

April 20, 2009

*Via ECFS*

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

**Re: Ex Parte of Bresnan Communications, LLC, WC Docket No. 08-238**

Dear Secretary Dortch:

Bresnan Communications, LLC (“Bresnan”), through its attorneys, submits this letter respectfully requesting the Federal Communications Commission (“FCC” or “Commission”) to impose conditions on the merger of CenturyTel, Inc. (“CenturyTel”) and Embarq Corporation (“Embarq”). Bresnan is a provider of voice, video and broadband services in parts of four western states, including areas where CenturyTel is the incumbent local exchange carrier (“ILEC”).<sup>1/</sup> Within the past few months, Bresnan has started to provide voice services to small business customers located in CenturyTel’s territory in two of those states, Montana and Colorado, in addition to its existing residential voice services. In light of the difficulties it has faced in migrating these customers from CenturyTel, Bresnan adds its voice to the increasing number of service providers expressing their concerns over this merger.

Bresnan’s experience mirrors those of the other service providers that have commented in this proceeding. CenturyTel’s wholesale services are woefully inadequate or blatantly anticompetitive. These concerns are not alleviated by the commitments made by Embarq and CenturyTel in their April 10, 2009, ex parte submission.<sup>2/</sup> These commitments, while laudable, are not substitutes for tailored, enforceable merger conditions.

## **BACKGROUND**

Bresnan (and its affiliates) currently provide cable, broadband and/or telephony services to approximately 300,000 customers, primarily in rural areas and small cities. In many of these

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<sup>1/</sup> Bresnan provides services to Montana, Colorado, Wyoming and Utah.

<sup>2/</sup> Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Gregory J. Vogt, Counsel for CenturyTel, Inc. and Samuel L. Feder, Counsel for Embarq Corporation, WC Docket No. 08-238 (filed April 10, 2009) (“April 10 ex parte”).

markets, Bresnan is the only viable, facilities-based alternative to the incumbent carrier. At about the same time that CenturyTel and Embarq announced their merger plans, Bresnan began the process of providing voice and broadband offerings to small businesses in two markets, Kalispell, Montana, a city with a population of approximately 20,000 and in areas surrounding Lamar and La Junta, Colorado, towns with populations under 10,000.

As a result of Bresnan's entry into the marketplace, these businesses, for the first time, have an alternative to CenturyTel. In many instances, however, customers have had to wait months while CenturyTel processed Bresnan's orders. Whether the result of indifference, neglect, inadequate training or resources, or anticompetitive animus, the result is the same -- customers are unable to switch to the service provider of their choice in a timely manner. That customers have been willing to put up with such delays and still agree to switch to Bresnan speaks volumes about their desire for competitive alternatives.

As a facilities-based provider, all Bresnan needs from CenturyTel is access to customer information in order to submit a local service request to port telephone numbers and for CenturyTel to disconnect its lines without disrupting the customer's service. Yet these routine functions have been the source of extraordinary delay. CenturyTel's actions reflect what the company admits in its April 10 ex parte, that as a rural carrier unaccustomed to competitive entry, it has not allocated sufficient resources for wholesale processes. Bresnan welcomes CenturyTel's commitment to do so after the merger, but those commitments are vague and unenforceable. The FCC should address these failures through enforceable merger conditions tied to specific metrics where relevant.

### **THE NEED FOR CONDITIONS**

In their April 10 ex parte, CenturyTel and Embarq claim that evidence of anti-competitive behavior is unsubstantiated and, in any event, largely confined to complaints in Missouri.<sup>3/</sup> Bresnan's experience, however, confirms that these problems are real and are not isolated to one state or region. CenturyTel asserts that the problems stem from its use of manual processes that remain in place because the company has faced insufficient competition to justify the costs of installing automated systems.<sup>4/</sup> Despite currently owning some 2 million access lines, CenturyTel states that it is simply an amalgam of small rural companies that have only had to deal with small order volumes.<sup>5/</sup> This explanation, however, highlights a central concern with this merger. Once the transaction closes, CenturyTel will own some 8 million access lines, making it the fourth largest incumbent carrier, not far behind Qwest. In the markets where Bresnan competes with CenturyTel, and indeed in the vast majority of CenturyTel's markets,

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<sup>3/</sup> April 10 ex parte at 3.

<sup>4/</sup> *Id.*

<sup>5/</sup> *Id.* at 9.

CenturyTel adopts the mantle of a rural carrier and eschews the ILEC duties set forth in section 251(c). As stated on CenturyTel's website:

Competitors must take note of the fact that most CenturyTel Operating Companies are "rural telephone companies" as that term is defined in the Telecom Act, 47 U.S.C. 153. Pursuant to Section 251(f) of the Act, rural CenturyTel companies are exempt from Section 251(c) of the Act and are therefore exempt from offering Interconnection agreements to competitors who wish to purchase resale at a discount, UNEs, collocation or other 251(c) obligations.<sup>6/</sup>

This policy is clearly in evidence in the traffic exchange agreements that Bresnan has entered into with CenturyTel, in which the company reserves all rights to ignore 251(c) obligations.<sup>7/</sup> There is nothing to suggest that CenturyTel will not maintain its mindset of a small, rural carrier after the merger.

