April 29, 2009

VIA ECFS

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

Re: ***Ex Parte Letter*** - Embarq Corporation, Transferor, and CenturyTel, Inc., Transferee, Application for Transfer of Control of Domestic Authorizations Under Section 214 of the Communications Act, as Amended - WC Docket 08-238

Dear Secretary Dortch:

COMPTEL, DeltaCom, NuVox, Socket Telecom, LLC and Sprint (collectively "Commenters") respectfully submit this letter to respond to various assertions contained in recent ex parte filings submitted on behalf of CenturyTel and Embarq (the "Applicants") in the above-captioned docket. While the Applicants have stepped-up the pace of their ex partes in recent weeks, their theme is largely the same as it has been from the beginning: bigger is better and being bigger will enable us to compete and invest – with no competitive harm. This tag-line quality rationale is hardly the type of material upon which the Commission can or should base its public interest assessment. As Commenters have demonstrated on several occasions, the likely competitive harms associated with this merger must be addressed and offset through conditions – voluntary or otherwise.

Fortunately, the Applicants' April 10, 2009 and subsequent submissions appear to show that the Applicants are beginning to think in terms of voluntary commitments they need to make to meet the public interest standard and to secure approval of their proposed transaction. At this juncture, however, it appears as though the Applicants are merely "testing the waters" with a rather limited set of porous and vague commitments. Much more will need to be done to meet the public interest standard set in Commission precedents. And, if the Applicants want to secure approval in the timeframe they desire, it will need to be done quite quickly. To facilitate this process, Commenters offer the following constructive observations with respect to the "commitments" offered to date by the Applicants.

CT/EQ Commitment No. 1

"The Applicants ... will adopt the best practices of either company for the merged entity."

This commitment has the "right idea" but it lacks sufficient specificity. First, "best practices" should be interpreted from the perspective of the Applicants' wholesale customers. Otherwise, the merged entity, under CenturyTel management and control, reasonably can be expected to view as "best" those practices that thwart rather than facilitate competition. Second, where issues have been raised in this docket about the spread of anticompetitive CenturyTel practices, those issues should be addressed in the context of this commitment. For example, it should be expressly clarified that Embarq's number porting, maintenance and repair methods and procedures, order processing, UNE provisioning intervals, hot cut process, 911 records and directory listings practices[1] will prevail as best practices to be used throughout the merged entity pursuant to this commitment. Third, this Commitment needs an implementation date. The one that makes the most sense is the date the transaction is consummated. This way, the Applicants can take as much time as they need, while facing what should be a fair amount of pressure to devote the resources needed to get it done in a timely manner. Finally, this commitment should have no expiration date. The public interest would not be served by re-adoption of discarded anticompetitive practices in 36 or even 48 months. To the extent the merged entity wishes to improve practices going forward, the governing standard should be that they must be considered improvements by the Applicants' wholesale customers.

<u>CT/EQ Commitment No. 2</u>

> **"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."**

This commitment also has the right idea, and it also lacks sufficient specificity. First, in order to give this commitment meaning, some definition must be given to "substantially" and "reasonable and normal allowances". Otherwise, it is hard to envision an event that wouldn't fall into the allowances. Second, in order to track this commitment, performance must be measured. UNE and special access performance metrics need to be reported to and monitored by the Commission. Third, to avoid a potentially endless series of disputes and litigation, the performance metrics should be coupled with a self-effectuating enforcement mechanism including direct payments to competitors for performance failures. Fourth, this Commitment needs an implementation date. Again, the one that makes the most sense is the date the transaction is consummated. Finally, this commitment should allow for and encourage improvement in service levels and have no expiration date.

<u>CT/EQ Commitment No. 3</u>

> **"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."**

With this Commitment, the Applicants once again have the right idea but lack sufficient specificity. First, clarification is required to ensure that this commitment applies to all

1 Each of these elements are components of conditions previously proposed by the Commenters. For convenience, those conditions are replicated and appended hereto.

CLEC orders and not just those made by CenturyTel's CLECs. Second, "promptly processed" must be defined as "within 24 hours" and the commitment must be expanded to include timely performance of the port in accordance with industry standards. Finally, to the extent not covered by another commitment, this commitment should include the immediate elimination of arbitrary port quantity limits previously imposed by CenturyTel.

CT/EQ Commitment No. 4

"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."

