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June 2, 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, June 1, 2009 and on Tuesday, June 2, 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 and my remarks were consistent with filings made in this docket previously by me on behalf of NuVox and Socket.

**Best Practices**

In particular, I focused on the need to include Embarq's **single point of interconnection, UNE dedicated transport availability and intervals, directory listings and ADSL transmission product wholesale availability** practices expressly within the scope of the Applicants' "best practices" commitment. *The Applicants' apparent resistance to affirming these items as components of their "best practices" commitment is alarming and should be a matter of significant concern to the Commission that ought to be addressed before and not after any transfer of control application is approved.*<sup>1</sup>

<sup>1</sup> Contrary to CenturyTel and Embarq's June 1, 2009 ex parte, it is clear that NuVox, Socket and many others continue to oppose Commission approval of the merger without conditions or commitments necessary to produce the public interest benefits required by Commission precedent. See Letter from Gregory J. Vogt, Counsel for CenturyTel, *et al.*, to Marlene H. Dortch, FCC, WC Docket No. 08-238 (June 1, 2009). As explained in prior submissions, each condition proposed is merger related and supported by Commission precedent. The Applicants' June 1, 2009 ex parte otherwise contains a

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**Special Access and ADSL Transmission**

I also reiterated the need for the Commission to impose conditions capping Applicants' prices for **special access and ADSL transmission services**. *The Applicants' May 29, 2009 ex parte filing suggests that they intend to raise special access rates for Embarq's DSL channel terminations.<sup>2</sup> Imposing a rate cap pending the outcome of the Commission's rulemaking in WC Docket No. 05-25 should not be controversial and certainly would be reasonable in this context for reasons explained in previous submissions.*

I also noted that the Commission has used the merger approval process to secure "broadband" conditions such as the proposed ADSL transmission service condition in the past, and that doing so again would produce a tangible public interest benefit. As explained previously, making all retail speeds available on a wholesale basis currently is an Embarq best practice. *The Commission should not miss this opportunity to cap the rates for such wholesale offerings at retail, pending further review. It is hard to fathom how leaving the Applicants' wholesale ADSL transmission practices unchecked could be consistent with the public interest.*

**Interconnection Agreements**

Finally, I underscored the importance of the Commission's clarifying that the Applicants must allow **section 252(i) adoptions** (and may not reject such requests as not being made within a reasonable period of time) of interconnection agreements extended per any commitments made by or conditions imposed on the Applicants.

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rehash of previously filed materials and some disingenuous responses to various COMPTTEL ex partes that do not require any response.

<sup>2</sup> See Letter from Samuel L. Feder, Counsel for Embarq, to Marlene H. Dortch, FCC, WC Docket No. 08-238 (May 29, 2009).

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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,



John J. Heitmann

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