

## APPENDIX C

### Conditions

The Applicants have offered certain voluntary commitments, enumerated below. Because we find these commitments will serve the public interest, we accept them as conditions of our approval. Unless otherwise specified herein, these commitments are effective as of the Transaction Closing Date, which is defined for these purposes as the date on which the Applicants consummate the proposed transaction approved herein. The commitments described herein shall be null and void if CenturyTel and Embarq do not consummate the proposed transaction, and there is no Transaction Closing Date. Unless otherwise specified herein, these commitments will expire three years from the Transaction Closing Date.

It is not the intent of these commitments to restrict, supersede, or otherwise alter state or local jurisdiction under the Communications Act of 1934, as amended, or over the matters addressed in these commitments, or to limit state authority to adopt rules, regulations, performance monitoring programs, or other policies that are not inconsistent with these commitments.

#### **CenturyTel and Embarq Commitments**

*For Embarq operating 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.*

- For two years after the Transaction Closing Date, the merged company will maintain service levels for the Embarq operating companies that are comparable to those Embarq wholesale customers experienced pre-merger.
- Orders will be processed in compliance with federal and state law, as well as the terms of applicable interconnection agreements.
- For two years after the Transaction Closing Date, Embarq will continue to produce and make available CLEC service performance reporting via its wholesale website consistent with state commission requirements, except during system integration. Such performance data is available to any requesting CLEC today with respect to its carrier specific data for each respective state. In addition, access to the system and/or performance data will be made available to the FCC upon request.
- For two years after the Transaction Closing Date, the Embarq operating companies will maintain the following service metrics on a quarterly basis, separately for the states of Florida, Nevada, Ohio, North Carolina, Virginia, and all other states in the aggregate:
  - Pre-ordering – average response time to pre-order queries calculated in seconds, which measures the number of seconds from Embarq’s receipt of a query from a CLEC to the time Embarq returns the requested data to the CLEC.
  - Provisioning – average completed interval measured in days, which measures the average number of business days from receipt of a valid, error-free service request to the completion date in the service order entry system for new, move and change service orders, separately for all UNE, resale, and other CLEC services;
  - Repair/Maintenance – customer trouble report rate, which measures the total number of network customer trouble reports received within a calendar month per 100 units/UNEs, separately for all UNE, resale, and other CLEC services;

- Repair/Maintenance – average time to restore (service), which measures the average duration from the receipt of the customer trouble report to the time the trouble is cleared, separately for all UNE, resale, and other CLEC services; and
- Work Center – center responsiveness, which measures the average time it takes Embarq’s work center to answer a call expressed as the percentage of calls that are answered within 20 seconds.
- For the above-described metrics, Embarq will maintain a comparison of actual quarterly results to a benchmark value to be set at the 12-month average results achieved from April 1, 2008 through March 31, 2009. Embarq will maintain service at a level that is no less than one standard deviation from the benchmark value, 90 percent of the time.
- These metrics will be reported manually during system integration and made available to CLECs and the FCC as described above.
- The Applicants will combine each company’s wholesale systems into a single platform for the merged company. To integrate systems, new code must be developed and implemented. It is possible that wholesale customers may experience temporary conversion related issues as systems are converted. The merged company will use best efforts to minimize any potential impacts on wholesale customers.
- A reasonable transition is anticipated whereby the Applicants intend to migrate onto their new systems on a market-by-market basis to facilitate a smooth transition.
- Applicants will notify wholesale customers 30 days in advance of the anticipated integration of wholesale OSS on a market-by-market basis.

*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.*

- This condition means that wholesale OSS will be provided through the Embarq companies’ automated IRES and successor EASE system.

*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.*

- As of April 20, 2009, CenturyTel had already added 36% more employees to the existing 14 employees to handle port orders from carriers, for a total of 19. This number of employees will be maintained during the interim until integration. The merged company will continue to monitor the resources required to meet this commitment and will increase the number of employees necessary to port numbers in four business days and provide a firm order confirmation within one business day for normal levels of orders in compliance with FCC rules, subject to any requests by interconnectors for a later number porting date.
- CenturyTel companies will not limit the number of ports that can be processed.
- All CenturyTel CLEC customers are covered under this commitment.

*Applicants will improve CenturyTel companies' processing of wholesale orders as follows:*

- Local number portability orders will be processed through Embarq OSS within fifteen months of the Transaction Closing Date.
- Provisioning intervals for DS1 loops may be amended, upon request, to include a 9 business day provisioning interval maximum.
- No later than thirty months after the Transaction Closing Date, the CenturyTel companies will provision DS1 loops within 6 business days, 80 percent of the time.
- Within 120 days of the Transaction Closing Date, the merged company will implement and make available to CLECs Embarq's TELRIC-compliant coordinated loop and bulk loop hot cut processes for use with UNE loops, xDSL-capable UNE loops and x-DSL capable UNE subloops offered by Embarq and CenturyTel operating companies.
- Within fifteen months of the Transaction Closing Date, maintenance and repair calls for DS1 or higher UNE services will be answered at the Embarq wholesale services operations center. In addition, the merged company will provide dedicated resources to handle wholesale maintenance and repair calls.
- When a number is ported from CenturyTel, E-911 records will be unlocked at the time of porting. Trouble reports involving locked E-911 records will be addressed within 24 hours.