This commitment also has a sound premise, but lacks specificity. First, it should be clarified that a CLEC negotiating "multiple contracts" can (a) negotiate a "single" contract that can be replicated for use with multiple CenturyTel and Embarq entities, and (b) use any existing CenturyTel or Embarq ICA as the baseline for such negotiations. Second, the "in most circumstances" clause should be eliminated, as it could be used to renege on the commitment almost at whim. Finally, and most critically, this commitment should be expanded to reduce transaction costs associated with interconnection agreements in other ways. Specifically, this commitment should be amended to allow for: (a) the extension of any interconnection agreement, regardless of whether its initial term has expired, for a period of up to 36 months from the date the transaction closes, or from the interconnection agreement's expiration date, whichever is later; (b) porting of interconnection agreements; and (c) 30-day/condition-free implementation of section 252(i) adoptions.

Additional Commitments Are Necessary

Even if modified as described above, the commitments made by the Applicants do not go far enough to offset this merger's potential public interest harms. As explained by Commenters in previous filings, additional UNE and special access commitments are needed to produce the requisite showing that the merger will advance competition and positively impact wholesale customers.

With respect to UNEs, Commenters' proposed **UNE Rate Rationalization and Discount** condition should be incorporated into a set of commitments enforceable at the Commission or at any state commission with jurisdiction over affected interconnection agreements. The rationale for this condition is the same as it has been when the Commission has adopted UNE rate discount commitments in the past. Commenters' proposed **UNE Availability Freeze** condition also should be incorporated into a set of commitments adopted by the Commission. Here, too, the rationale for this condition is the same as it has been when the Commission has adopted UNE rate discount commitments in the past. Finally, with respect to UNEs, the Applicants should be required to pass-on some of the claimed merger synergies, efficiencies and cost savings to their wholesale customers. One way to do this is to adopt Commenters' proposed **Dedicated Interoffice Facilities** condition, which would require transmission facilities owned by the merged entity (including any affiliates) to be made available as UNE dedicated transport (regardless of whether CenturyTel chooses to maintain its Balkanized legal structure).

With respect to special access, several conditions appear to fit the circumstances. Notably, Applicants' disclosures to date regarding their CLEC and competitive transport operations (LightCore and perhaps more) remain quite limited. From the network map provided (most recently at page 4 of the Applicant's April 22, 2009 ex parte), it is obvious that extensive fiber assets no longer will be available to support competitive special access offerings. For this reason and others explained previously, special access conditions, including Commenters' proposed **Special Access Rate Cap, Affiliate Transactions, Circuit and Plan Portability** and **Forbearance Freeze** conditions are necessary to tip the public interest assessment in the Applicants' favor.

A few other conditions that do not fit neatly into the UNE or special access categories also appear to fit the circumstances and are necessary to tip the public interest assessment in Applicant's favor. To the extent not incorporated into the "best practices" commitment discussed above, approval of the merger should be conditioned on the Applicants' compliance with industry best practices regarding **Number Portability**.

Commenters' **Single Point of Interconnection** condition also is necessary to address artificial barriers to competition maintained by CenturyTel and to ensure that some of the claimed merger synergies, efficiencies and cost savings are passed on to wholesale customers.

Commenters' **Cap of Transit Service Rates** condition is necessary to offset increased market power and to provide a firm foundation for competition, which has been slow to develop in the Applicants' combined service territories, capable of supporting and spurring investment and broadband deployment by wireline competitors.

Finally, Commenters' **ADSL Transmission Service** condition is necessary to ensure the availability of competitive broadband and to provide Applicants with a continuing incentive to invest.

<u>Glimpses of What's to Come, If Approval Is Not Conditioned</u>

While the tone of this ex parte is intended to be positive and constructive, Commenters cannot let pass without a response several mischaracterizations and misleading statements contained in the Applicants' April 10, 2009 ex parte presentation. As explained in the attached Declaration of James R. Burt on Behalf of Sprint, Sprint has arbitrated a number of interconnection issues with CenturyTel related to the **Single Point of Interconnection** condition proposed by the Commenters (which is intended to create a legal obligation independent of any that otherwise does or does not exist). In spite of the experience between Sprint and CenturyTel on this topic, however, CenturyTel misrepresented Sprint's position in the Applicants' April 10, 2009 filing. In the same letter, CenturyTel also brazenly mischaracterizes questions posed by the Commission in its Unified Intercarrier Compensation Proceeding.

