

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

February 20, 2009

IN RE:)	
)	
JOINT APPLICATION OF EMBARQ)	DOCKET NO.
CORPORATION, EMBARQ'S CERTIFICATED)	08-00219
TENNESSEE SUBSIDIARIES AND CENTURYTEL,)	
INC. REGARDING TRANSFERS OF CONTROL)	

ORDER GRANTING PETITIONS FOR INTERVENTION,
ADOPTING ISSUES, AND ESTABLISHING PROCEDURAL SCHEDULE

This matter came before the Hearing Officer upon the joint filing by the Embarq Corporation ("Embarq"), the Embarq subsidiaries certificated to provide telecommunications services in the State of Tennessee, and CenturyTel, Inc. ("CenturyTel") (collectively the "Applicants") of the *Joint Application of Embarq Corporation, Embarq's Certificated Tennessee Subsidiaries and CenturyTel, Inc. Regarding Transfers of Control* ("Joint Application") on November 21, 2008. Petitions to intervene were filed by: Level 3 Communications, LLC ("Level 3") on December 18, 2008; Comcast Phone of Tennessee, LLC, d/b/a Comcast Digital Phone ("Comcast") on January 16, 2009; the Northeast Tennessee TVA Power Distributors¹ ("NE TN Power Distributors") on January 19, 2009; NuVox Communications, Inc. ("NuVox") on February 3, 2009; DeltaCom, Inc. d/b/a DeltaCom Business Solutions ("DeltaCom") and Bristol Tennessee Essential Services ("Bristol") on February 4, 2009. On January 13, 2009, Level 3 withdrew its petition to intervene, and on February 17, 2009, Comcast withdrew its petition to intervene.

¹ The Northeast Tennessee TVA Power Distributors group includes the following: Bristol Tennessee Essential Services, the City of Elizabethton Tennessee's Department of Electric Services, Erwin Utilities, Greeneville Light & Power Company, Holston Electric Cooperative, Johnson City Power Board and Mountain Electric Cooperative, Inc.

BACKGROUND

According to the Joint Application, Embarq, CenturyTel, and Cajun Acquisition Company (“CAC”) entered into an Agreement and Plan of Merger as of October 26, 2008. Embarq is a publicly traded holding company with incumbent local exchange operations in 18 states, including Tennessee. CenturyTel is a publicly traded holding company with its own incumbent local exchange operating company subsidiaries in 25 states, including CenturyTel Solutions, LLC, CenturyTel of Claiborne, Inc., CenturyTel of Adamsville, Inc. and CenturyTel of Ooltewah-Collegedale, Inc. in Tennessee (the “CenturyTel Tennessee Subsidiaries”). CAC is a direct wholly-owned subsidiary of CenturyTel created to effectuate this transaction. Under the terms of the transaction, Embarq and CAC will merge with Embarq being the surviving corporation and CAC ceasing to exist. The transaction will be accomplished through a stock-for-stock transaction. CenturyTel expects to refinance Embarq’s bank debt at closing, but no incremental debt will be incurred as a result of the transaction. Embarq will become a wholly-owned subsidiary of CenturyTel, but Embarq’s Tennessee operating subsidiaries will remain subsidiaries of Embarq. The Applicants therefore request that the Authority approve the ultimate parent level transfer of control of Embarq and its certificated subsidiaries to CenturyTel pursuant to Tenn. Code Ann. Section 65-4-113.²

During a regularly scheduled Authority Conference held on January 26, 2009, Chairman Eddie Roberson, Director Sara Kyle and Director Mary W. Freeman of the Tennessee Regulatory Authority (“Authority”), the voting panel assigned to this docket, voted unanimously to convene a contested case proceeding and to appoint the Authority’s General Counsel or his designee to serve as Hearing Officer for the purpose of preparing this case for hearing, including ruling on intervention requests, adopting an issues list, entering a protective order and

² Joint Application, pp. 2-3 (November 21, 2008).

establishing a procedural schedule to completion.³ On January 30, 2009, a status conference was noticed for February 9, 2009. Prior to the status conference, objections were raised by the Applicants to all petitions to intervene. Also, pursuant to the January 30, 2009 notice, each party filed a list of proposed issues to be considered during this proceeding, and the Applicants and the NE TN Power Distributors each filed a proposed procedural schedule.

FEBRUARY 9, 2009 STATUS CONFERENCE

A status conference was held on February 9, 2009, at which the following counsel or representatives appeared:

Edward Phillips, Esq.: **Embarq**;

R. Dale Grimes, Esq.: **CenturyTel**;

Michael S. Lattier, Esq.: **NE TN Power Distributors** (William C. Bovender by phone);

Charles B. Welch, Jr., Esq., Rene Locker, Esq.: **Comcast** (Samuel Cullari by phone);

H. LaDon Baltimore, Esq.: **NuVox** (Susan Berlin by phone);

Henry Walker, Esq.: **DeltaCom** (Tommy Monsanto by phone); and

Henry Walker, Esq.: **Bristol**.

