

June 1, 2009

## **EX PARTE PRESENTATION**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: Transfer of Control of Embarq Corp. to CenturyTel, Inc., WC Docket No. 08-238

Dear Ms. Dortch:

CenturyTel, Inc. (“CenturyTel”) and Embarq Corporation (“Embarq”) (collectively, the “Applicants”) submit this in response to a series of letters that have been filed by COMPTTEL, and its members, and Charter Communications in this docket.<sup>1</sup> These letters, as well as others filed in the docket, repeat a call for detailed, heavy-handed conditions similar to those that have applied to large transactions involving the Bell Operating Companies (“BOCs”) to be placed on this merger of two much smaller mid-size carriers. These letters add nothing of significance to the facts or arguments that have previously been presented in this record and already addressed by the Applicants. Nonetheless, the Applicants submit this response to complete the record.

There is no justification in either two decades of Commission merger precedents or in the factual record in this docket to impose BOC-like conditions on this instant merger.<sup>2</sup> The Applicants do not now compete with each other, except for minimal, limited overlaps, and therefore there is no reduction of competition in any market as a result of this merger. As the Applicants have previously noted, antitrust authorities

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<sup>1</sup> See, e.g., Letter from Charles W. McKee, Sprint Nextel, et al., to Marlene H. Dortch, FCC, WC Docket No. 08-238 (Apr. 29, 2009)(“COMPTTEL April 29 Ex Parte”); Letter from Thomas Jones, Counsel for Charter Communications, to Marlene H. Dortch, FCC, WC Docket No. 08-238 (May 19, 2009)(Charter May 19 Ex Parte); Letter from John J. Heitmann, Counsel for COMPTTEL, to Marlene H. Dortch, FCC, WC Docket No. 08-238 (May 28, 2009)(“COMPTTEL May 28 Ex Parte”).

<sup>2</sup> 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 Docket No. 08-238, at 2-3 (Nov. 25, 2009)(“Domestic 214 Application”); Joint Reply Comments of CenturyTel, Inc. and Embarq Corporation, WC Docket No. 08-238, at 20-28 (Jan. 23, 2009) (“CenturyTel/Embarq Joint Reply”).

cleared the transaction, and without any qualification, in far less than the statutorily allocated time period under Hart-Scott-Rodino.<sup>3</sup>

The few remaining opponents—COMPTTEL, Charter, and a handful of competitive local exchange carriers (“CLECs”)—do not even oppose Commission approval of the transaction, but rather continue to press for self-serving and onerous conditions on this merger—a transaction that is clearly in the public interest.<sup>4</sup> They appear to be using the Commission application review process as a pretext to obtain a wish list of interconnection obligations. Their claims are littered with misleading anecdotal stories that do not withstand scrutiny, and are mostly attempts to appeal and preempt existing state arbitration decisions in this unrelated proceeding before the FCC.

Conditions in this case are unwarranted for five reasons. First, the CLECs’ complaints relate to existing facts upon which the merger will have no effect and thus are entirely unrelated to the merger. Second, the requested conditions largely relate to issues that have already been adjudicated by state commissions, and thus need not and should not be addressed by the FCC in a merger proceeding. Third, some of their concerns are the focus of ongoing Commission rulemaking proceedings; if these concerns have merit, they should be addressed in those proceedings, which would apply to all similarly situated carriers, rather than solely to the parties in this transaction. Fourth, there is no history of competitive abuse, and no justification for attempting to impose sanctions on the Applicants here. Fifth, the Applicants are not BOCs, have never been subject to antitrust decrees or Section 271 obligations, are not large integrated carriers with facilities-based long distance or wireless operations, and do not serve concentrated urban markets or contiguous ILEC territories.<sup>5</sup> Thus, there is no basis in the Commission’s precedent for imposing these parties’ wish lists in this transaction.<sup>6</sup> Moreover, the Applicants have already shown their willingness to make a more limited, reasonable set of commitments that address the CLECs’ concerns, despite the fact that there is no actual justification for such conditions in the context of this merger.<sup>7</sup>

The Applicants further address below some specific claims that have appeared in some of the CLECs’ most recent *ex partes*.