The attached Supplemental Declaration of R. Matthew Kohly on behalf of Socket Telecom, LLC also addresses a number of mischaracterizations and/or misleading statements made by CenturyTel in the April 10, 2009 filing with respect to Directory Listings, Hot Cuts, Dedicated Transport and Points of Interconnection. Mr. Kohly also responds to CenturyTel's claims regarding its DS1 provisioning interval. In this regard, CenturyTel has claimed a 9 business day interval is its standard, but has said that Socket cannot have the interval incorporated into its current interconnection agreement. In a nutshell, this captures how CenturyTel typically treats its wholesale customers: with cynicism and contempt.

The Commission should remain mindful that it is CenturyTel taking control here. No matter whether an Embarq employee takes on key roles or even control over wholesale operations, he still will have to report to and carry-out the wishes of a CenturyTel management team that does not yet appear to be willing to embrace fully its wholesale obligations.

* * *

Please do not hesitate to contact the undersigned, if you have any concerns or questions.

Respectfully submitted,

/S/
Charles W. McKee
Director Government Affairs
Sprint Nextel Corporation
2001 Edmund Halley Drive
Reston, VA 20191
(703) 433-3786

/S/
John J. Heitmann
Kelley Drye & Warren LLP
3050 K Street, NW, Suite 400
Washington, DC 20007
(202) 342-8544
jheitmann@kelleydrye.com
Counsel to NuVox and Socket Telecom, LLC

/S/
D. Anthony Mastando
VP, Regulatory Affairs and Senior Regulatory Counsel
DeltaCom, Inc.
7037 Old Madison Pike
Huntsville, AL 35806

/S/
Mary C. Albert
Karen Reidy
COMPTEL
900 17th Street N.W., Suite 400
Washington, DC 20006

Attachments

cc:	Nicholas Alexander	Michele Ellison	Susan O'Connell
	Jim Bird	Dennis Johnson	Joel Rabinovitz
	Randy Clarke	Melissa Kirkel	Jennifer Schneider
	Renee Crittendon	David Krech	Don Stockdale
	Neil Dellar	Albert Lewis	Mark Stone
	Scott Deutchman	Marcus Maher	Julie Veach
	Bill Dever	Erin McGrath	Best Copy and Printing
	Nicholas Degani	Chris Moore	

PROPOSED CONDITIONS

1. Conditions to Reduce Transaction Costs Associated with Interconnection Agreements

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

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

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

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

2. Conditions Related to Unbundled Network Elements

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

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

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

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

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

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

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

3. Conditions Related to Special Access and Other Wholesale Services

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

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

PROPOSED CONDITIONS

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

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

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

4. Other Conditions

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

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

1 *See* Local Number Portability Administration – Working Group, Industry Best Practices Document *available at* www.npac.com/cmas/LNPA.

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

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

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

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

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

PROPOSED CONDITIONS

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

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

DECLARATION OF JAMES R. BURT
ON BEHALF OF SPRINT NEXTEL

1. My name is James R. Burt. I am Director – Policy for Sprint Nextel ("Sprint"). My business address is 6450 Sprint Parkway, Overland Park, KS 66251. My primary job responsibilities include the development and advocacy of state and federal regulatory and legislative positions important to Sprint. This includes testifying before regulatory and legislative bodies.
2. Sprint offers a comprehensive range of wireless and wireline communications services; instant national and international push-to-talk capabilities; and a global Tier 1 Internet backbone.
3. Sprint operates as a competitive local exchange carrier ("CLEC") in numerous states. Sprint's CLEC entity provides wholesale services for several cable companies for the provision of cable telephony service.
4. Sprint's wholesale services include, but are not limited to, interconnection with incumbent local exchange carriers ("ILEC"), telephone number administration, telephone number portability and 911 provisioning.
5. Sprint's CLEC entity interconnects with multiple ILEC affiliates of both CenturyTel, Inc. ("CenturyTel") and Embarq Corporation ("Embarq") in several states pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 ("the Act").
6. Sprint has recently arbitrated several Section 251/252 interconnection issues with CenturyTel in the states of Michigan, Arkansas, Colorado and Oregon. I was a witness in those proceedings.
7. One issue Sprint arbitrated with CenturyTel was whether Sprint had the right to request direct interconnection at a single point of interconnection ("POI") within CenturyTel's network. A POI is where two carriers' networks connect. Sprint and CenturyTel also arbitrated whether Sprint had the right to choose direct or indirect interconnection.
8. Direct interconnection involves two carriers directly connecting with one another. Indirect interconnection involves three carriers. The two that are exchanging traffic and a third that is acting as an intermediary between the two by providing a transit service.
9. Sprint's position is that the CLEC may choose to interconnect directly or indirectly as stated in Section 251(a) of the Act.
10. Sprint's position for direct interconnection is that a CLEC may request a single POI within the LATA at any technically feasible point within the ILEC network. Sprint does not take the position that the POI can be outside the ILEC's network.