In Bresnan's experience, the issues it has faced with CenturyTel have nothing to do with high order volumes or that some processes are manual and others automated. Bresnan's order volumes for business customers has thus far been small and problems arise whether using one of CenturyTel's automated systems or being shuffled to manual processes. Moreover, CenturyTel's anticompetitive behavior extends beyond ordering processes. For one, CenturyTel imposes unreasonable costs on its rivals, like Bresnan, that are not contained in its contracts or tariffs and are wholly unrelated to costs. Perhaps most egregiously, CenturyTel's representatives make false statements regarding Bresnan's services, claiming incorrectly that customers will not be

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<sup>6/</sup> See

<http://business.centurytel.com/business/Wholesale/InterconnectionServices/QuickLinks/howToGetStarted.jsp>

<sup>7/</sup> See, e.g., Article I of the Traffic Exchange Agreement between Bresnan and CenturyTel, stating:

CenturyTel represents and warrants that it is a "rural telephone company" as that term is defined in the Act, 47 U.S.C. 153. Pursuant to Section 251(f)(1) of the Act, CenturyTel is exempt from Section 251(c) of the Act. Notwithstanding such exemption, CenturyTel has entered into and accepted this Agreement for purposes of exchanging local traffic, as defined in Article IV, Section 3 herein, with CLEC. CenturyTel's execution of the Agreement does not in any way constitute a waiver or limitation of CenturyTel's rights under Section 251(f)(1) or 251(f)(2) of the Act. Accordingly, CenturyTel expressly reserves the right to assert its right to an exemption or waiver and modification of Section 251(c) of the Act, in response to other requests for interconnection by CLEC or any other carrier.

able to obtain 911 services if they switch to Bresnan. In the text below, Bresnan will focus on three primary concerns: delays caused by CenturyTel's inadequate and inept ordering systems and anticompetitive policies; unreasonable and unlawful ordering charges; and disparaging Bresnan's services.

## **I. Unreasonable Delays in Processing Orders**

Bresnan has run into roadblocks at virtually every step of the wholesale and provisioning ordering process. These problems collectively cause substantial delays in porting customers and their telephone numbers. They appear to result from a combination of inadequate resources, poorly trained representatives, antiquated systems and policies whose effect, if not intent, is wholly anticompetitive. This merger will further the public interest only if these systemic problems are addressed. In the text below, Bresnan provides examples of these problems not in an effort to utilize the merger review process to resolve individual, discrete disputes, but to highlight the need to develop enforceable conditions that will force Centurytel to make the improvements it claims this merger will produce in its wholesale services.

### *A. CenturyTel's CSRs Fail to Provide the Information It Requires to Process Orders*

Once Bresnan has obtained authority from a new customer, the ordering process begins by Bresnan requesting specific customer information in order to submit a local service request ("LSR") to port a new customer's number(s) from CenturyTel to Bresnan.<sup>8/</sup> In order to do this, Bresnan must access CenturyTel's electronic system to access customer service records ("CSRs").<sup>9/</sup> The system is called ezViewCSR and it purports to provide "all user information including information on the entire list of customer's working telephone numbers," when accessed using the customer's account number, which is available from the customer's CenturyTel bill.<sup>10/</sup>

CenturyTel's electronic CSRs however, lack significant information needed to submit a local order for business services. For example, in Bresnan's experience with CenturyTel's CSRs: (1) the account name that is required on the LSR order is frequently incorrect, although the CSR provides the Directory listing information, that information is often different from the account name; (2) Circuit ID numbers, which are required on the LSR order are never included; (3) DID numbers which are required on the LSR order are never included; and (4) not all of the

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<sup>8/</sup> Exhibit A, Joint Affidavit at ¶ 5.

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

<sup>10/</sup> CenturyTel, ezViewCSR User Guide, July 2008 available at <http://business.centurytel.com/business/Wholesale/InterconnectionServices/Library/CenturyTelServiceGuide.pdf>

numbers on the account are included in the CSR for the account (there could be multiple CSRs per account).<sup>11/</sup> Only after repeated efforts was Bresnan informed that it needed to obtain manual CSRs in order get the information it needs. CenturyTel's instructional guides for CLECs, however, nowhere indicate that manual CSRs are even available, let alone required for certain types of orders.<sup>12/</sup> Nor did CenturyTel ever inform Bresnan account representatives that manual CSRs were available or required during purportedly comprehensive instructions of how Bresnan should place, follow and escalate CSR and local number portability orders with CenturyTel.<sup>13/</sup> CenturyTel's failure to inform Bresnan of the availability or the need for manual CSRs led to significant delays and wheel spinning.

