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June 11, 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 Wednesday June 10, 2009 and Thursday, June 11, 2009, on behalf of NuVox and Socket, I engaged in brief telephone conversations with Mark Stone of Commissioner Adelstein's office. The conversations focused on the need to flesh-out the framework of voluntary commitments offered to date by the Applicants.

In particular, I emphasized that Embarq's practice of offering all retail **ADSL transmission** speeds on a wholesale basis should be considered a "**best practice**" that, consistent with the Applicants' best practices commitment, not only should be spared from elimination by CenturyTel but should be expanded throughout the merged entity.

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. **Thus, it is imperative that the Commission require the Applicants to preserve this Embarq best practice and,**

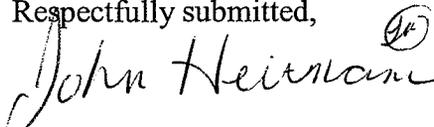
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**consistent with their commitment to adopt “best practices”, to extend it throughout the merged entity.**

I also explained that, 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.<sup>1</sup> For example, 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. Embarq also has wholesale ADSL transmission prices that exceed retail prices – although by not nearly as much. These practices fairly can be described as anticompetitive, unjust, unreasonable and anti-consumer. **In light of the fact that, pursuant to the proposed transaction, CenturyTel management is taking control of Embarq, it is difficult to fathom how the Commission could find approval of this merger to be in the public interest without a condition or voluntary commitment addressing this critical broadband issue.**

I also highlighted the critical need for the Commission to address special access pricing in the context of this merger by acknowledging the problem and by – at a bare minimum imposing a cap on the Applicants’ special access prices. Applicant’s combined network map 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, the Commission can reasonably conclude that the public interest requires a condition or commitment that the Applicants will not raise prices on special access services for a three-year period.**

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

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<sup>1</sup> The Commission approved the AT&T / BellSouth merger subject to a voluntary commitment that ensured wholesale availability of ADSL transmission services at rates not to exceed retail rates for forty-two months. *In re: AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, 22 FCC Rcd 5662, Appendix F: Conditions at 153.

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cc: Mark Stone (via electronic mail)  
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