11. Sprint does not believe there is the equivalent of a POI when carriers indirectly interconnect. Sprint does agree that in indirect interconnection each carrier is responsible for the cost to deliver its traffic to the third party tandem and is responsible for the cost of any third party charges for the use of the tandem.
12. CenturyTel and Embarq's April 10, 2009 ex parte misrepresents Sprint's position regarding the location of the POI between Sprint's network and the ILEC network. CenturyTel and Embarq incorrectly state on page 6 of the ex parte that Sprint has sought to establish a POI for one or more CenturyTel ILECs that are not even on CenturyTel's network. As stated above, Sprint's position on direct interconnection, the type that includes the designation of a POI, is that Sprint may request a single POI within the LATA at any technically feasible point within the ILEC network.
13. One can only speculate as to why Sprint's position has been mischaracterized by CenturyTel and Embarq. It may be due to CenturyTel and Embarq combining two distinct issues into one, i.e., combining the issues of how many POIs are required in direct interconnection with terms for indirect interconnection where the carriers wishing to exchange traffic utilize a third carrier that is presumably not on either of the two carriers network that wish to exchange traffic.
14. CenturyTel and Embarq's April 10, 2009 ex parte also mischaracterizes questions posed by the FCC in the Unified Intercarrier Compensation proceeding. The statement on page 6 of the April 10, 2009 ex parte "The Commission has made clear that there is currently no requirement for an ILEC to accept such a POI." is referring to the previous mischaracterization of Sprint's position on interconnection. CenturyTel and Embarq have mischaracterized the question posed by the FCC as a statement. Below, I have inserted the paragraph preceding and the paragraph that actually contains the question asked by the FCC that CenturyTel and Embarq are attempting to characterize as a conclusion. In its full context, the FCC is clearly asking a question of potential commentors. This question can not be construed as a statement. In fact, in footnote 17 they recognize this is a question the FCC is seeking comment on rather than a conclusion in the parenthetical cite that precedes the question they are referencing, "seeking comments on the following question:"[1]

c. Single Point of Interconnection Issues

112. As previously mentioned, an ILEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point, including the option to interconnect at a single POI per LATA. Our current reciprocal compensation rules preclude an ILEC from charging carriers for local traffic that originates on the ILEC's network. These rules also require that an ILEC compensate the other carrier for transport'" and termination for local traffic that originates on the network facilities of such other has led to questions concerning which carrier should bear the cost of transport to the POI, and under what circumstances an interconnecting carrier should be able to recover from the other carrier the costs of transport from the POI to the switch serving its end user. In particular, carriers have raised the question whether a CLEC, establishing a

[1] CenturyTel and Embarq reference CC Docket No. 99-203 in footnote 17 of the April 10, 2009 EX PARTE PRESENTATION. The correct FCC docket is FCC Docket No. 01-92. The sentence cited by CenturyTel and Embarq appears in paragraph 113 Docket No. 01.92.

> single POI within a LATA, should pay the ILEC transport costs to compensate the ILEC for the greater transport burden it bears in carrying the traffic outside a particular local calling area to the distant single POI. Some ILECs will interconnect at any POI within a local calling area; however, if a CLEC wishes to interconnect outside the local calling area, some LECs take the position that the CLEC must bear all costs for transport outside the local calling area. CLECs hold the contrary view, that our rules simply require LECs to interconnect at any technically feasible point within a LATA, and that each carrier must bear its own transport costs on its side of the POI.
>
> 113. *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?* Alternatively, should a carrier be required either to interconnect in every local calling area, or to pay the ILEC transport and or access charges if the location of the single POI requires the ILEC to transport a call outside the local calling area? Further, if we should determine that a carrier establishing a single POI outside a local calling area must bear some portion of the ILEC's transport costs, do our regulations permit the imposition of access charges for calls that originate and terminate within one local calling area but cross local calling area boundaries due to the placement of the POI?

As the first statement in paragraph 112 makes clear, consistent with Sprint's position that "an ILEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point, including the option to interconnect at a single POI per LATA."

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

Jim Burt

James R. Burt

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

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

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

its affiliate, Socket Holdings Inc d/b/a Socket Internet. In addition to these integrated services, Socket also provides stand-alone or naked DSL to both business and residential users. Socket competes primarily in the non-metro areas of Missouri. In many instances, Socket is the only competitive alternative available in some of the more rural areas.