*B. CenturyTel Unreasonably Attempts to Require Unavailable Personal Identifier Information to Port Numbers*

Another example of requiring information that CenturyTel does not make available involved CenturyTel's announcement in November 2008 that it would require competitors to provide the customer's Personal Identification ("PID") number when ordering number portability. CenturyTel, however, provided no way for competitors to acquire this information, other than by calling the potential customer. The customer, however, often did not know about the PID because CenturyTel had only recently provided it in an innocuous bill insert. Moreover, the PID did not appear on the CSRs and CenturyTel refused to provide the number to Bresnan even though it had obtained a letter of authority from the customer. Bresnan would have to either ask the customer to call CenturyTel, or try to set up a three-way call. Requiring customers to make such calls creates obvious and unfair win-back opportunities. Other providers have noted the same problem.<sup>14/</sup> Perhaps recognizing that this program was simply unworkable, CenturyTel suspended its PID process shortly before it became effective.

CenturyTel should not be allowed to restart this requirement until it adopts a mechanism for making the PID readily available, at no cost, to competitors that have received Letters of Authority ("LOAs") from their new customers, for example by providing it on the CSRs. Moreover, CenturyTel must be prohibited from using requirements, such as these, that may result in contact with its departing customer to engage in win-back activities. To make this prohibition readily enforceable, the Commission should adopt a condition to bar any win-back activities, regardless of whether a customer initiates a call to CenturyTel to obtain information to effectuate a transfer, until after the customer migration has been fully implemented.

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<sup>11/</sup> Exhibit A, Joint Affidavit at ¶ 5.

<sup>12/</sup> *Id.* at ¶ 6.

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

<sup>14/</sup> See, e.g., Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Thomas Jones, Attorney for Charter Communications, Inc., WC Docket No. 08-238, at 4-5 (filed Feb. 27, 2009) ("Charter Ex Parte").

C. *CenturyTel Further Delays the Porting Process by Repeatedly Rejecting the Same Orders Rather than Addressing all Issues at One Time*

After Bresnan obtains the customer information via the CSR request or requests, it must then submit an LSR for number portability. Bresnan has encountered substantial delays in this part of the porting process as well. One primary problem is that CenturyTel does not identify and correct all errors on LSRs at one time.<sup>15/</sup> Instead, CenturyTel will reject an LSR for one purported mistake and send the order back. Once returned, CenturyTel identifies another mistake from the original submission and returns the order once again, even though it should have identified that additional error in the first place. This process may be repeated numerous times. And the problems arise not only with multi-line business orders, but with simple residential ports as well.<sup>16/</sup>

Often, the errors identified by CenturyTel are not errors at all, but simply mistakes by CenturyTel, such as demanding information that is inapplicable to the order, or minor variations of business rules, such as identifying an address with an abbreviation rather than spelling it out, *e.g.*, Ave. instead of Avenue.<sup>17/</sup> As another example, CenturyTel was rejecting orders because Kalispell was misspelled. As it turned out, CenturyTel's records had misspelled Kalispell (spelling it Kallispell) and Bresnan's orders were rejected because they spelled the city name correctly.<sup>18/</sup> CenturyTel has also mistakenly rejected orders for failing to include circuit ID numbers even though the customer was not utilizing a dedicated circuit.

Recently, CenturyTel began rejecting orders for failing to include the primary NPA/NXX of the originating CenturyTel central office -- called local serving office ("LSO") information -- even though such information is nowhere to be found on customer's bills or CSRs, but is readily available to CenturyTel. CenturyTel had previously accepted orders without the LSO information, and CenturyTel's order guide indicates that the LSO information is not required.<sup>19/</sup> As a work around, CenturyTel has now directed Bresnan to fill in the LSO field with the NPA/NXX of the main telephone number on the account. Although this directive is nonsensical, Bresnan is complying in an effort to streamline the process.

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<sup>15/</sup> Exhibit A, Joint Affidavit at ¶ 8.

<sup>16/</sup> *Id.* at ¶ 13.

<sup>17/</sup> *Id.* at ¶ 9.

<sup>18/</sup> *Id.*

<sup>19/</sup> *Id.* at ¶ 10.

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The following is an example of how these various problems interact to cause extraordinary delay. The initial LSR for this business customer was submitted on January 23, 2009, thereafter:

- On January 27, 2009, the order was rejected for including an inactive telephone number.
- On January 29, 2009, the order was again rejected, this time for failing to include circuit ID information. CenturyTel ultimately confirmed that there was no circuit ID related to this customer.
- On February 5, 2009, the order was rejected because the customer needed to call CenturyTel to migrate a circuit.
- On March 3, 2009, CenturyTel again rejected the order because certain lines were associated with different business locations, necessitating submitting different orders, each with its own purchase order number (“PON”).
- On March 9, 2009, the order was rejected for failing to include the local service originating (NPA/NXX) information.
- On March 11, 2009, the order was again rejected for failing to include a circuit ID.
- On March 18, 2009, the order was rejected for failure to specify which circuits were to be disconnected and which telephone numbers were associated with those circuits.
- On March 24, 2009, the order was rejected for failure to note that the customer utilized a third-party internet service provider.

