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May 21, 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, "Best Practices" and Corrections –
WC Docket No. 08-238*

Dear Ms. Dortch:

On Wednesday, May 20, 2009, on behalf of NuVox and Socket, I engaged in a brief conversation by telephone with Don Stockdale of the Commission's Wireline Competition Bureau. The conversation focused on the Commission's requirement that incumbent LECs provide requesting carriers with the option of interconnecting at a single point in each LATA. During the call, I explained my view that the Commission had clearly interpreted its interconnection rules to require incumbent LECs to make available to requesting carriers a single point of interconnection per LATA. I noted that the Commission said as much in its *Unified Intercarrier Compensation NPRM*:

an ILEC must allow a requesting telecommunications carrier to interconnect at any feasible point, including the option to interconnect at a single POI per LATA.

Developing a Unified Intercarrier Compensation Regime, Notice of Proposed Rulemaking, 16 FCC Rcd. 9610, ¶ 112 (2001). Prior to that, the Commission expressed the same interpretation of its rules in its *Texas 271 Order*:

Section 251, and our implementing rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. This means that a competitive LEC has the option

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to interconnect at only one technically feasible point in each LATA.

Application by SBC Communications Inc. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, Memorandum Opinion and Order, 15 FCC Rcd. 18354 (2000) (citing 47 U.S.C. § 251(c)(2),(3); 47 C.F.R. §51.305(a)(2) and, as an example, *Memorandum of the Federal Communications Commission as Amicus Curiae, US West Communications, Inc., vs. AT&T Communications of the Pacific Northwest, Inc. et. al*, No. CV 97-1575 JE). Notably, the Commission did not then and, to my knowledge, has never since limited the single POI requirement to Bell Operating Companies.

As explained previously, regardless of whether the Commission's rules require a single POI in a given context, it would be eminently reasonable for the Commission to impose such a requirement as a condition to approving the merger. The Applicants should not be able to continue (and expand on an enormous scale) CenturyTel's practice of reaping the benefits of acting as one incumbent LEC when it is beneficial to them, and as multiple incumbent LECs when it serves as a barrier to competition and raises rivals' costs.

Best Practices

Notably, I have just learned that Embarq does not do this in Missouri where it operates multiple incumbent LEC entities.¹ Instead, Embarq allows requesting carriers to establish a single POI and does not require the establishment of a redundant POI for each Embarq incumbent LEC. Thus, the proposed single POI condition – much like the proposed ADSL transmission condition – fits firmly within the Applicants' on-record commitment to “adopt the best practices of either company for the merged entity”.²

Similarly, the Embarq incumbent LECs in Missouri will allow a requesting carrier to negotiate a single ICA encompassing multiple Embarq incumbent LECs in a state and will provide dedicated transport as a UNE connecting Embarq end offices and/or tandems that are owned by separate Embarq incumbent LECs. Thus, the proposed single ICA condition and

¹ CenturyTel does. Thus, it is reasonable to expect that barring a condition or voluntary commitment on point, CenturyTel will cease Embarq's reasonable practice of treating its multiple incumbent LECs in a state as a single incumbent LEC for purposes of interconnection and unbundling.

² *Letter from Gregory J. Vogt, Counsel for CenturyTel, Inc., et al., to Marlene Dortch, Secretary, FCC, WC Docket 08-238, at 2 (filed Apr. 10, 2009).*

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proposed UNE dedicated transport condition also fall within the scope of the “best practices” commitment made by the Applicants.

In sum, the following conditions previously proposed by NuVox, Socket, DeltaCom, Sprint and COMPTTEL can be addressed with a firm, express and enforceable commitment to adopt upon the merger closing date “best practices”, including the following Embarq “best practices”, throughout the merged entity:

- **number porting (no quantity or non-industry standard geographic limitations),**
- **UNE provisioning intervals**
- **hot cuts (allowing use of an in-service loop as a UNE)**
- **maintenance and repair methods and procedures**
- **order processing**
- **911 records**
- **directory listings**
- **ADSL transmission wholesale availability³**
- **single ICA covering multiple incumbent LECs in the same state,**
- **single POI for multiple incumbent LECs in the same LATA, and**
- **dedicated transport UNE availability between affiliated incumbent LECs in the same state**

Corrections

Also, please note that in two ex parte notification filings I submitted yesterday, the reference to UNE Rates on page 3 of both letters erroneously stated “UNE Rates Based on Socket / Embarq Missouri ICA.” The rates actually were sourced from an Embarq ICA with an AT&T affiliate, AT&T Communications of the Southwest, Inc., because the particular UNE rates used are not replicated in the Socket ICA. Thus, the statement in both letters should be corrected to read “Embarq UNE Rates Based on Embarq / AT&T ICA.” I apologize for these errors.

³

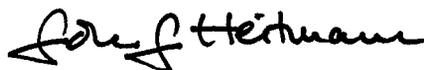
The wholesale availability component of this condition is an Embarq “best practice”. However, Embarq’s (and CenturyTel’s) wholesale prices exceed its retail prices for ADSL transmission products. Accordingly, the wholesale pricing of ADSL transmission service must be addressed with a separate condition barring wholesale prices from exceeding retail prices, as previously proposed.

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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.

Respectfully submitted,



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

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