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

5. The purpose of this declaration is to respond to the April 10, 2009 letter submitted by Embarq Corporation and CenturyTel, Inc. That letter, which contains many statements and allegations that are incredibly misleading or simply incorrect, reflects CenturyTel's unabashed tendency to play "fast and loose" with the facts. It is exactly this kind of behavior that Socket believes will be expanded to the Embarq properties if the merger is approved without appropriate conditions.

Directory Listings

6. CenturyTel tries to dismiss the issue of its mishandling of CLEC directory listings raised by Socket by claiming that the number of errors is "statistically minimal" and that the inaccurate and missing listings are simply caused by clerical errors rather than by a deliberate attempt to undermine competition through inadequate systems and processes. CenturyTel also suggests that these errors are caused by the third-party directory publishers and that CLECs could solve this problem by reviewing the "galley proofs"[1].

[1] As noted in my original declaration, CenturyTel does not provide a true galley proof that shows listings as they will actually appear in the directory. Instead, CenturyTel shows the listings in the form of a spreadsheet with minimal information concerning the listing. The only online look-up for these listings is CenturyTel's EZViewCSR which is inadequate for directory listings because it only shows a straight-line view of the listing and does not show any features. For example, a complex business listing with multiple lines or multiple locations will only show the caption header and not a complete set of listings. In addition, the listing requests submitted through CenturyTel's interface are subjected to layers of interpretation. As a result, what appears in CenturyTel's galleys is not necessarily what appears in the actual directory.

First, whether CenturyTel's errors are caused by willful misconduct or rampant incompetence does not change two facts: (1) CenturyTel is causing these errors, and (2) such errors are negatively affecting Socket's customers and Socket's ability to compete in local exchange market.

7. CenturyTel's claims that the quantity of these errors is statistically minimal is either false or CenturyTel has a unique view of what qualifies as being "statistically minimal". Socket reviews its listings in CenturyTel's "galleys" on a quarterly basis and in the final "galley" issued prior to a directory being published. When Socket finds errors, Socket submits a Directory Service Request ("DSR") to have the errors corrected. A review of CenturyTel's recent performance shows a "galley" error rate of 15.01% to 22.76% of Socket's directory listing lines for Columbia, Missouri and the surrounding exchanges.[2] Socket simply cannot accept that these error rates are minimal and should not be addressed. Even when Socket submits corrections, these errors still make it into the actual printed directory. The 2008 directory for the Columbia exchange, 14.44% of the yellow page listing[3] lines and over 5% of the white page listing lines were in error. This still unacceptable error percentage is reduced from the galleys, in part, because of Socket's extraordinary efforts to correct the galleys. Unfortunately, once an error makes its way into the directory, it is there for a year until a new directory is published. This can be quite damaging to a business customer, and, in turn, to Socket.

8. The fact that CenturyTel tries to dismiss its dismal performance as inconsequential and not its fault rather than simply addressing its performance issues in a straightforward manner reflects CenturyTel's continuing failure to take its wholesale obligations seriously. Because CenturyTel management will control the combined entity – including its wholesale division (it is our understanding that Mr. Cheek will be reporting up to CenturyTel management), Socket is seriously concerned about this mindset spreading to

[2] These error percentages are based upon the percentage of lines in error for the directory listings for the directory for Columbia, Missouri and surrounding exchanges for the time period of April 2008 through the final galley reviewed in March 2009. A review of the directory listings for the directory covering CenturyTel's exchanges in St. Charles, Warren and Lincoln County (suburban St. Louis exchanges) shows a percentage of listing lines in error ranging from 10.64% to a high of 22.09% for the same period. Sadly, this is a problem that is getting worse – not better, as the recent March 2009 galleys had the highest percentage of errors to date. These errors require Socket to submit an Insert, Change or Deletion order to correct the list error.

[3] Yellow page listing refers to the single line business listing found in the yellow pages and does not include any paid advertisements.

the Embarq properties if this change in control is permitted to be consummated without adequate safeguards. Socket also is concerned about manual processes and procedures replacing Embarq's processes and procedures causing the spread of and failure to address CenturyTel's performance issues.