The telephone numbers for this customer were finally ported on April 3, 2009, nearly three months from the initial request. Bresnan’s experience with this customer is, unfortunately, not atypical. A number of Bresnan’s orders have received multiple rejections and a substantial number of Bresnan’s orders to port business customer’s numbers receive at least one rejection. When the issue of repeated rejections was escalated with CenturyTel, CenturyTel claimed that its policy is to identify all errors at one time. The policy clearly is not being applied in the field.

*D. CenturyTel’s Six Business Day Porting Interval for Simple Ports Is Unreasonable*

Although the current porting interval for wireline numbers is four days,<sup>20/</sup> CenturyTel routinely requires six business days to port even simple residential numbers. This delay is aggravated by CenturyTel’s rejections. Often, CenturyTel will wait until the last day to reject an order, and then restart the six day clock all over again. As a result, porting intervals between CenturyTel and Bresnan have routinely exceeded weeks or even months.<sup>21/</sup> These last minute

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<sup>20/</sup> *Telephone Number Portability*, Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 18515 (2004).

<sup>21/</sup> Exhibit A, Joint Affidavit at ¶¶ 11-12.

delays harm Bresnan's business and its customers because it has prevented Bresnan from providing specific scheduling dates for such service orders. The Commission has recognized that delay of processing service orders "directly affects a competing carrier's ability to serve its customers."<sup>22/</sup> What is perhaps most telling about CenturyTel's service is that customers have put up with these delays rather than simply choosing to remain with CenturyTel, indicating their desire for competitive alternatives.<sup>23/</sup> Nevertheless, these lengthy delays deprive Bresnan of the revenues that it should be receiving from these new customers, while CenturyTel unfairly retains that end user revenue and imposes unnecessary costs on Bresnan.

*E. CenturyTel Must Eliminate its Order Cap*

As others have noted, and CenturyTel acknowledges, it will not process more than 50 orders per carrier per day.<sup>24/</sup> CenturyTel readily acknowledges that this is a resource problem, presumably one that it intends to rectify as part of its commitments. Rather than rely on vague commitments, the Commission can help ensure that CenturyTel will deploy sufficient resources by removing the cap and requiring that CenturyTel process all orders within industry standard intervals. The Commission should condition the merger on compliance with the current four-day porting interval, or the shortest interval offered by other incumbent LECs. If the Commission should adopt a shorter interval, CenturyTel must comply with that interval.<sup>25/</sup> Failure to comply should be coupled with self-enforcing penalties. In this way, the Commission can ensure that CenturyTel will make sufficient resources available without having to dictate in any way how or where those resources should be deployed.

**II. CenturyTel's Unreasonable Service Order Charges Raise Rivals Costs**

CenturyTel imposes unreasonable charges on its competitors, thus raising their costs of doing business. As one example, CenturyTel charges Bresnan \$31.20 in Montana and \$20.00 in Colorado for ordering a CSR. If a customer has multiple CSRs, as do many business customers, CenturyTel imposes the charge for each CSR.<sup>26/</sup> Bresnan has been billed hundreds of dollars to pull successive CSRs for a single business customer. The basis for the charge is CenturyTel's

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<sup>22/</sup> *Application by Bellsouth Corp., et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to provide In-Region, Interlata Services in Louisiana*, 13 FCC Rcd 6245 (1998).

<sup>23/</sup> Exhibit A, Joint Affidavit at ¶ 12.

<sup>24/</sup> See Charter Ex Parte at 4; April 10 ex parte at 8.

<sup>25/</sup> See Letter to Marlene H. Dortch, Secretary, FCC from Kyle McSlarrow, President, NCTA, WC Docket No. 07-244 (filed April 15, 2009) (calling on the Commission to shorten the wireline porting interval to 48 hours).

<sup>26/</sup> Exhibit A, Joint Affidavit at ¶ 7.

generic charge for ordering a business line.<sup>27/</sup> However, nothing in CenturyTel's agreement with Bresnan or CenturyTel's tariff indicates that this generic charge applies to requests for CSRs. Apart from being unauthorized, there is nothing to suggest that this generic charge bears any relationship to CenturyTel's costs to provide electronic or manual CSRs.

CenturyTel also imposes the same charge for number porting. No other carrier imposes such charges on Bresnan, and as other commenters have noted, the charge is unlawful.<sup>28/</sup> CenturyTel's charge violates the Commission's requirement that CenturyTel recover carrier-specific costs associated with providing number portability only through tariffed end-user charges.<sup>29/</sup> Although CenturyTel claims in its April 10 ex parte that this charge is not specifically designed to recover the costs of porting,<sup>30/</sup> where the sole purpose of an LSR is to request a number port and no other services, CenturyTel's argument loses credibility.