*The Applicants are willing to negotiate multiple interconnection contracts in a state at the same time in most circumstances when such consolidated negotiations will aid in addressing common issues.*

- In many states, the Applicants operate both Rural and Nonrural companies with unique network and cost characteristics. For a period of two years after the Transaction Closing Date, the merged company is willing to negotiate all Rural company interconnection contracts in a state at the same time and all Nonrural company interconnection contracts in a state at the same time. These unified negotiations will include negotiation of common terms, but the company reserves the right during those unified negotiations to ask for individual terms which are unique to each operating company in the state. These individual terms are limited to rates, different physical interconnection points reflecting network configurations, or where unified terms are otherwise technically infeasible.
- Each legal entity will continue to have its own interconnection contract, but these contracts will be negotiated jointly as indicated above. Joint negotiations will substantially ease the burden on interconnecting carriers.
- As the carriers integrate operations, the companies expect that the merged company will naturally gravitate toward consistent terms in a state, albeit separately for Rural and Nonrural operating companies, subject to the necessary unique terms described above.
- No Embarq or CenturyTel legal entity shall terminate or change the conditions of a currently effective interconnection agreement that is in its initial term as of the Transaction Closing Date, including the point of interconnection (POI), for a period of three years after the Transaction Closing Date, unless requested by the interconnecting party.

- No Embarq or CenturyTel legal entity shall terminate or change the conditions of any other effective interconnection agreement, including the POI, for a period of two years after the Transaction Closing Date, unless requested by the interconnecting party. This commitment excludes inactive agreements, which are those agreements that are not used by an interconnector to obtain service or for which a termination notice was sent prior to May 10, 2009.
- A party may use § 252(i) to opt in to an interconnection agreement for no more than the remaining length of that particular agreement pursuant to the previous two bullets. No opt-ins are permitted for inactive agreements.
- Neither the Applicants nor the interconnected carrier waive any rights to seek an amendment to reflect prior and future changes of law.
- During this period, the interconnection agreement may be terminated only via the interconnected carrier's request unless terminated pursuant to the agreement's "default provisions."

*For a period of 12 months after the Transaction Closing Date, the merged company agrees not to file a forbearance petition that seeks to alter the current status of any facility currently offered as a loop or transport UNE under Section 251(c)(3) of the Act or to request any new pricing flexibility for special access services in any market.*

*For three years after the Transaction Closing Date, the CenturyTel and Embarq operating companies will offer to Internet service providers, for their provision of broadband Internet access service to ADSL-capable retail customer premises, ADSL transmission service in their respective territories that is functionally the same as the services they offered as of the Transaction Closing Date. Each local operating company's wholesale offering will be at a price not greater than its retail price in the same state for ADSL service that is separately purchased by customers who also subscribe to that local operating company's local telephone service.*

- An ADSL transmission service shall be considered "functionally the same" as the service the CenturyTel or Embarq local operating company offered within its individual local operating company territory as of the Transaction Closing Date if the ADSL transmission service relies on ATM transport from the DSLAM (or equivalent device) to the interface with the Internet service provider, and provides a maximum asymmetrical downstream speed of up to 3.0 Mbps, where available (the "Broadband ADSL Transmission Service").
- Nothing in this commitment shall require any CenturyTel or Embarq local operating company to serve any geographic areas it currently does not serve with Broadband ADSL Transmission Service or to provide Internet service providers with broadband Internet access transmission technology that was not offered by that local operating company to such providers in its operating company territory as of the Transaction Closing Date.

*The merged company expects to make substantial additional investment in broadband services. The merged company will offer retail broadband Internet access service to 100 percent of its broadband eligible access lines within three years of the Transaction Closing Date.*

- To meet this commitment the merged company will make available retail broadband Internet access service with a download speed of 768 kbps to 90 percent of its broadband eligible access lines using wireline technologies within three years of the Transaction Closing Date. The merged company will make available retail broadband Internet access service in accordance with the FCC's current definition of broadband to the remaining broadband eligible access lines using alternative technologies and operating arrangements, including but not limited to satellite and terrestrial wireless broadband technologies.
- In addition, the merged company will make available retail broadband Internet access service with a download speed of (1) 1.5 Mbps to 87% of the broadband eligible access lines within two years of the Transaction Closing Date and (2) 3 Mbps to 75% of broadband eligible access lines within one year of the Transaction Closing Date, 78% of broadband eligible lines within two years of the Transaction Closing Date, and 80% of broadband eligible lines within three years of the Transaction Closing Date.
- Broadband eligible access lines are defined as retail single-line residential and single-line business access lines.

