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EMBARQTM

Embarq
Mailstop: NCWKFR0313
14111 Capital Boulevard
Wake Forest, NC 27587-5900
embarq.com

January 22, 2009

Chairman Eddie Roberson
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

filed electronically in docket office on 01/22/09

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 are an original and four (4) copies of the Response of Embarq Corporation and CenturyTel, Inc. to The Northeast Tennessee TVA Power Distributors' Petition for Leave to Intervene in the above-referenced docket. This document has been filed by way of email sent today to the Tennessee Regulatory Authority Docket Manager, Sharla Dillon.

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

Sincerely,

Edward Phillips

HEP:sm

Enclosures

cc: R. Dale Grimes, Esquire
William C. Bovender, Esquire

Edward Phillips

ATTORNEY

Voice: (919) 554-7870

Fax: (919) 554-7913

edward.phillips@embarq.com

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 d/b/a Embarq, Embarq)	Docket No. 08-00219
Communications, Inc. and Embarq)	
Payphone Services, Inc.)	
)	

**RESPONSE OF EMBARQ CORPORATION AND
CENTURYTEL, INC. TO THE NORTHEAST TENNESSEE TVA POWER
DISTRIBUTORS' PETITION FOR LEAVE TO INTERVENE**

I. INTRODUCTION

On January 19, 2009, seven Northeast TVA Power Distributors (“Electric Distributors” or “Petitioners”)¹ filed a petition for leave to intervene (“Petition to Intervene”) pursuant to Tenn. Code Ann. §§ 4-5-310, 65-2-107 and Tenn. Comp. R. & Regs. 1220-1-2-.08 in the above-referenced docket. For the reasons discussed below, the Directors of the Tennessee Regulatory Authority (“Authority”) assigned to consider this matter should deny the Petition.

On November 21, 2008, Embarq Corporation (“Embarq Corporation”) and CenturyTel, Inc. (“CenturyTel”) filed a Joint Application for approval of a merger that would transfer ultimate ownership of Embarq Corporation to CenturyTel. United Telephone Southeast LLC d/b/a Embarq (“UTSE” or “Embarq”), Embarq Communications, Inc. and Embarq Payphone

¹ The seven Northeast TVA Power Distributors filing the Petition to Intervene are identified as Bristol Tennessee Essential Services, The City of Elizabethton Tennessee’s Department of Electric Services, Erwin Utilities, Greeneville Light and Power Company, Holston Electric Cooperative, Johnson City Power Board and Mountain City Electric Company, Inc.

Services will remain direct subsidiaries of Embarq Corporation and becoming indirect subsidiaries of CenturyTel.

II. LAW AND ARGUMENT

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

Tenn. Code Ann. § 65-4-113 limits the scope of review by the Authority to determine whether the result from the proposed transaction will benefit the consuming public and the suitability, financial responsibility, and capability of the transferee to efficiently perform the utility service being transferred. The Electric Distributors allegations concerning the joint-use-pole agreements with Embarq will not further the Authority's review of the merger. Rather, the Electric Distributors seek participation in this proceeding merely as a means to leverage concessions from Embarq in a contract dispute. The Authority should not permit this proceeding or its judicial resources to be used in such a manner.

Moreover, the claims of the Electric Distributors only involve Embarq Corporation's incumbent local exchange carrier, UTSE. The other entities (Embarq Communications, Inc., Embarq Payphone Services, Inc. or CenturyTel, Inc.) in this merger should not be made parties to a contract dispute between UTSE and the Electric Distributors.

B. Nothing Under Title 65 of the Tennessee Code Supports the Authority's Ability to Dispose of Issues Arising From Joint-Pole-Use Agreements.

The Tennessee Regulatory Authority, like other state agencies, is a "creature of statute" and must therefore find its powers, functions and duties expressly stated or implied under its enabling statutes. Title 65 does not expressly permit the agency to resolve issues relating to or arising from disputes involving joint-pole-use agreements.

The proceeding in which the Electric Distributors seek to intervene is a merger docket that, as discussed above, is limited in scope to a specific type of statutory review. As noted, the

Electric Distributors' allegations concern joint-pole-use agreements with Embark. The Authority's consideration of issues related to joint-pole-use agreements will not further the Authority's review of the merger. A merger proceeding is not the appropriate vehicle for establishing terms and conditions of a contract.