### III. CenturyTel Falsely Disparages Bresnan's Services

Among the most egregious of CenturyTel's practices is its false disparagement of Bresnan's services as being unable to provide 911 services. As recently as this past month, a CenturyTel customer service representative informed a Bresnan video customer that was in the process of transferring her voice account to Bresnan that Bresnan did not provide 911 services.<sup>31/</sup> The FCC has consistently held that "unfair and deceptive marketing practices by common carriers constitute unjust and unreasonable practices" prohibited by section 201(b) of the Communications Act.<sup>32/</sup> Illegal deceptive marketing, as considered by the FCC, is not limited to formal marketing programs but may include oral statements made by customer service representatives.<sup>33/</sup> In one directly relevant case, the FCC charged a carrier with violating section

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<sup>27/</sup> See Montana Local Telephone Service Tariff at 24, available at <http://interapp.centurytel.com/resources/pdf/applications/tariffs/montana/mt12loc.pdf>; see also Colorado Tariff at 3rd Revised Sheet No. 2.4 available at <http://interapp.centurytel.com/resources/pdf/applications/tariffs/colorado/co14loc.pdf>

<sup>28/</sup> See Charter Ex Parte at 5.

<sup>29/</sup> 47 C.F.R. § 52.33.

<sup>30/</sup> April 10 ex parte at 12.

<sup>31/</sup> See Exhibit B, Brester Affidavit at ¶¶ 2-3.

<sup>32/</sup> *Joint FCC/FTC Policy Statement for the Advertising of Dial-Around and Other Long-Distance Services to Consumers*, Policy Statement, 15 FCC Rcd 8654, ¶ 4 (2000) ("FCC/FTC Policy Statement"); *NOS Communications, Inc. and Affinity Network Incorporated Apparent Liability for Forfeiture*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 8133, ¶ 6 (2001); *Business Discount Plan Inc.*, Order of Forfeiture, 15 FCC Rcd. 14461, ¶ 3 (2000); *Research and Action Center and Consumer Action*, Memorandum Opinion and Order, 4 FCC Rcd 2157, ¶ 18 (1989).

<sup>33/</sup> *FCC/FTC Policy Statement* ¶ 9 ("[T]he principles of truth and accuracy apply to advertisements conveyed via . . . oral representations made by customer service operators."). See also *Truth-in-Billing*

201(b) by “conducting a misleading marketing campaign” that included contacting former customers “and describing ‘problems’ that the customers’ chosen carriers were allegedly having.”<sup>34/</sup> The Commission described the identified practice as “tricking and threatening former customers into . . . switch[ing] their services back” using methods that “depict[ ] a callous disregard for the requirements of the Communications Act and section 201(b) in particular.”<sup>35/</sup> CenturyTel’s customer services representatives’ misinformation and misrepresentations concerning Bresnan’s services likely violate the Commission’s prohibition against unfair and deceptive marketing practices and thus the Commission should ensure that CenturyTel will not condone or allow such practices to occur post-merger.

### PROPOSED CONDITIONS

CenturyTel admits that its wholesale systems are inadequate and antiquated, and it proposes certain commitments to address this problem. It commits to adopting Embarq’s automated Operation Support Systems (“OSS”) within 15 months of the transaction close. In the meantime, CenturyTel commits to devoting “additional resources to its existing manual CLEC ordering processes to ensure that all local number portability requests are promptly processed.”<sup>36/</sup> It commits to devoting these additional resources within 30 days of the date of the April 10 ex parte.<sup>37/</sup> And, it commits to adopting the best practices of either company.

Bresnan welcomes CenturyTel’s statements regarding the importance of its wholesale services business and its commitments to improve them. The commitments, however, are no substitute for enforceable conditions with appropriate metrics and penalties. Otherwise, there is nothing to prevent CenturyTel from renegeing if it believes that circumstances warrant. Moreover, the commitments are hopelessly vague as CenturyTel nowhere identifies any best practice it commits to adopt, nowhere indicates the level of resources it will commit to wholesale order processing, and nowhere commits to meeting any specific level of performance.

Bresnan respectfully requests that the Commission adopt the following conditions in order to ensure that the merger does not aggravate CenturyTel’s currently anticompetitive practices.

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*and Billing Format*, CC Docket No. 98-170, Notice of Proposed Rulemaking, 13 FCC Rcd. 18176, ¶ 34 (1998) (“We note that a carrier’s provision of inaccurate and misleading information to a consumer who calls with a question or complaint could be considered an unjust and unreasonable practice in violation of Section 201(b) of the Act.”).

<sup>34/</sup> *NOS Communications, Inc., Affinity Network Incorporated and NOSVA Limited Partnership*, EB Docket No. 03-96, Order to Show Cause and Notice of Opportunity for Hearing, 18 FCC Rcd. 6952, ¶ 2 (2003).

<sup>35/</sup> *Id.* ¶ 15.

<sup>36/</sup> April 10 ex parte at 2.

<sup>37/</sup> April 10 ex parte at 9.

**1. Adopt Embarq's automated OSS within six (6) months of the merger closing.**

CenturyTel's commitment to adopt Embarq's OSS within 15 months is unreasonably long. It provides no basis for requiring such a lengthy lead time. As part of this upgrade, CenturyTel should also begin providing electronic copies of its wholesale bills in a format which will enable easy analysis and review.

