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May 20, 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 Tuesday, May 19, 2009, Jerry James of COMPTTEL, Riley Murphy of NuVox, George Pfenenger and Matthew Kohly of Socket, Charles McKee of Sprint, and I on behalf of NuVox, Socket, and DeltaCom met with Acting Chairman Copps and Jennifer Schneider of Chairman Copps's Office to discuss the above-captioned proceeding. Our 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.<sup>1</sup> 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

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<sup>1</sup> 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. In addition, Embarq's practice of offering all retail **ADSL transmission** speeds on a wholesale basis should be considered a "best practice" that not only should be spared from elimination by CenturyTel but that should be expanded throughout the merged entity. As Socket's President and CEO, George Pfenenger, explained, CenturyTel currently refuses to offer its entry-level transmission and extended geographic reach ADSL transmission products on a wholesale basis.<sup>2</sup>

Consistent with the Commission's goal of furthering broadband deployment and availability, the Commission also should impose as a separate 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. On this point, it was explained that Embarq currently offers only a 3-month agreement for such wholesale products at rates that exceed retail rates, although not by nearly the margin of the CenturyTel ADSL transmission rates.<sup>3</sup>

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

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<sup>2</sup> CenturyTel does not permit Socket to purchase a wholesale product with 512K/256 even though it has a corresponding retail product at this speed. CenturyTel has recently expanded this practice and no longer provides the 768K/256K product on a wholesale basis. CenturyTel made this change with no advance notice to Socket and simply began rejecting orders for the product when it implemented this policy change. These two speeds represent the entry level DSL products and are often the products chosen by consumers who are just making the change to broadband DSL from dial-up Internet access. CenturyTel also has a general business practice of limiting the geographic availability of its wholesale ADSL transmission service. It does this by refusing to allow Socket Internet to purchase the ADSL transmission service for its extended reach ADSL services. There is no technical reason for this limitation. Embarq imposes no similar speed or geographic restrictions.

<sup>3</sup> For example, Embarq's wholesale rate for ADSL Transmission Service is \$21 for 768K/384K. The retail rate for the comparable DSL service is \$19.95 in a bundle. Similarly, the wholesale rate for ADSL Transmission Service is \$31 for 3.0Mbps/640K. The retail rate for comparable ADSL service is \$29.95 in a bundle. CenturyTel of Missouri, LLC's wholesale rate for 1.5M/256K is \$37.50 while the retail rate for the same service in a bundle is \$24.99.

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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** (a standard NRC and a newly imposed "loop conditioning" charge) 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. The following table provides a few examples of the "upside down" UNE rates common with the Embarq ILECs.

A Location	Z Location	<b>1.544 UNE Transport MRC</b>	Special Access First Mile	Special Access Add'l Mile	Special Access Mileage	<b>Special Access Total</b>
Jefferson City	California	<b>\$700.79</b>	\$130	\$6.90	22	<b>\$274.90</b>
Warrensburg	Lexington	<b>\$931.58</b>	\$130	\$6.90	30	<b>\$330.10</b>
Warrensburg	Oak Grove	<b>\$588.52</b>	\$130	\$6.90	27	<b>\$309.40</b>
Warrensburg	Odessa	<b>\$752.99</b>	\$130	\$6.90	20	<b>\$261.10</b>
Warrensburg	Wellington	<b>\$931.58</b>	\$130	\$6.90	39	<b>\$323.30</b>

UNE Rates Based on Socket/ Embarq Missouri ICA; Special Access Rates Based on Embarq FCC No. 1, 1<sup>st</sup> Revised Sheet 7-335, eff. June 30, 2007

The attached written *ex parte* presentations were distributed at the meeting. Please note that the piece containing proposed language is not intended to be comprehensive but rather speaks only to certain conditions discussed. Additional clarifications may be necessary. For example, it should be clarified that requesting carriers should have the right under section 252(i) to opt-into an extended interconnection agreement.

