and state processes already exist to address porting issues.</p>

Proposed Merger Conditions	Evidence Provided to Support Adoption	Reasons Condition Should be Rejected
<p>Beginning 30 days after merger closing, the merged entities shall permit requesting entities to establish a single POI per LATA and that POI shall serve as the POI for all interconnection between the requesting entity and any CTL/EQ entity operating in the LATA.</p>	<p>CenturyTel requires one POI per LATA per operating company</p>	<p>Condition would require CenturyTel to provide transport where it does not have facilities. LATA concept is not applicable to independent ILECs. Condition ignores the authority of state commissions and attempts to set aside applicable law and regulation. Federal law requires negotiated contract with each incumbent local exchange carrier under 251(c). No precedent exists for requirement for non-BOC companies. Issue is pending in existing FCC rulemaking.</p>
<p>Within 30 days of merger closing, CTL/EQ shall file in each state a tariff to offer section 251 network elements at a 25% discount from lowest UNE rate offered by any CTL/EQ ILEC as of 1/1/09. Non industry-standard rate elements such as loop conditioning for DS1 circuits shall be waived or eliminated without any increase in NRCs The discounted UNE rates shall stay in effect for 36 months from effective date. ICA amendments, to the extent required by change of law provisions, will be deemed effective as of the effective date of the tariff and the parties will true-up accordingly.</p>	<p>None</p>	<p>CenturyTel and Embarq do not compete in the provision of UNEs. Parties have made no allegation that specific rates are unreasonable. Condition violates costing principles for UNEs established by FCC. Condition undermines state authority and preempts existing state rate decisions. Different cost characteristics and network configurations in states and operating companies must dictate rates. Arbitrary lower rates would be noncompensatory and therefore violate Section 252 pricing standards. Condition that “non industry-standard rate elements” such as loop conditioning for DS1 circuits shall be waived or “eliminated” ignores and violates 47 C.F.R. § 51.319 (a)(1)(iii)(B) which provides that incumbent LECs shall recover the costs of line conditioning in accordance with forward-looking pricing principles and in compliance with rules governing nonrecurring costs.</p>

Proposed Merger Conditions	Evidence Provided to Support Adoption	Reasons Condition Should be Rejected
For a period of 48 months after merger closing, the merged entities shall continue to offer and provide all special access services at rates no higher than those in effect, whether by application or tariff or contract, as of 1/1/09.	None	CenturyTel and Embarq do not compete in providing special access. Condition violates tariff principles and existing contracts. No demonstration that existing special access rates are or will become unreasonable. FCC already is examining special access rates in pending proceeding.
With regard to special access services and for a period of 48 months, no CTL/EQ entity or affiliate 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.	None	Existing law already governs a carrier's nondiscrimination and reasonableness requirements. Condition is vague.
Beginning 30 days after merger closing and for a period of 48 months, neither CTL nor EQ will increase the rates paid by competitive LECs as of 1/1/09 for transit tandem services.	None	CenturyTel and Embarq do not compete in providing transit. No allegation has been made that existing transport rates are unreasonable. Undermines tariff principles and state and federal authority over pricing.
CTL/EQ will offer to ISPs ADSL transmission service that is functionally the same as any retail ADSL service offered by CTL/EQ 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 CTL/EQ local telephone service whether purchases separately or in bundled service offerings.	Requests for wholesale discounts on broadband services	FCC has already defined obligations of broadband providers in offering wholesale services, so there is no need for new regulation. A new rule, if any, should only be imposed in a rulemaking applicable to all providers. Broadband services are unregulated in a number of states and therefore are not appropriately regulated pursuant to common carrier-type regulations. Price squeeze arguments on broadband services was rejected by U.S. Supreme Court.

Proposed Merger Conditions	Evidence Provided to Support Adoption	Reasons Condition Should be Rejected
<p>Within 120 days of merger closing, the merged CTL/EQ entity shall utilize the Embarq OSS, platforms, systems, methods and procedures for maintenance and repair, directory listings, 911 records and number porting throughout the merged entity.</p>	<p>Allegations that CenturyTel utilizes manual processes</p>	<p>Applicants are committed to using the best practices of both companies after the merger. The applicants have voluntarily committed to converting to Embarq’s automated system for processing number ports within 15 months of the merger close.</p> <p>CenturyTel has voluntarily committed to provide additional resources to help facilitate its manual order processing in the interim.</p> <p>Establishing a shorter timeline is fraught with downside risks, especially to consumers.</p> <p>Utilizing new systems are interdependent and involve a number of complex operational issues which must each be completed in due course.</p> <p>Managed conversion process will prevent disruptions to retail and wholesale customers.</p> <p>Combined entity has incentive to use the most efficient systems available to reduce its costs.</p>
<p>Within 60 days after merger closing and for a period of 48 months, the merged entity shall adhere to the shortest ordering and provisioning intervals for the wholesale service orders in place as of 1/1/09.</p>	<p>Allegations of delayed order processing in some states</p>	<p>Ordering intervals depend on the operational capabilities in each state.</p> <p>The applicants have voluntarily committed to converting to Embarq’s automated system for processing number ports within 15 months of the merger close.</p> <p>CenturyTel has voluntarily committed to provide additional resources to help facilitate its manual order processing in the interim.</p> <p>To the extent that more regional systems can be utilized, they will be utilized as part of the OSS upgrade process.</p> <p>Condition undermines state authority.</p>

Proposed Merger Conditions	Evidence Provided to Support Adoption	Reasons Condition Should be Rejected
<p>Within 120 days after merger closing, the merged CTL/EQ entity will utilize the most advanced and reliable platforms/systems, methods and procedures for billing wholesale services throughout the merged entity.</p>	<p>Allegations of erroneous billing</p>	<p>Applicants are committed to using the best practices of both companies after the merger.  Establishing a specific timeline is fraught with downside risks, especially to consumers.  Utilizing new systems are interdependent on a number of complex operational issues which must each be completed in due course.  Managed conversion process will prevent disruptions to retail and wholesale customers.  Combined entity has incentive to use the most efficient systems available to reduce its costs.</p>
<p>Beginning 45 days after merger closing and for a period of 48 months, the combined CTL/EQ entity will prepare and file quarterly performance metrics related to the provision of UNEs.</p>	<p>None</p>	<p>Condition undermines state authority and existing contracts.</p>
<p>Beginning 45 days after merger closing and for a period of 48 months, the combined entity will prepare and file quarterly performance metrics related to the provision of special access services.</p>	<p>None</p>	<p>The FCC is already considering this issue in a pending rulemaking.</p>
<p>For a period of 48 months, beginning on the merger closing date, the merged CTL/EQ entities shall not file any forbearance petition under section 10 of the Act.</p>	<p>None</p>	<p>Federal law permits filing of forbearance petition; therefore condition violates law.</p>
<p>For a period of 48 months, the merged CTL/EQ entities shall not seek a ruling, including via forbearance, to alter the status of any facility currently offered as a loop or transport UNE under Section 251(c)(3) of the Act.</p>	<p>None</p>	<p>Company is entitled to petition governmental entities for a change in existing law.  Undermines state and federal authority.</p>
<p>For a period of 48 months, the merged entities shall not seek a ruling, including through the filing of a forbearance petition seeking further deregulation of any special access services, including “enterprise broadband” services.</p>	<p>None</p>	<p>Company is entitled to file a petition for pricing flexibility under current FCC rules.  Company is entitled to petition governmental entities for a change in existing law.  Undermines state and federal authority.</p>