**2. Adopt specific performance metrics for number portability.**

As a condition of the merger, CenturyTel should agree to the shorter of a four day porting interval or the shortest interval offered by other incumbent LECs. Additionally, CenturyTel must agree to comply with any shorter interval adopted by the Commission. More specifically, CenturyTel should complete 95% of a carrier's total, for all CenturyTel and Embarq companies, monthly port requests within the applicable porting interval. Failure to comply with respect to any carrier should result in a penalty payment to the carrier.

**3. Eliminate multiple rejections of the same order.**

As a condition of the merger, CenturyTel should adopt and enforce a policy that all errors on an LSR will be corrected at one time and that it will clearly specify its business rules.

Minor deviations, such as abbreviating Ave. rather than spelling out the whole word, should not be the cause of a reject. CenturyTel should, within six months of the merger closure, upgrade its automated systems so that such minor deviations do not result in automatic rejections.

**4. All information required in an LSR must be available on the customer's CSR.**

As of the date of the merger, CenturyTel may not request information on any LSR, whether for a complex business order or a simple residential order, that is not available on electronically available CSRs.

**5. Prohibit all CSR and LSR-port only charges.**

CenturyTel should immediately upon the merger closure, end any charges for obtaining a CSR and for submitting an LSR that requests only a number port.

**6. Cease misrepresentations.**

CenturyTel should, immediately upon the merger closure, train its employees not to make representations, particularly disparaging representations, of any kind regarding the service

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capabilities of competitive providers. CenturyTel should certify to the Commission that such training has been accomplished and describe the company's disciplinary policies for violations. The Commission should adopt a schedule of penalties for continuing non-compliance.

**7. Lift the cap on orders.**

CenturyTel claims that the merger will improve its wholesale processes and it commits to devoting additional resources to its wholesale division. One way to hold CenturyTel to this commitment is by eliminating its current cap on the number of orders it will process per carrier. Eliminating the cap, coupled with the condition on number porting intervals noted above, will require CenturyTel to allocate sufficient resources, as it has already committed to do.

**8. Ban all win-back efforts.**

As noted above, CenturyTel's policies have the effect of requiring additional, often customer-initiated contact, with CenturyTel in order to complete the customer migration process. These contacts, which are necessitated by CenturyTel's inadequate systems and processes, provide unfair opportunities to engage in win-back efforts, including making disparaging and untrue remarks about Bresnan's services. To preclude such activities in an administratively reasonable manner, the Commission should condition the merger on a flat ban on any win-back activities during the porting process and for 30 days after the customer migration. The Commission should adopt stiff penalties for demonstrated lack of compliance.

**CONCLUSION**

For the reasons set forth herein, the Commission should condition its approval CenturyTel's merger with Embarq on pro-competitive conditions.

Respectfully submitted,

/s/ Michael H. Pryor

Michael H. Pryor

*Counsel for Bresnan*

cc (via email): Nicholas Alexander

Jim Bird

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Melissa Kirkel  
Albert Lewis  
Marcus Maher  
Joel Rabinovitz  
Jennifer Schneider  
Donald Stockdale  
Mark Stone  
Julie Veach

**Attachment A**

**DECLARATION OF KATY HOULD AND LISA STROUF  
ON BEHALF OF BRESNAN COMMUNICATIONS, LLC**

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

In the Matter of )  
)  
Embarq Corporation, Transferor, and )  
CenturyTel, Inc., Transferee, Application for ) WC Dkt. No. 08-238  
Transfer of Control of Domestic )  
Authorizations Under Section 214 of the )  
Communications Act, as Amended )

**DECLARATION OF KATY HOULD AND LISA STROUF  
ON BEHALF OF BRESNAN COMMUNICATIONS, LLC**

1. My name is Katy Hould, and I am Manager of Commercial Provisioning at Bresnan Communications, LLC (“Bresnan”). My business address is 2727 Central Ave Billings MT, 59102. I am responsible for managing all technical and operational provisioning functions related to Bresnan Commercial Telephone and High Speed Internet service. My position requires me to have knowledge of: switch and equipment provisioning, LNP (Local Number Portability), Port Outs, E911, LIDB/CNAM, Directory Listings, and system administrator for various systems used for provisioning Bresnan Commercial Voice service. I also manage and oversee complex order designs and implementations and assist in the overall development of Commercial Telephone Service processes and procedures.

2. My name is Lisa Strouf, and I am the Residential Telephony Supervisor at Bresnan Communications, LLC (“Bresnan”). My business address is 2727 Central Ave, Billings, MT 59102. I am responsible for overseeing the Residential provisioning department and I supervise the daily activities of the Telephony Order Specialists as well as all work responsibilities of the department, including pre-install, day of install and post install. My

position requires me to know about all aspects of the order provisioning process, including LNP(Local Number Portability), Directory Listings, Caller Name updates, e911 activities, installs (ported and host), and disconnects (port-out and host).

