

BASS, BERRY & SIMS PLC

A PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW

R. DALE GRIMES
TEL: (615) 742-6244
dgrimes@bassberry.com

315 DEADERICK STREET, SUITE 2700
NASHVILLE, TN 37238-3001
(615) 742-6200
www.bassberry.com

OTHER OFFICES

KNOXVILLE
MEMPHIS

February 6, 2009

Via Hand Delivery

Chairman Eddie Roberson
c/o Ms. Sharla Dillon
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

filed electronically in docket office on 02/09/09

***In Re: Joint Application of Embarq Corporation and CenturyTel, Inc. Regarding
Transfers of Control of United Telephone Southeast LLC d/b/a Embarq,
Embarq Communications, Inc. and Embarq Payphone Services, Inc.
Docket No. 08-00219***

Dear Chairman Roberson:

Enclosed please find an original and six (6) copies of the Response of Embarq Corporation and CenturyTel, Inc. to DeltaCom Communications, Inc.'s Petition for Leave to Intervene to be filed in the above referenced docket. This document also is being filed electronically today with the Tennessee Regulatory Authority Docket Manager, Sharla Dillon.

Please stamp two (2) copies of this document as "filed" and return them to me by way of our courier.

Should you have any questions concerning any of the enclosed, please do not hesitate to contact me.

With kindest regards, I remain

Very truly yours,



R. Dale Grimes

RDG/smb

Enclosures

Chairman Eddie Roberson
February 6, 2009
Page 2

cc: Hon. Gary Hotvedt, Hearing Officer
Charles B. Welch, Jr., Esq.
Samuel Cullari, Esq.
Michael H. Pryor, Esq.
William C. Bovender, Esq.
H. LaDon Baltimore, Esq.
Susan Berlin, Esq.
Henry Walker, Esq.

7532397.1

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In the Matter of :)	
)	
Joint Application of Embarq)	
Corporation And CenturyTel, Inc.)	
Regarding Transfers of Control of)	
United Telephone Southeast LLC)	Docket No. 08-0219
d/b/a Embarq, Embarq)	
Communications, Inc. and Embarq)	
Payphone Services, Inc.)	

**RESPONSE OF EMBARQ CORPORATION AND
CENTURYTEL, INC. TO DELTACOM COMMUNICATIONS, INC.'S
PETITION FOR LEAVE TO INTERVENE**

I. INTRODUCTION

On February 4, 2009, Deltacom Communications, Inc. ("DeltaCom") filed a petition for leave to intervene ("Petition") in the above referenced docket pursuant to Tenn. Code Ann. § 4-5-310(a). DeltaCom claims that as a competitive local exchange carrier that has an interconnection agreement with Embarq, its ability to compete with Embarq and exercise its rights under that agreement "may be directly affected" by the merger of Embarq and CenturyTel that is the subject of this proceeding. DeltaCom mentions no facts to support this conclusory fear.¹ For the reasons discussed below, the Tennessee Regulatory Authority ("Authority") should deny the Petition.

¹ DeltaCom does not have an interconnection agreement with CenturyTel in Tennessee.

II. LAW AND ARGUMENT

A. The Merger Review Process under Tenn. Code Ann. §§ 65-4-112 and -113 is Limited in Scope.

Tenn. Code Ann. § 65-4-112 and -113 limit the scope of review by the Authority to determine whether the proposed transaction will benefit the consuming public and whether the transferee has the suitability, financial responsibility, and capability to efficiently perform the utility service being transferred. DeltaCom's assertions concerning potential issues under its interconnection agreement with Embarq and an ability to compete with the merged entity do not relate to any of the matters properly considered in the Authority's review of the merger. Rather, DeltaCom's participation in this proceeding is most likely a means to leverage concessions from Embarq based on perceived, unjustified and unsubstantiated fears. The Authority should not permit this proceeding or judicial resources to be used in such a manner.

B. DeltaCom Fails to Set Forth Specific Facts Demonstrating its Legal Interests may be Impaired Without the Grant of Intervention.