Hot Cuts

9. CenturyTel does not have a loop hot cut process in place and has ignored repeated requests from Socket to establish such a process. CenturyTel's claim that it does have a "coordinated process for the smooth transition of customer services" and its allegation that "Socket declines to follow an approved procedure that would avoid the inconveniences it now raises" are misleading at best. Specifically, CenturyTel is unable to provide a "coordinated process for the smooth transition of customer services" using a loop hot cut process so that the loop serving the customer does not change when the customer changes service providers thereby avoiding unnecessary delay and deployment of loop plant and engineering resources. This process simply does not exist or, if it does exist, CenturyTel repeatedly has told Socket that it does not exist.

10. Apparently, the approved procedure that CenturyTel is referring to is a Local Number Portability ("LNP") hot cut process which is found in the Interconnection Agreement between Socket and CenturyTel. This process is only for porting the customer's phone number and does not involve re-using the loop as is done in a loop hot cut process. Instead, CenturyTel requires a duplicate loop to be in place before the customer's phone number can be ported and will do nothing to address Socket's concerns about its orders being placed into "jeopardy" status because of a lack of facilities.[4]

11. CenturyTel's statement in Footnote 39 clearly contradicts its claim that it is has a loop hot cut process. In that footnote, CenturyTel tries to justify its refusal to establish a loop hot cut process on the grounds that Socket's request demanded procedures that "were not feasible and at rates that were not cost compensatory". Other than being an acknowledgement that it never established a loop hot cut process, this statement is simply

[4] Because a loop hot cut process does not exist, in the month of March 2009, over 20% of Socket's orders for xDSL capable loops were denied for a lack of facilities. When this occurs, Socket is unable to serve residential and small business customers via an xDSL-capable loop or subloop because there are not sufficient facilities in place to assemble a duplicate loop to reach the customer's premise.

false as Socket never proposed specific procedures or rates[5]. Instead, Socket simply sought to open a dialogue to establish such a procedure and pointed out that other LECs have such a process. Since acknowledging receipt of Socket's request on October 17, 2008, CenturyTel has never responded to it. This is the type of neglect that is the hallmark of CenturyTel management's approach to its wholesale obligations. CenturyTel's misleading statements, history of neglect (at best), and vague promises that it will do better, if allowed to take over all of the Embarq properties, should satisfy nobody.

Intercompany Transport and POIs

12. CenturyTel attempts to gloss over the issue of transport between various CenturyTel companies by arguing that "in many of CenturyTel's service territories in Missouri, no CenturyTel ILEC owns the tandem switch or the transport facilities" and also focuses on facilities owned by its non-ILEC affiliate, LightCore and claims that Socket is attempting to have the FCC overturn a Missouri PSC decision. That is not the case. Socket simply believes that some of the synergies of the merger should be passed-on even if CenturyTel chooses to maintain barriers created by its Balkanized legal structure and prefers to keep the Commission in the dark about the extent of its fiber assets allocated to its "non-ILEC" operations..

13. Often, one CenturyTel ILEC has an end-office subtending a tandem switch owned by another CenturyTel ILEC and CenturyTel takes the position it is not required to provide unbundled dedicated transport between the tandem office and the end office because of the existence of separate legal entities. For example, one CenturyTel ILEC in Missouri, Spectra Communications Group, LLC, owns no tandem switches and has approximately 50% of its end offices subtending one of CenturyTel of Missouri, LLC's tandem offices.[6] Clearly, in cases like this – where one CenturyTel entity subtends another, it would be reasonable to condition merger approval on making such links available as dedicated transport UNEs. The benefits of operating as one larger entity should not flow through

[5] Copies of Socket's request to establish a collaborative process to establish a loop hot cut process as well as Socket's Bona Fide Request are attached. To date, CenturyTel has yet to substantively respond to either request.

[6] All of the exchanges owned by CenturyTel of Missouri, LLC and Spectra Communications Group, LLC were once operated as a single ILEC entity by GTE Midwest, Inc. CenturyTel acquired these exchanges in separate transactions.

only to CenturyTel shareholders. Some benefits of merging should be shared to ensure that competition is not snuffed-out entirely by an even bigger CenturyTel.

14. The same logic applies to POIs for direct interconnection. In this context, Spectra Communications Group, LLC has claimed that Socket is not permitted to interconnect at a single POI per LATA and exchange all traffic through that POI because doing so is not technically feasible since its end offices are not connected by Spectra-owned facilities. Where the connecting facilities are owned by a CenturyTel entity, a single POI should be permitted. Indeed, any approval of the proposed merger should be conditioned on CenturyTel's making a single POI per LATA available where CenturyTel/Embarq entities own connecting facilities. A merger that results in no benefits being passed through to customers – wholesale customers, included – serves only CenturyTel's interest and not the public interest.