3. Bresnan (with its affiliates) provides voice, video and broadband services in Montana, Colorado, Wyoming and Utah. The markets Bresnan serves are generally rural areas and small towns. Bresnan is typically the only facilities-based alternative for voice services in these areas. Bresnan currently competes with CenturyTel in Kalispell, Montana and Lamar/LaJunta, Colorado. Within the past few months, Bresnan has begun providing competitive services to small business customers in these markets and has opted into existing traffic exchange agreements with the local CenturyTel operating companies.

4. The purpose of this Declaration is to share Bresnan's experiences concerning CenturyTel's operations, practices, and wholesale service capabilities. In Bresnan's experience, CenturyTel's operations, practices and wholesale service capabilities are wholly inadequate and unable to sufficiently serve the wholesale service and porting requests of competing providers, like Bresnan.

***CenturyTel's Wholesale Services and Porting Practices For Small Business Customers, And for Access to Customer Service Records***

5. The first critical step in migrating a customer from CenturyTel to Bresnan is to obtain the customer information that is required to submit a valid local service request. CenturyTel utilizes an electronic system to access customer service records (CSRs), called ezViewCSR, that purports to provide "all user information including information on the entire list of customer's working telephone numbers," when accessed using the customer's account

number, which is available from the customer's CenturyTel bill.<sup>1/</sup> CenturyTel's electronic CSRs however, lack significant information that CenturyTel requires when submitting a local service order to migrate a business customer. For example, the electronic CSRs:

- Frequently contain the incorrect Account Name which is required on the LSR order. (It may contain the Directory listing information, but that often is different than the Account Name).
- Never include Circuit ID numbers, which are required on the LSR order.
- Never include DID numbers, which are required on the LSR.
- Often exclude some of the telephone numbers on the account (there could be multiple CSRs per single account).

6. As Bresnan began to submit orders for small businesses with multiple lines or locations, CenturyTel informed Bresnan that a manual CSR must be requested for any complex business order. CenturyTel's instructional guides for CLECs nowhere indicate that manual CSRs are even available, let alone required for certain types of orders. Nor did CenturyTel ever inform Bresnan account representatives that manual CSRs were available or required during purportedly comprehensive instruction of how Bresnan should place, follow and escalate CSR and local number portability orders with CenturyTel. CenturyTel's CSRs, both electronic and manual, often contain inaccurate information that leads to rejections of Bresnan's LSRs when Bresnan incorporates the erroneous CSR information.

7. Despite the inadequate information contained on CSRs, CenturyTel charges Bresnan for each CSR pulled. Where Bresnan has had to pull both electronic and manual CSRs in order to obtain information, CenturyTel has charged for both. Moreover some business accounts with multiple numbers have multiple CSRs and Bresnan must pay the \$31.20 for each business CSR in Montana and \$20 for each business CSR in Colorado. Bresnan has been billed

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<sup>1/</sup> CenturyTel, ezViewCSR User Guide, July 2008.

hundreds of dollars to pull successive CSRs for a single business customer. Even though CenturyTel may refund some of these amounts, Bresnan must expend limited resources auditing and disputing CenturyTel's bills containing multiple CSR charges.

### *The Number Porting Process*

8. Gathering the information required to submit a local service request is only one step in the process of ordering a number port. Bresnan must then submit a local service request (LSR) for number portability. Bresnan has encountered substantial delays in that part of the process as well. One primary problem is that CenturyTel does not identify and correct all errors on an LSR at one time. Instead, CenturyTel will reject an LSR for one mistake and send the order back. Once returned to CenturyTel, CenturyTel identifies another mistake from the original submission and returns the order once again, even though it should have identified that additional error in the first place. This process may be repeated numerous times. The serial identification of errors causes substantial delays and each rejection of an LSR re-starts a six business-day window that CenturyTel offers for porting numbers.

9. Often, the errors identified by CenturyTel are not errors at all, but simply mistakes by CenturyTel, such as demanding information that is inapplicable to the order, or minor variations of business rules, such as identifying an address with an abbreviation for Avenue rather than spelling it out. For example, CenturyTel has mistakenly rejected orders for failing to include circuit ID numbers even though the customer was not utilizing a dedicated circuit. In a different instance, CenturyTel was rejecting orders because Kalispell was misspelled. As it turned out, CenturyTel's records had misspelled Kalispell (spelling it Kallispell) and Bresnan's orders were rejected because they spelled the city name correctly. After Bresnan submitted the order with the wrong spelling, the orders were processed.

