

VIA ECFS

EX PARTE

May 4, 2009

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

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

Dear Ms. Dortch:

Charter Communications, Inc. (“Charter”), through its undersigned attorneys, hereby submits supplemental information as a follow-up to its March 9th *ex parte* meeting¹ with Wireline Competition Bureau Staff regarding the above-referenced proceeding. In that meeting, Charter urged the Commission to impose conditions on the proposed transaction between CenturyTel, Inc. (“CenturyTel”) and Embarq Corporation (“Embarq”) (together, the “Applicants”) to ensure that the merged firm adopts the best, rather than worst, wholesale practices among the Applicants.²

First, in Charter’s experience, CenturyTel’s anticompetitive number portability practices—including its arbitrary limit on the number of port requests and other orders that it will process from a single competitor per day—apply not only to port requests for residential customers but also to those for business customers.³

¹ *See generally* Letter from Thomas Jones et al., Counsel for Charter Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 08-238 (filed Mar. 9, 2009) (“March 9th Ex Parte Letter”) (notice of *ex parte* meeting with Randy Clarke, Bill Dever, Don Stockdale, and Julie Veach of the Wireline Competition Bureau).

² *Id.* at 1.

³ Charter’s experience with CenturyTel in this respect is not unique. *See, e.g.*, Letter from Michael H. Pryor, Counsel for Bresnan Communications, LLC, to Marlene H. Dortch, Secretary,

Second, Charter is aware of at least one other incumbent LEC with separate incumbent LEC operating companies within the same state that, unlike CenturyTel, allows competitors such as Charter to enter into a single interconnection agreement for the entire state. Specifically, Windstream allows competitors to enter into a single agreement for interconnection with its separate incumbent LEC operating companies in Georgia.

Finally, as explained in Charter's February 27th Ex Parte Letter, it is likely that CenturyTel's pattern of anticompetitive and discriminatory practices in violation of the Act and the Commission's rules will continue post-merger and spread throughout the merged firm.⁴ Although the Applicants claim that Embarq's wholesale management team will lead the merged firm's wholesale operations,⁵ they have provided no basis for concluding that the merged firm will adopt the wholesale *practices and policies* of Embarq rather than of CenturyTel. In fact, the Applicants' other public statements indicate that the senior and mid-level management of the merged entity will come largely from CenturyTel, the acquiring firm. According to the Applicants, CenturyTel's current Chairman and CEO, President and COO, Executive Vice President and CFO, and Senior Vice President and General Counsel will lead the merged entity.⁶ In addition, the merged company will be organized into five operating regions, three of which will be led by current CenturyTel employees.⁷ All five "regional leaders" will report to CenturyTel's current COO.⁸ Furthermore, a majority of the merged firm's board members will come from CenturyTel.⁹

It is well established in mergers and acquisitions literature and in the field of organizational behavior that an acquiring firm is likely to impose its business practices and

FCC, WC Dkt. No. 08-238, at Attachment A (filed Apr. 28, 2009) (stating that it takes CenturyTel "weeks or months [to] port business customers").

⁴ See Letter from Thomas Jones et al., Counsel for Charter Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 08-238, at 2 (filed Feb. 27, 2009) ("February 27th Ex Parte Letter").

⁵ See Letter from Gregory J. Vogt, Counsel for CenturyTel, Inc., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 08-238, at 10 (filed Apr. 10, 2009).

⁶ See "Merger Update" (Apr. 24, 2009), available at http://www.centuryteleembarqmerger.com/merger_key_materials/Congress_Gov_Update_4-24-09.pdf.

⁷ See *id.*

⁸ See *id.*

⁹ See *id.*

organizational culture on an acquired firm.¹⁰ As one scholar has stated, in mergers and acquisitions, there will often be “considerable pressure on top managers at acquired firms to conform to the management practices of the buyer.”¹¹ Moreover, given that it “is among the most well accepted organizational notions” that “chief executives have a fundamental role in shaping and guiding their organizations,”¹² and the merged entity will be managed by CenturyTel’s CEO and other top CenturyTel executives, it is likely that CenturyTel’s business practices and organizational culture will dominate the merged firm. As CenturyTel has noted in a state commission review of the proposed transaction, it plans to “manage the Embarq Companies as part of the CenturyTel family of companies.”¹³ Accordingly, there is a real risk that CenturyTel’s anticompetitive conduct will also prevail at the merged firm.

For these reasons and the reasons discussed in Charter’s previous filings in this docket, the Commission should impose Charter’s proposed conditions¹⁴ on its approval of the CenturyTel-Embarq transaction.

¹⁰ See, e.g., Afsaneh Nahavandi and Ali R. Maledzadeh, “Acculturation in Mergers and Acquisitions,” *ACADEMY OF MANAGEMENT REVIEW*, Vol. 13, No. 1, at 81 (1988) (finding that “in related mergers, the acquirer is more likely to impose its own culture and practices on the acquired company”); see also *id.* at 84; Deepak K. Datta, “Organizational Fit and Acquisition Performance: Effects of Post-Acquisition Integration,” *STRATEGIC MANAGEMENT JOURNAL*, Vol. 12, at 281-297 (1991) (noting that acquisitions “can lead to the imposition of [the acquiring firm’s] style and systems on the acquired entity even if the actual integration of operations undertaken is low”); Daan van Knippenberg et al., “Organizational identification after a merger: A social identity perspective,” *BRITISH JOURNAL OF SOCIAL PSYCHOLOGY*, Vol. 41, at 235 (2002) (“Because of its ‘acquiring’ role, the dominant organization is likely to be more influential in determining the shape of the merged organization than the dominated organization.”).

¹¹ Michael Lubatkin et al., “Top Management Turnover in Related M&A’s: An Additional Test of the Theory of Relative Standing,” *JOURNAL OF MANAGEMENT*, Vol. 25, No. 1, at 58 (1999) (internal citation omitted).

¹² Yair Berson et al., “CEO values, organizational culture and firm outcomes,” *JOURNAL OF ORGANIZATIONAL BEHAVIOR*, Vol. 29, at 626 (2008).

¹³ See Direct Testimony of G. Clay Bailey on Behalf of CenturyTel, Inc., *In the Matter of the Joint Application of CenturyTel, Inc. and Embarq Corporation for Approval of a Transfer of Control of United Telephone Company of Ohio, United Telephone Company of Indiana, Inc., and Embarq Communications, Inc.* Public Utilities Commission of Ohio, Case No. 08-1267-TP-ACO, at 6 (filed Nov. 26, 2008).

¹⁴ See February 27th Ex Parte at 14-17; see also March 9th Ex Parte, Attachment, at 3-5.

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Respectfully submitted,

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