STATEMENT OF  
ACTING CHAIRMAN MICHAEL J. COPPS

RE: *Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, WC Docket No. 08-238

Today, we consider the merger of CenturyTel and Embarq—two wireline telecommunications companies operating in largely rural areas. A key question presented by the proposed transaction is: will rural America fare better or worse as a result of this transaction? Having looked at both the potential benefits and the potential harms that could result from this merger, I find that the scale tips in favor of permitting it to proceed.

As one example, I believe that rural consumers and wholesale customers will benefit from the merged entity's commitment to maintain service levels consistent with the better of the management and operating practices of the pre-merger companies. The service levels that Embarq has provided for wholesale operations will be maintained and, with the adoption of Embarq's Operation Support Systems by CenturyTel, the newly merged company will be wholly modernized in its order processing. In addition, the merged company will improve specific practices, including local number portability order processing, and will streamline interconnection agreement negotiations.

A major focus here is broadband and making sure that every corner of the country has high-speed, value-laden technology and service. I believe that the steps which the applicants make toward realization of this objective will move us in the right direction. As a result, the merged company will provide consumers in its territory with services they may not have seen before and had not expected to see in the near future.

This particular commitment goes significantly beyond the commitments of previous mergers, but it should not be construed as ideal. It should be regarded by no one as a standard or indicative of what to expect from the Commission when it considers future mergers or, for that matter, the national broadband plan that the Commission is currently pursuing. Our country is woefully behind many others in delivering real broadband to our citizens and, going forward, will have to raise its aspirations and expectations appreciably. Consumers, businesses, innovators and all of us as citizens should expect much more from national broadband policy than we have seen in recent years. Fortunately, we now, finally, have a genuine national commitment to get the job done.

I thank the Commission staff, the applicants, stakeholders and other concerned parties, and my Commission colleagues who put in significant time and effort to make sure that this transaction is consistent with the needs of rural America and, more generally, the public interest.

**STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN**

**RE:** *Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc., WC Docket No. 08-238*

I am pleased to support the merger of Embarq and CenturyTel with a key set of pro-consumer, voluntary, enforceable commitments. These commitments tip the public interest balance toward approval because they address the concerns raised in the record that the combination will harm competition.

The parties have agreed to measures that are essential to ensure the merger is in the public interest. I am particularly pleased by the commitment to bring broadband at speeds of at least 3 Mbps to at least 80 percent of their combined region, which is mostly rural, within three years, and 87 percent at 1.5 Mbps within two years, along with strong commitments to the remainder of its combined territory. These buildout commitments go far toward bringing broadband and all its economic opportunities to those the company will serve in rural America.

Further, the combined company will reduce competitors' costs of negotiating interconnection agreements by using template contracts and granting more opt-in rights. The combined company will also use pre-merger "best practices" to ensure that the new company's wholesale operations improve upon – not simply combine – legacy systems. The record is heavy with complaints that CenturyTel's largely manual OSS and number porting processes thwart competition. Today's commitments will bring Embarq's automated processes to the CenturyTel region.

Finally, I am especially pleased that the parties have agreed to additional commitments on key wholesale products. The parties have agreed to make their retail ADSL offerings available on a wholesale basis at prices at or below retail, thereby addressing a major competitive concern. The parties have also agreed for 12 months to not seek either forbearance for UNE loops and transport, nor to seek pricing flexibility for special access throughout their combined region. These commitments ensure a measure of stability for competitors and consumers alike.

With these commitments, today's action is a win for consumers that would not have happened without Chairman Copps leading from the top the type of merger review that has been missing from the Commission for quite a while now. I also want to thank the Wireline Competition Bureau for the detailed analysis that made the quality of this item and the voluntary commitments possible.

**STATEMENT OF  
COMMISSIONER ROBERT M. McDOWELL**

RE: *Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, WC  
Docket No. 08-238

I am pleased to support this merger and look forward to the consumer benefits that will result from the combination of Embarq and CenturyTel. The merger will benefit consumers in many ways, including creating synergies that will spur network investment and speeding the roll-out of broadband and other advanced services throughout the combined entity's service area.

I am, however, concerned by the nature of some of the conditions that are attached to this merger. I have repeatedly stated, and our precedent requires, that conditions should be narrowly-tailored to remedy only merger-specific harms, not to implement policies that are better addressed in a rulemaking of general applicability.

Finally, as we work to reform FCC processes going forward, I hope that the Commission will endeavor to meet its 180-day "shot clock" for merger reviews more consistently.