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May 19, 2009

FILED IN PDF FORMAT VIA ECFS

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

Re: Notice of Ex Parte Presentation – WC Docket No. 08-238

Dear Ms. Dortch:

On Monday, May 18, 2009, Jerry James of COMPTTEL, Charles McKee of Sprint, and I on behalf of NuVox, Socket, and DeltaCom met with Commissioner McDowell, Nicholas Alexander and Jonathan Adler of Commissioner McDowell's Office, to discuss the above-captioned proceeding. In particular, the conversation focused on the need to flesh-out the framework of voluntary commitments offered to date by the Applicants.

For example, discussion of the Applicants' **Interconnection Agreements** ("ICAs") commitment focused on the critical need to establish stability and to discourage CenturyTel from continuing to use the ICA negotiations and arbitration process as a barrier to entry by **extending ICAs for 36 months**, including those in evergreen status, from the date of merger closing or ICA expiration, whichever is later.¹ ICAs also should allow for a **single point of interconnection** in a LATA for access to all Applicant ILEC switches and serving wire centers connected by Applicant-controlled facilities.

Discussion of the Applicants' "**best practices**" commitment highlighted the need for express and enforceable commitments to use Embarq's **number porting, UNE provisioning intervals, hot cuts, order and repair processing, 911 records and directory listings** practices as best practices throughout the merged entity as of the date of merger closing. Quantity and

¹ NuVox and Socket have existing ICAs with Embarq and CenturyTel ILECs that are 36 month agreements.

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non-industry standard limitations imposed on number porting by the CenturyTel ILECs (but not to date by the Embarq ILECs) must be eliminated as of the date of the merger closing.

With respect to Applicants' commitment to **maintain current Embarq performance levels**, we emphasized the need for performance metrics to measure compliance and a self-effectuating enforcement mechanism to provide ample incentives for the Applicants to devote the resources necessary to comply.

The conversation regarding Applicants' **OSS** commitment focused on the need to insure that the interim provisions regarding additional resources to be devoted to number porting at the CenturyTel ILECs require Applicants to process and implement port requests in a manner that comports with FCC regulations and industry standards.

Finally, we also explained that additional commitments are necessary to meet the Commission's public interest standard. The record clearly shows that CenturyTel's substantial metro and inter-city fiber networks will be eliminated as a potential source of competition in the Embarq territories. Moreover, competitive sources of these critical inputs to broadband services are scarce to nonexistent in much of the Applicants' serving territory. Thus, modest special access commitments, including a **special access rate cap** and **circuit and plan portability** commitments are appropriate to adopt in this context.

The record also shows that Embarq's non-industry standard practice of imposing **two NRCs on DS1 UNE loops** has not been defended (in this docket or otherwise) and should be eliminated. DS1 UNE loops are a critical input to competitive broadband service offerings. The need for **UNE rate relief**, particularly where UNE rates are "upside down" (*i.e.*, higher than special access) also was highlighted.

Consistent with the Commission's goal of furthering broadband deployment and availability, the Commission also should impose a requirement to provide **wholesale ADSL transmission services** to requesting ISPs that are functionally equivalent to retail offerings at prices no higher than the ILEC's retail price, including bundles. The Commission should avail itself of this opportunity to bolster competition in the market for broadband services.

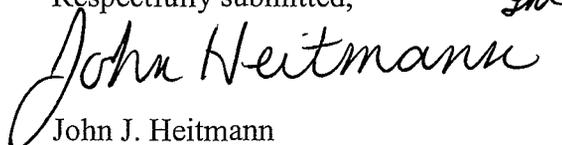
The attached written *ex parte* presentation was distributed at the meeting.

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In accordance with the Commission's rules, this letter is being filed electronically for inclusion in the public record of the above-referenced proceeding. If you have any questions, please contact me at 202/342-8544.

Respectfully submitted,

 *JH*
John J. Heitmann

Attachment

cc: Commissioner McDowell (via electronic mail)
Nick Alexander (via electronic mail)
Jonathan Adler (via electronic mail)

Jennifer Schneider (via electronic mail)
Mark Stone (via electronic mail)

Nick Degani (via electronic mail)
Bill Dever (via electronic mail)
Dennis Johnson (via electronic mail)
Don Stockdale (via electronic mail)
Julie Veach (via electronic mail)

Jim Bird (via electronic mail)
Joel Rabinovitz (via electronic mail)

COMPTEL, DeltaCom, NuVox, Socket Telecom and Sprint Ex Parte
May 18, 2009
WC Docket 08-238

Commission precedent shows that conditions or "voluntary commitments" are needed to offset potential competitive harms and to satisfy the public interest standard

- > Applicants need to do much more to meet the public interest standard
- > All conditions/commitments must be made explicitly enforceable at the Commission and, to the extent they relate to ICAs, also at state commissions

Applicants' Commitment No. 1:

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

- > **"Best practices"** should be interpreted from the perspective of the Applicants' wholesale customers
- > Issues raised in this docket about the spread of anticompetitive CenturyTel practices, should be addressed in the context of this commitment
 - > Commitment should state that Embarq's current practices for:
 - **number porting,**
 - **UNE provisioning intervals,**
 - **hot cuts,**
 - **maintenance and repair methods and procedures,**
 - **order processing,**
 - **911 records,** and
 - **directory listings**will prevail as best practices to be used throughout the merged entity
- > Condition should eliminate CenturyTel's **arbitrary quantity limits on number porting** and require CenturyTel to handle porting pursuant to industry standards
- > Condition should eliminate CenturyTel's **practice of refusing to reuse an existing in-service loop** through implementation of a hot cut process
- > Implementation date: transaction closing date
- > This commitment should have no expiration date

Applicants' Commitment No. 2:

"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."

- > It should be clarified that a CLEC negotiating "multiple contracts" can:

- (a) negotiate a **"single" ICA** that can be replicated for use with multiple CenturyTel and Embarq entities; and
- (b) use any CenturyTel or Embarq ICA as the baseline for such negotiations
- > The "in most circumstances" clause should be eliminated or clearly limited
- > This commitment should be expanded to **reduce transaction costs associated with ICAs** in other ways, including:
 - (a) the **extension of any ICA for a period of up to 36 months** from the date the transaction closes, or from the ICA's expiration date, whichever is later, regardless of whether its initial term has expired;
 - (b) requesting carriers should be able to select a **single POI per LATA** for access to all Applicant ILEC switches and serving wire centers connected by Applicant controlled facilities;
 - (c) **porting of ICAs**; and
 - (d) **30-day/condition-free section 252(i) ICA adoptions**
- > Implementation date: transaction closing date

Applicants' Commitment No. 3:

"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."

- > Must define "substantially" and "reasonable and normal allowances"
- > Performance must be measured; **UNE and special access performance metrics** need to be reported to and monitored by the Commission
- > Performance metrics should be coupled with a **self-effectuating enforcement mechanism** including direct payments to competitors for performance failures
- > Implementation date: transaction closing date
- > This commitment should allow for and encourage improvement in service levels and have no expiration date

Applicants' Commitment No. 4:

"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.”

- > “Promptly processed” must be defined as “within 24 hours” and must include timely performance of the port in accordance with industry standards
- > To the extent not covered by another commitment, this commitment should include the immediate **elimination of arbitrary port quantity limits**
- > Interim commitment effective as of the transaction closing date

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; additional UNE, special access and pro-competition commitments are needed:

- > **UNE**

- > **UNE Rate Rationalization and Discount**

- > UNE rates in Embarq’s serving areas are often “upside down” – should be addressed through application of a 25% discount for 36 months; Embarq’s non-industry standard “conditioning charges” (applied in addition to standard NRCs) must be eliminated on DS1 loops

- > **Dedicated Interoffice Facilities**

- > UNE availability for the Applicant’s interoffice facilities connecting Applicant ILECs’ switches and serving wire centers

- > **UNE Availability Freeze**

- > 36 month moratorium on section 10 forbearance requests

- > **Special Access**

- > **Rate Cap**

- > LightCore will no longer be a potential competitor; alternatives are scarce to non-existent

- > **Circuit and Plan Portability**

- > Carriers should be able to pick one volume and term plan per state and aggregate circuits from Applicant ILECs into a single plan without increasing commitments

- > **Affiliate Transactions**

- > Balkanized CenturyTel operating strategy leads to increased incentives and ability to discriminate

- > **Forbearance Freeze**
36 month moratorium on section 10 forbearance requests
- > **Pro-Competition**
 - > **ADSL Transmission Service**
Applicants must offer to requesting ISPs ADSL transmission service that is functionally equivalent to retail product offerings at prices no higher than the ILEC's retail price, including bundles
 - > **Cap of Transit Service Rates**
36 month cap on rates

Glimpses of What's to Come, If Approval Is Not Conditioned

- > **CenturyTel is taking control**
 - > Even if an Embarq employee takes control over wholesale operations, he still will have to carry-out the wishes of a CenturyTel management team that does not yet appear to be willing to embrace fully its wholesale obligations, as demonstrated by the following examples of anticompetitive CenturyTel practices:
 - > CenturyTel will not commit contractually to the DS1 interval it has claimed in this docket as its standard
 - > CenturyTel will claim "no facilities" when the only loop available is the one it is using to serve a customer that has selected a competing carrier
 - > CenturyTel games the number porting and directory listing processes
 - > CenturyTel's disingenuous approach to its wholesale obligations also is reflected in its April 10, 2009 ex parte presentation which contains several mischaracterizations and misleading statements
 - > CenturyTel never before has engaged in an undertaking that remotely approaches the scale and scope of the proposed transaction
 - > Absent stringent and enforceable commitments, CenturyTel will have neither the commitment nor incentive to ensure that wholesale customers and their downstream customers are not adversely impacted by the merger