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<sup>3</sup> CenturyTel/Embarq Joint Reply at 12-23.

<sup>4</sup> Domestic 214 Application at 5-11; CenturyTel/Embarq Joint Reply at 4-12; Letter from Gregory J. Vogt & Samuel L. Felder, Counsel for CenturyTel, Inc. & Embarq Corp., respectively, to Marlene H. Dortch, FCC, WC Docket No. 08-238 (Apr. 29, 2009)(“CenturyTel/Embarq Public Interest Ex Parte”).

<sup>5</sup> The Applicants serve largely rural and small city markets, in widely dispersed territories. Domestic 214 Application at 2; CenturyTel/Embarq Joint Reply at 2.

<sup>6</sup> For a thorough discussion of these proposed conditions, the Commission’s precedent, and an analysis why these proposals are unjustified, see CenturyTel/Embarq Joint Reply at 13-28; Letter from Gregory J. Vogt & Samuel L. Felder, Counsel for CenturyTel, Inc. & Embarq Corp., respectively, to Marlene H. Dortch, FCC, WC Docket No. 08-238 (Apr. 10, 2009)(“CenturyTel/Embarq Competition Ex Parte”).

<sup>7</sup> See CenturyTel/Embarq Competition Ex Parte at 2.

1. COMPTEL's May 28 Ex Parte, in addition to repeating its wish list of conditions, states for the first time that COMPTEL believes Embarq charges double non-recurring charges ("NRCs") for its DS1 unbundled network elements ("UNEs").<sup>8</sup> This allegation is patently false. Embarq charges one NRC for installation and, where necessary, a separate NRC for line-conditioning. The line conditioning NRC is levied only when a CLEC requests that a particular line be conditioned, and not on each DS1 line provisioned. This NRC is permitted under the FCC rules,<sup>9</sup> TELRIC-compliant, and contained in existing interconnection contracts that have been approved by the appropriate state commissions. The FCC has specifically allowed recovery of the costs for line conditioning.<sup>10</sup>

2. In COMPTEL's April 29 Ex Parte, one of the signatories—Socket—alleges that 12 to 20 percent of the directory listings it places for former CenturyTel customers contain errors because of alleged "willful misconduct" or "rampant incompetence." This claim should be rejected.

The declaration supporting this allegation, signed by Mr. Kohly, is vague about where the errors occurred, fails to indicate what, if any, errors actually appeared in published directories, and has not provided any data to support these allegations. Nor does it explain what CenturyTel allegedly did. It is thus extremely difficult for CenturyTel to evaluate the allegations and adequately respond to them. Nevertheless, from CenturyTel's review of the facts, it appears that Mr. Kohly must be complaining about errors in draft galleys that Socket reviews before final publication because CenturyTel is not aware of high error rates in published directories. CenturyTel itself goes through the same correction process for its own customer listings when it reviews galley proofs prior to publication. CenturyTel continually works with its third party directory publisher to ensure that all listings, for itself and interconnectors, are accurate. Socket does not allege that the directory listings are more accurate for CenturyTel customers than for its own, or that these errors violate any interconnection contract or rule. Accordingly, these allegations should not be credited.

3. Socket also repeats allegations about CenturyTel's coordinated conversion process.<sup>11</sup> CenturyTel has been attempting to help Socket better utilize CenturyTel's processes to speed customer conversion and minimize potential customer disruption. If Socket is dissatisfied with the results of those discussions, it should seek to arbitrate the issue at the Missouri Public Service Commission, as it has done in the past with a variety of issues. As the Applicants have already demonstrated, the use of Embarq's wholesale process upon integration of systems after the merger should address Socket's concerns,<sup>12</sup>

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<sup>8</sup> COMPTEL May 28 Ex Parte at 3.

<sup>9</sup> 47 C.F.R. § 51.507(e).

<sup>10</sup> *Implementation of the Local Competition Provision in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report & Order, 11 FCC Rcd 15499, ¶ 382 (1996); *Implementation of the Local Competition Provision in the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report & Order, 15 FCC Rcd 3696, ¶ 192 (1999).

<sup>11</sup> *Id.*, ¶ 2.