Provisioning Interval for DS1 Loops

15. CenturyTel addresses Socket's complaints about CenturyTel's excessively long fifteen business day provisioning interval for DS1 loops as being based upon erroneous information, being an interval Socket agreed to when it negotiated its Interconnection Agreement, and simply being a dispute over Socket being unable to obtain a change in the existing interval.

16. Contrary to CenturyTel's assertion, Socket's initial complaint about the long, fifteen business day interval for DS1 loops was based upon accurate information. That was the standard interval the companies operated under and is the standard interval found in our interconnection agreement. The newly announced interval of "nine business days with no guarantees" appeared for the first time in CenturyTel's Reply Comments and the accompanying Declaration of Jeffrey Glover filed in this proceeding. Prior to that, neither I nor anyone at Socket had ever heard of a nine business day interval. Upon inquiring about the new interval, I was told that the nine business day interval is a best-efforts attempt with no guarantees. As a practical matter, an interval with no guarantee of actually meeting that interval is of little or no value.

17. CenturyTel correctly points out that the 15 business day interval is one that Socket agreed to accept and include in the ICA. That is because in 2006 when the ICA was being negotiated, it was represented this was the interval CenturyTel operated under for retail

services and that this interval would place Socket at parity with CenturyTel's own retail performance. Essentially, it was all that CenturyTel was willing to agree to do.

18. This 15 business day interval was reiterated as recently as July 2008 when I inquired whether CenturyTel's standard interval had changed because of the shorter retail installation dates being promised to customers by CenturyTel in competitive situations when CenturyTel was competing against Socket. At that time, I was told that 15 business days was still the standard interval for a DS1 loop. In fact, it was Socket's understanding that an order submitted with a due date of less than fifteen business days would be rejected. Mr. Glover's statement is simply inconsistent with CenturyTel's prior representations and Socket's experience with CenturyTel.

19. Remarkably, CenturyTel has refused to amend the Interconnection Agreement to reflect the nine business day interval. This speaks volumes as to CenturyTel's commitment. Clearly, it is not worth the paper it was printed on. CenturyTel's suggestion that it might be willing to negotiate such an interval as part of Socket's next interconnection agreement reveals the disingenuous nature of CenturyTel's present claims with respect to such an interval. Once again, CenturyTel has provided the Commission with a little taste of the type of wholesale obligation neglect that CenturyTel's management team sets as the standard. The Commission should ensure that this standard is not allowed to spread to a single Embarq market and that it is corrected throughout the merged entity.

20. As a practical matter, having a shorter interval with no real guarantee of meeting that interval is of little or no value. Absent a firm, contractual commitment to meet the 9 business day installation interval, Socket cannot rely upon meeting that interval when scheduling a retail customer's installation date. Having a degree of certainty is just as important, if not more important, than possibly being able to shave about a week off an installation interval. As a new entrant, Socket believes that it is important to instill customer confidence. That is done by meeting installation commitments not scheduling a shorter interval and then missing it. Simply put, the competitive nature of our business requires us to meet our customer expectations.

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

______________________ Dated: April 29, 2009

R. Matthew Kohly

Socket®
VOICE ▪ DATA ▪ INTERNET

2703 Clark Lane ▪ Columbia, MO 65202
PO Box 7085 ▪ Columbia, MO 65205
voice: (573) 817-0000 ▪ fax: (573) 441-1050
www.socket.net ▪ 1-800-SOCKET-3

July 8, 2008

Mr. Joey Bales
CenturyTel of Missouri, LLC
100 CenturyTel Drive
Monroe, LA 71203

Dear Mr. Bales:

As you are aware, Socket Telecom, LLC, ("Socket") is presently serving customers through UNE-L arrangements using xDSL-capable loops from CenturyTel. Socket has consistently encountered two significant difficulties with serving customers through this arrangement. These are a lack of facilities in some instances and no information about what areas within an exchange are served by which wire-centers or offices. As Socket expands into additional collocations, I expect the occurrences of these issues to only increase. For that reason, I would like to formally request these issues be addressed in a collaborative process.

The first issue is the inability to have UNE-L orders worked because of a lack of facilities. In some instances, Socket's orders for xDSL loops are being placed into jeopardy status and later moved to unworkable status because of a lack of facilities to the customer premise. Often, the lack of facilities is occurring in the customer's drop. One-way this can be addressed through a loop hot-cut process in which the customer's loop is reused by the new service provider. This is essentially a coordinated move on the frame where the CTEL cross-connects would be removed and the Socket cross-connects would be put in their place. This avoids the necessity to provision additional loops to a customer premise to be used only during the change process. A UNE-L hot-cut is a process that many local exchange carriers have in place today and I believe putting a similar process in place would save both companies time and money.