Interventions

At the status conference, the Applicants argued that the legal rights and interests of the intervenors will not be affected by this transfer of control proceeding, and the all the intervenors have a remedy for any alleged disputes arising out of their individual contracts, separate from this docket. The intervenors countered with the argument that they should be allowed to intervene in order to guarantee that their interests are not adversely affected, and argued that any approval of the merger by the Authority should include conditions that would assure no

³ See Order Convening a Contested Case and Appointing a Hearing Officer, Docket No. 08-00219 (February 2, 2009).

deterioration of the current contractual relationships between the parties. It was also suggested that if anyone having a contract with the Applicants was precluded from intervening in this proceeding, only the Consumer Advocate would qualify. The Hearing Officer finds that each of these arguments have merit.

Applying the standards set forth in Tenn. Code Ann. § 4-5-310(a) (2005)⁴, all petitions to intervene were timely, and the interventions should not impair the interests of justice or the orderly and prompt conduct of these proceedings. As for the “legal interest” criterion relative to this particular proceeding, it is a close call. Therefore, rather than grant or deny the interventions based on Tenn. Code Ann. § 4-5-310(a)(2), the Hearing Officer will rely on Tenn. Code Ann. § 4-5-310(b), which gives the agency discretion to grant petitions for intervention “at any time, upon determining that the intervention sought is in the interests of justice and shall not impair the orderly and prompt conduct of these proceedings.” Furthermore, Tenn. Code Ann. § 4-5-310(c) allows a hearing officer to impose, at any time, conditions upon the intervenor’s participation in the proceedings. Conditions may include:

- (1) Limiting the intervenor’s participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;
- (2) Limiting the intervenor’s use of discovery, cross-examination and other procedures so as to promote the orderly and prompt conduct of the proceedings....⁵

Because the Hearing Officer accepts the intervenors’ arguments that the merger could adversely impact the relationship between the intervenors and the surviving applicant, the Hearing Officer

⁴ Tenn. Code Ann. § 4-5-310(a) (2005) sets forth the following criteria for granting petitions to intervene: (a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if; (1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing; (2) The petition states facts demonstrating that the petitioner’s legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of the law; and (3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

⁵ Tenn. Code Ann. § 4-5-310(c)(1) and (2).

hereby exercises his discretion and grants limited intervention to the intervenors pursuant to Tenn. Code Ann. § 4-5-310(b) and (c). The intervention of NE TN Power Distributors is limited to issues number 1 and 3 (below). The intervention of NuVox, DeltaCom and Bristol is limited to issues number 2 and 3 (below).

Issues

After distilling the issues that were proposed by each of the parties on February 6, 2009, the following issues are hereby adopted for this proceeding:

1. Will the merged company (the surviving Applicant) have the technical and financial ability to properly maintain its obligations with respect to right-of-ways and pole attachments?
2. What requirements or conditions, if any, should be placed on the provisioning of wholesale services by the merged company (the surviving Applicant)?
3. Is the merger in the public interest? (For purposes of this issue, public interest includes, but is not limited to, the necessity to place conditions, if any, upon the merged companies and evaluation of how the merger may impact competition.)

Procedural Schedule

The following procedural schedule is hereby adopted:

February 27, 2009	Discovery requests, all parties, and filing of a proposed agreed protective order
March 13, 2009	Response to discovery requests, all parties
March 27, 2009	Direct testimony, all parties
April 3, 2009	Rebuttal testimony, all parties
April 6, 2009	Pre-Hearing Conference
April 13, 2009 (or week thereof)	Proposed Hearing date, subject to confirmation by the assigned panel of directors

If any issues or disputes arise regarding discovery, the parties are to contact the Hearing Officer for resolution. After a Hearing date is determined, a Notice of Hearing will be issued.

IT IS THEREFORE ORDERED THAT:

1. The limited interventions of NE TN Power Distributors, NuVox, DeltaCom and Bristol are granted. The intervention of NE TN Power Distributors is limited to issues number 1 and 3; the intervention of NuVox, DeltaCom and Bristol is limited to issues number 2 and 3; the intervenors may participate in this proceeding as these issues require and receive copies of any notices, orders or other documents filed herein.

2. Issues 1, 2 and 3 are adopted as stated herein.

3. A procedural schedule is established as stated herein.

4. One copy of all discovery requests and responses is to be filed with the Authority.

All filings are due no later than **2:00 p.m.** on the dates indicated in the procedural schedule.

A handwritten signature in black ink, appearing to read "G.R. Hotvedt", written over a horizontal line.

Gary R. Hotvedt,
Hearing Officer