10. As alluded to above, CenturyTel requires information on the LSR that is not obtainable from the electronic customer service records, for example, circuit ID or DID numbers. Recently, CenturyTel began rejecting orders for failing to include the NPA/NXX of the originating CenturyTel central office -- called local serving office (LSO) information -- even though such information is nowhere to be found on customer's bills or CSRs, but is readily available to CenturyTel. This requirement popped up suddenly and unexpectedly. CenturyTel had previously accepted orders without the LSO information, and CenturyTel's order guide indicates that the LSO information is not required. The following is one example of how these various problems can be compounded to cause extraordinary delay. The initial LSR for this customer was submitted on January 23, 2009. Thereafter:

- On January 27, the order was rejected for including an inactive telephone number.
- On January 29, the order was again rejected, this time for failing to include circuit ID information. CenturyTel ultimately confirmed that there was no circuit ID related to this customer.
- On February 5, 2009, the order was rejected because the customer needed to call CenturyTel to migrate a circuit.
- On March 3, 2009, CenturyTel again rejected the order because certain lines were associated with different business locations, necessitating submitting different orders, each with its own purchase order number (PON).
- On March 9, 2009 the order was rejected for failing to include the local service originating (NPA/NXX) information.
- On March 11, 2009 the order was again rejected for failing to include circuit ID.
- On March 18, 2009, the order was rejected for failure to specify which circuits are to be disconnected and which telephone numbers are associated with those circuits.
- On March 24, 2009, the order was rejected for failure to note that the customer utilized a third-party internet service provider.

The numbers for this customer were finally ported on April 3, 2009, nearly three months from the initial request.

11. Bresnan's experience with this customer is, unfortunately, not atypical. A number of Bresnan's orders have received multiple rejections and a substantial majority of Bresnan's orders to port business customer's numbers receive at least one rejection. When the issue of

repeated rejections was escalated with CenturyTel, CenturyTel claimed that its policy is to identify all errors at one time. Its policy clearly is not being applied in the field.

12. Each rejection restarts the clock. As a result, porting intervals exceeding weeks or even months are not uncommon. There is been virtually no instance when a customer's number has been ported within industry standard intervals. CenturyTel's processing failures have made it impossible for Bresnan to inform potential customers of when their service would be transferred. What is perhaps most remarkable is that customers have put up with these delays rather than simply choosing to remain with CenturyTel, indicting their strong desire for competitive alternatives. Nevertheless, these lengthy delays deprive Bresnan of the revenues that it should be receiving from these new customers, while CenturyTel unfairly retains that end user revenue and imposes unnecessary costs on Bresnan.

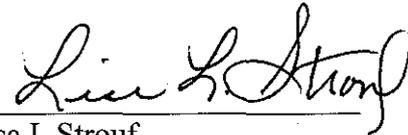
### ***Residential Orders***

13. CenturyTel's inadequate whole processes are not limited to "complex" business orders. They extend to port residential numbers as well. The primary problem is that CenturyTel consistently fails to either confirm or reject simple residential orders in a timely manner. Instead, CenturyTel will often reject a port request shortly before the due date, which then restarts the porting interval. This requires Bresnan to reschedule service installation with its new customer. Because CenturyTel requires six business days to process even a simple single-line port request, CenturyTel's last minute rejections cause substantial delays.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 15 April, 2009

By:



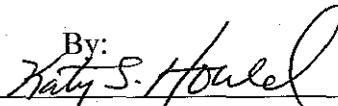
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Lisa L Strouf

**Residential Telephony Supervisor**

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 4-14-09

By:   
\_\_\_\_\_  
**Katy S. Hould**  
**Commercial Provisioning Manager**

**Attachment B**

**DECLARATION OF TODD BRESTER  
ON BEHALF OF BRESNAN COMMUNICATIONS, LLC**

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

In the Matter of )  
)  
Embarq Corporation, Transferor, and )  
CenturyTel, Inc., Transferee, Application for ) WC Dkt. No. 08-238  
Transfer of Control of Domestic )  
Authorizations Under Section 214 of the )  
Communications Act, as Amended )

**DECLARATION OF TODD BRESTER  
ON BEHALF OF BRESNAN COMMUNICATIONS, LLC**

I, being of lawful age and under no disability, upon being duly sworn, and having personal knowledge of the matters set forth herein, declare and state as follows:

1. My name is Todd Brester, and I am Field Service Technician III at Bresnan Communications, LLC (“Bresnan”). I have worked for Bresnan since 1995. My business address is 333 1st Avenue East, Kalispell, MT 59901. I am responsible for equipment installations, equipment service calls, and customer service.
2. On April 1, 2009, I was at the home of a Bresnan cable subscriber connecting our digital phone service for her. She has been a customer with us since 2003 and previously only had video service with us. When the phone service was connected, she decided to call CenturyTel to notify them that they could disconnect her CenturyTel line. I was able to listen in on the conversation because the customer was holding the receiver far enough away that I could hear. That is when the CenturyTel representative told her she would not be able to make 911 emergency calls if she used Bresnan’s phone service. I assured the subscriber that of course our service provides the capability to access 911.

3. This situation is not the first time that I have heard that a CenturyTel customer service representative has made misrepresentations concerning Bresnan's 911 services. Another subscriber had previously told me about a similar experience. That subscriber informed me that a CenturyTel customer service representative had stated that 911 services would be unavailable using Bresnan's voice service.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 4-10-09

By: Jed Brestas  
[INSERT NAME]  
[INSERT TITLE]