The second issue is related to identifying which areas within an exchange are served by a particular wire center, office, or hut. As you know, Socket is expanding into additional collocations in the Columbia exchange. We currently have no information from CenturyTel about what areas are served by a particular office, wire center or hut. Today, the best we can do is submit an order and see whether it will be worked or not. As we establish more collocations, we will likely have to resort to submitting multiple orders for the same customer site and see which one will get worked. This is essentially feeling your way around in the dark and wastes both Socket's and CenturyTel's time and money.

I have previously requested maps that would provide this information in a very general fashion and been told that maps do not exist. Given that, I do request to know what information is available, what information CenturyTel relies upon when making the determination about whether a customer location is served from a particular wirecenter, office, or hut and what information is available to Socket.

I would like to schedule a call to discuss these two issues. Please identify who from CenturyTel should participate and let me know your availability.

Sincerely,

R. Matthew Kohly

cc: Susan Smith, Director External Affairs

CENTURYTEL personal touch ▬ advanced communications

REQUEST FOR ADDITIONAL UNBUNDLED SERVICES

CLEC Name **Socket Telecom, LLC**	**CLEC Primary Contact Name and Title** **Matt Kohly**
Company Address PO Box 1118 Columbia, MO 65205	**Contact Address** 2703 Clark Lane Columbia, MO 65202
Company Physical Street Address 2703 Clark Lane Columbia, MO 65202	**Contact Phone/Fax Number** Phone: 573.777.1991, ext. 551 Fax: 573.441.1050
Date Submitted **10/9/08**	**Contact Email Address** rmkohly@sockettelecom.com

Technical Assistance Contact Name and Title Kurt Bruemmer
Contact Phone/Fax Number Phone: 573.817.000, ext. 207 Fax:
Contact Email Address **kbruemmer@sockettelecom.com**

The following information is required for CenturyTel to understand and evaluate your request.

1. Provide technical and functional requirements of characteristics of the requested capability.

Socket requests that CTEL implement a coordinated loop hot-cut and bulk hot-cut process for migrating customers from CTEL to Socket using UNE Loops, UNE xDSL-capable Loops, UNE Subloops, and UNE xDSL-capable subloops. Specifically, a hot-cut refers to a process requiring incumbent LEC technicians to disconnect manually the customer's loop, which was hardwired to the incumbent LEC switch, and physically re-wire it to the competitive LEC switch, while simultaneously reassigning (*i.e.*, porting) the customer's original telephone number from the incumbent LEC switch to the competitive LEC switch See Para. 1294, FCC Triennial Review Remand Order). Socket requests this process be done on a coordinated basis with Socket contacting CTEL to being the process on the due date. Similar processes are available from AT&T and Embarq in Missouri as well as numerous other ILECs across the country

Socket would like this process to be available during non-business hours (for example - beginning at 3am) as well as business hours. This process is necessary to place Socket at parity with CenturyTel in provisioning retail service. Further, the availability of this process was cited as the primary reason ILECs were no longer required to provide unbundled local switching on an unbundled basis. .

2. What are the geographic coverage area(s) in which the service/application is to be accessible or is to provide access (City, LATA, and State) along with date when required and the projected quantity for a three year demand forecast?

Socket requests this option be available initially in the Columbia MO exchange in offices where Socket is collocated. Currently, this is CLMAMOXA. However, construction is underway for additional collocations in CLMBAMOXB as well as additional huts and buildings in the Columbia exchange. As Socket expands into other CTEL offices, Socket requests this process be available in those areas as well. The volumes expected are estimated to be :

Year 1: 2,000
Year 2: 3,500
Year 3: 4,500

3. If known, provide the serving address, central office(s) (CLLI Codes) and NXXX(s) involved.

CLMAMOXA and CLMAMOXB plus additional huts where Socket collocates to gain access to subloops.

4. Please identify the equipment to be installed and quantity.

N/a

5. Describe the physical dimensions of the equipment.

N/a

6. Provide a diagram of the requested service. Attach additional pages as necessary.

7. Is the information confidential? If so, provide Non-Disclosure Agreement (NDA).

Socket does not consider this information confidential.

Please mail completed form(s) to:

ATTENTION: Carrier Relations
CenturyTel
100 CenturyTel Drive, 1 North
Monroe, LA 71203