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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,



John J. Heitmann

Attachment

cc: Commissioner Copps (via electronic mail)  
Jennifer Schneider (via electronic mail)

Nick Alexander (via electronic mail)  
Jonathan Adler (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)

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

Applicants' Commitment No. 1 ("Best Practices"):

**"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

Applicants' Commitment No. 2 ("Reducing Costs Associated with ICAs"):

**"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 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**

> Condition should allow CLEC negotiating "multiple contracts" to:

(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

**Applicants' Commitment No. 3 ("Maintaining Embarq Service Levels"):**

**"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."**

> 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

**Applicants' Commitment No. 4 ("OSS"):**

**"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**

## **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 special access, UNE and pro-competition commitments are needed, *including*:
  - > **Special Access**
    - > **Rate Cap**

LightCore will no longer be a potential competitor; alternatives are scarce to non-existent; rates should be capped pending outcome of Commission's special access rulemaking
    - > **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
  - > **UNE**
    - > **UNE Rates**

Embarq's non-industry standard "conditioning charges" (applied in addition to standard NRCs) must be eliminated on DS1 loops; UNE rates in Embarq's serving areas are often "upside down" (i.e., higher than special access) and some Applicant UNE rates have not been set in state UNE rate proceedings – such rates should be addressed through application of a 25% discount for 36 months
    - > **Dedicated Interoffice Facilities**

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

## PROPOSED LANGUAGE FOR CERTAIN CONDITIONS

**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 from the interconnection agreement’s expiration date or the Merger Closing Date, whichever is later. During this period, the interconnection agreements may only be terminated at the competitive LEC’s request.

The merged CenturyTel/Embarq entities shall permit requesting entities to establish a single 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 and connected by CenturyTel/Embarq owned or controlled facilities.

**Best Practices** – The Applicants will adopt the best practices of either company for the merged entity. For purposes of this condition, “best practices” will be construed from the perspective of the Applicants retail or wholesale customers, as appropriate. This commitment includes but is not limited to a commitment to use the following Embarq practices throughout the merged entity’s operations, as of the Merger Closing Date:

(a) number porting (all quantity and geography based limits previously imposed by CenturyTel shall be eliminated -- 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<sup>1</sup>);

(b) UNE provisioning intervals (Embarq’s current intervals shall be incorporated into existing CenturyTel interconnection agreements effective as of the Merger Closing Date);

(c) hot cuts (CenturyTel will no longer place orders in jeopardy due to a lack of redundant loop plant and instead will implement Embarq’s hot cut process);

(d) maintenance and repair methods and procedures,

(e) order processing,

(f) 911 records, and

(g) directory listings.

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<sup>1</sup> See Local Number Portability Administration – Working Group, Industry Best Practices Document available at [www.npac.com/cmas/LNPA](http://www.npac.com/cmas/LNPA).



## **PROPOSED LANGUAGE FOR CERTAIN CONDITIONS**

**Special Access Rate Cap** - For a period of thirty-six (36) 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.

**Special Access Circuit and Plan Portability** - For a period of thirty-six (36) months after the Merger Closing Date, the merged CenturyTel/Embarq entities shall permit a requesting telecommunications provider to pick one volume and term plan per state and aggregate circuits from Applicant ILECs into a single plan without increasing commitments or incurring penalties under any existing plans.

**UNE Rates** – Effective as of the Merger Closing Date, non industry-standard rate elements such as Embarq’s loop conditioning charges for DS1 circuits shall be waived or eliminated without any increase to standard nonrecurring charges.

The merged CenturyTel/Embarq entity(ies) shall make available to requesting carriers section 251 network elements at a twenty-five percent (25%) discount off of any UNE rate offered by any CenturyTel/Embarq incumbent LEC as of January 1, 2009 that exceeds the relevant incumbent LEC’s rate for equivalent special access service or that has not been set by a state commission in a TELRIC rate case. The discounted UNE rates will be available 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.

For a period of thirty-six (36) months after the Merger Closing Date, the merged CenturyTel/Embarq entities shall make available as DS1 and DS3 UNEs dedicated transport CenturyTel/Embarq owned or controlled 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.

**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

**PROPOSED LANGUAGE FOR CERTAIN CONDITIONS**

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.