Tenn. Code Ann. § 4-5-310(a)(2) requires that a party "state facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding" before it can be permitted to intervene.² DeltaCom has not met its burden under the statute. Instead of providing facts showing that its rights under the interconnection agreement may be directly affected by the merger, DeltaCom expressed – in one sentence – a vague concern that its ability to compete against Embarq and exercise its rights under the interconnection agreement *may* be affected. This is an

² See also Tenn. Comp. R. & Regs. 1220-1-2-.08 and Tenn. Code Ann. § 65-2-107.

empty conclusion and not a statement of fact that supports a grant of intervention. In fact, the joint application of Embarq and CenturyTel explicitly confirms: “[T]his transaction will have no impact on any terms of any existing interconnection agreements or UTSE’s obligations under state and federal laws regarding interconnection.”³ Since DeltaCom fails to articulate facts necessary to make any real demonstration that its rights, privileges, immunities or other legal interests will be in fact impaired due to the merger, there is no basis on which to grant the petition and it should therefore be denied.

C. This Proceeding is Not the Appropriate Docket to Review
DeltaCom’s Concerns about Interconnection Rights.

DeltaCom is essentially asking the Authority to protect DeltaCom’s rights under its interconnection agreement with Embarq as part of this proceeding. In fact, how competitors interconnect their networks is addressed by the federal Telecommunications Act of 1996, not Tennessee’s merger statute. If DeltaCom believes a company’s wholesale policies or practices are somehow anticompetitive, DeltaCom should not only substantiate its allegations with facts, but also address such concerns in a separate and appropriate venue or proceeding. The Authority’s consideration of the merger transaction between Embarq and CenturyTel is not the appropriate place.

III. CONCLUSION

Based upon the foregoing, the Authority should deny DeltaCom’s Petition for Leave to Intervene. The concerns raised by DeltaCom have no relation to the merger review under Tenn. Code Ann. §§ 65-4-112 and -113. DeltaCom fails to set forth any specific facts to demonstrate that any of its legal interests will be determined in this

³ See Joint Application of Embarq Corporation, Embarq’s certificated Tennessee Subsidiaries and CenturyTel, Inc. Regarding Transfers of Control, at pg. 12, ¶ 25.

proceeding as required by Tenn. Comp. R. & Regs. 1220-1-2-.08 and Tenn. Code Ann. §§ 4-5-310 and 65-2-107. Furthermore, this proceeding before the TRA is not the appropriate place for DeltaCom's allegations regarding its rights under any interconnection agreements. Therefore, Embarq and CenturyTel respectfully request the Authority to deny DeltaCom's request for intervention and proceed with consideration of the Joint Application without any undue delay.

February 6, 2009.

Respectfully submitted,



R. Dale Grimes
BASS, BERRY & SIMS PLC
315 Deaderick Street, Suite 2700
Nashville, Tennessee 37238-3001
(615) 742-6244
Email: dgrimes@bassberry.com
Tennessee B.P.R. No. 6223
Counsel for CenturyTel

Edward Phillips
14111 Capital Boulevard
Mailstop: NCWKFR0313
Wake Forest, NC 27587-5900
(919) 554-7870
Email: edward.phillips@embarq.com
Tennessee B.P.R. No. 016850
Counsel for Embarq

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via first class U.S. Mail, postage prepaid, hand delivery, overnight delivery or electronic transmission on this the 6 day of February, 2009 to the following:

For Comcast:

Charles B. Welch, Jr.
Farris Mathews Bobango, PLC
618 Church Street, Suite 300
Nashville, TN 37219
email: CWelch@farrismathews.com

For Comcast:

Samuel Cullari
Comcast Cable Communications, LLC
One Comcast Center, 50th Floor
Philadelphia, PA 19103
email: Samuel_Cullari@Comcast.com

For Comcast:

Michael H. Pryor
Mintz, Levin, Cohen, Ferris Glovsky &
Popeo, P.C.
701 Pennsylvania Ave., N.W.
Suite 900
Washington, D.C. 20004
email: MHPryor@Mintz.com

For NE TN TVA Distributors:

William C. Bovender
Hunter Smith and Davis LLP
1212 N. Eastman Road
P. O. Box 3740
Kingsport, TN 37664
email: Bovender@hsdlaw.com

For NuVox:

H. LaDon Baltimore
Farrar & Bates LLP
211 7th Avenue North, Suite 500
Nashville, TN 37219
email: don.baltimore@farrar-bates.com

For NuVox:

Susan Berlin
NuVox Communications, Inc.
Two North Main Street
Greenville, SC 29601
email: SBerlin@NuVox.com

*For Bristol Essential Services and
DeltaCom:*

Henry Walker
1600 Division Street, Suite 700
Nashville, TN 37203
email: HWalker@boultcummings.com



R. Dale Grimes