

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

**WASHINGTON HARBOUR, SUITE 400**

**3050 K STREET, NW**

**WASHINGTON, D.C. 20007-5108**

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

NEW YORK, NY  
TYSONS CORNER, VA  
CHICAGO, IL  
STAMFORD, CT  
PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES  
JAKARTA, INDONESIA  
MUMBAI, INDIA

DIRECT LINE: (202) 342-8544  
EMAIL: jheitmann@kelleydrye.com

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 19, 2009, on behalf of NuVox and Socket, I engaged in two brief conversations by telephone with Jennifer Schneider of Acting Chairman Copps's Office. The conversations 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. In this regard, I noted that NuVox and Socket have existing ICAs with Embarq and CenturyTel ILECs that are 36 month agreements. Key ICAs with CenturyTel are set to expire in October of this year. 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 to translate the commitment into express and enforceable commitments, including 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 non-industry standard geography-based 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.

Marlene H. Dortch  
May 19, 2009  
Page Two

With respect to Applicants' commitment to **maintain current Embarq performance levels**, I 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.

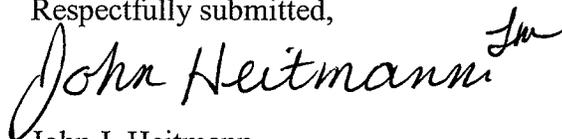
Finally, I also explained that additional commitments are necessary to meet the Commission's public interest standard. The record clearly shows that CenturyTel's substantial metro and inter-city fiber networks will be eliminated as a potential source of competition in the Embarq territories. Moreover, 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. I was highlighted the need for **UNE rate relief**, particularly where UNE rates are "upside down" (*i.e.*, higher than special access).

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.

In accordance with the Commission's rules, this letter is being filed electronically for inclusion in the public record of the above-referenced proceeding.

Respectfully submitted,

  
John J. Heitmann

KELLEY DRYE & WARREN LLP

Marlene H. Dortch

May 19, 2009

Page Three

cc: Jennifer Schneider (via electronic mail)  
Nick Alexander (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)