<sup>12</sup> See CenturyTel/Embarq Competition Ex Parte at 2, 8-11.

since Socket apparently has no problem with Embarq coordinated conversion procedures. Therefore, this allegation concerning a past practice of CenturyTel is not a reason to condition the instant merger, but rather justifies rapid approval.

4. Additionally, Socket repeats its allegation that CenturyTel does not permit Socket to establish one point of interconnection (“POI”) per LATA in Missouri when CenturyTel has separate operating companies in that state.<sup>13</sup> Although Socket denies that it is attempting to have a state arbitration overturned, it then proceeds to complain about the very issue that has already been arbitrated and decided. Moreover, the issue that Socket raised before the Missouri Commission and again here is significantly more complicated than Socket implies. CenturyTel allows, and the Missouri Commission has approved, a contract whereby Socket may indirectly interconnect with a CenturyTel company until it reaches a minimum threshold of traffic in a particular end office. Once that threshold of traffic is reached, the interconnection contract requires that a POI be established on CenturyTel’s operating company network, and direct interconnection be implemented. This requirement is necessary because, as a bill and keep arrangement, CenturyTel pays for the transport of traffic from its exchanges to the distant St. Louis exchange where Socket’s modem banks are located. Socket’s complaint is thus not about the fact that CenturyTel has separating operating companies; it is about whether CenturyTel should be required to shoulder the cost of providing transport services, which it often must purchase from independent third party providers. As explained previously, these issues have been litigated by Socket before the Missouri Commission,<sup>14</sup> and the FCC should not overturn those decisions in this unrelated merger proceeding.

5. Charter’s May 19 Ex Parte adds no new facts, but simply rehashes legal arguments that have already been addressed. For instance, Charter again alleges that Section 251 does not permit charges for directory listings that are submitted on behalf of a CLEC to a third party.<sup>15</sup> Charter is wrong, however, about the proper interpretation of the statute. Moreover, Charter ignores the fact, however, that this issue has been addressed at the state level and decided contrary to Charter’s position.<sup>16</sup> The proper forum for challenging such a decision would be an appeal to district court, not seeking a preemptive order at the FCC.

6. In the same letter, Charter also again claims that the FCC has already decided that there should be one POI per LATA for all incumbent LECs. Yet, the only authority for that proposition is an order applicable solely to SBC, where SBC made a voluntary commitment to abide by that principle in its territory. Charter fails to acknowledge or address that the issue for independents ILECs is undecided, and pending in an existing rulemaking.<sup>17</sup> Independent ILECs, and their networks, are not comparable to BOCs, particularly with respect to the amount of transport that must be purchased from third

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<sup>13</sup> Kohly Declaration, ¶ 12.

<sup>14</sup> See CenturyTel/Embarq Competition Ex Parte at 5-8 & n.20.

<sup>15</sup> Charter May 19 Ex Parte at 1-3.

<sup>16</sup> CenturyTel/Embarq Competition Ex Parte at 4-5.

<sup>17</sup> *Id.* at 5-8.

parties to connect various local exchanges. Charter's ex partes add nothing to the record and certainly do not justify a condition being imposed on this merger.

In accordance with 47 C.F.R. § 1.1206, please include this ex parte filing in the above-referenced docket.

Respectfully submitted,

By: /s/ Gregory J. Vogt

John F. Jones  
Jeffrey S. Glover  
Robert D. Shannon  
CenturyTel, Inc.  
100 CenturyTel Park Drive  
Monroe, LA 71203  
(318) 388-9000

Gregory J. Vogt  
Law Offices of Gregory J. Vogt, PLLC  
2121 Eisenhower Ave.  
Suite 200  
Alexandria, VA 22314  
(703) 838-0115

Of Counsel

Counsel for CenturyTel, Inc.

By: /s/ Samuel L. Feder

David C. Bartlett  
John E. Benedict  
Jeffrey S. Lanning  
EMBARQ  
701 Pennsylvania Ave, NW, Suite 820  
Washington, DC 20004  
(202) 393-7113

Samuel L. Feder  
Jenner & Block LLP  
1099 New York Ave., N.W.  
Suite 900  
Washington, D.C. 20001  
(202) 639-6092

Of Counsel

Counsel for Embarq Corporation