C. The Authority Could Initiate a Separate Proceeding to Mediate this Contract Dispute.

While the Authority lacks express authorization to hear and determine the underlying allegations of the Electric Distributors as set forth in the Petition to Intervene, there may be another way to resolve this matter that more efficiently uses the Authority's resources and Staff's time and effort. That is, the Authority exercising its discretionary powers may be able to assist in mediating the dispute between the parties in a separate proceeding where full focus and effort can be placed on these issues. Tenn. Code Ann. § 65-4-117 authorizes the Authority, among other things, to "[i]nvestigate upon its own initiative or upon complaint in writing, any matter concerning any public utility" under its jurisdiction.² The parties have been involved in discussions, meetings and negotiations since March 2008. While Embark is confident that if the parties continue such negotiations, all issues will ultimately be resolved, Embark does recognize the merits of mediation involving the Authority's expertise and resources.

III. DENIAL OF SPECIFIC ALLEGATIONS

The merits of the Electric Distributors' claims in its Petition to Intervene need not be debated here because a contract dispute cannot be an issue in this proceeding. Suffice it to say, that the Electric Distributors petition contains what Embark believes are inaccuracies regarding Embark's willingness to negotiate a new contract. As it has been since discussions began for a

² See Tenn. Code Ann. § 65-4-117(1). See also, Tenn. Code Ann. § 65-4-101.

new contract (or the revision of existing contracts) Embarq is eager to structure a solution satisfactory to all parties.

In contrast, it appears to Embarq that the Electric Distributors are attempting to gain an advantage in the contract negotiations by threatening to impede the merger between Embarq and CenturyTel. The Authority should not permit the Electric Distributors to use this merger proceeding to gain such leverage.

To the extent Embarq may not be able to answer the complaints and allegations set forth in the Petition to Intervene in a separate answer, Embarq denies all allegations not expressly admitted or denied herein. Further, Embarq now responds to the allegations contained in Paragraph No. 5 and its subparts, as follows:

1. As to the allegations under Paragraph No. 5. A of the Petition to Intervene Embarq denies it has not made efforts to equalize pole ownership. Embarq's offer last year to pursue purchase of existing pole plant to rebalance to an equitable ownership was rejected by the Electric Distributors even though it would have led to the equalization under the joint-pole-use agreements. Further, Embarq rejects that it should own approximately half the joint-use-poles under a new agreement. The concept of equalization of ownership is neither equitable nor practical. First, the proportionate use of the poles differs between the parties. The actual pole use trend for the Electric Distributors has grown well beyond the parameters set forth under the agreements as amended. And, as a matter of fact, the Tennessee Distributors now require placement of much larger poles at most locations. To the extent any other allegations contained in Paragraph No. 5. A of the Petition to Intervene have not been denied, such allegations are hereby denied.

2. As to the allegations contained in Paragraph No. 5. B of the Petition to Intervene, Embarq admits that it invoked the default rate provisions existing under Article XIII of the joint-

pole-use agreements to recalibrate rates being charged by the Petitioners to align with the intent of the joint-pole-use agreements; using cost based industry-recognized standards. Embark exercised its rights under Article XIII in full compliance with that section of the joint-pole-use agreements and denies that it is attempting to propose wholly unsatisfactory rates.

3. Further, it is Embark's position that it has proffered cost-based rates that are consistent with generally accepted accounting principles, that such rates are consistent with costing standards recognized in the industry guidance and that such rates are reasonable when measured against the foregoing standards. Embark asserts that the rates proposed by the Electric Distributors in their most recent invoices are not based on any accepted industry standards or the intent of the join-pole-use agreements. In addition, rates have been escalating for 11 years and the resulting current rates are unreasonable when measured against applicable standards. To the extent any other allegations contained in Paragraph No. 5. B of the Petition to Intervene have not been denied, such allegations are hereby denied.

4. As to the allegations contained in Paragraph No. 5. C of the Petition to Intervene, Embark denies that it ignores pole transfer requests. However, Embark does acknowledge there has been a communication problem in the past. This issue was discussed between the parties in May of 2008. Embark suggested that the Electric Distributors adopt the National Joint Use Notification System ("NJUNS") system (an electronic system with broad acceptance within the industry) to resolve this communication problem. Moreover, at least one of the Electric Distributors, Greeneville Light and Power has already embraced the NJUNS system, and in fact had already placed requests into NJUNS for transfer. To the extent any other allegations contained in Paragraph No. 5. C of the Petition to Intervene have not been denied, such allegations are hereby denied.

5. As to the allegations contained in Paragraph No. 5. D of the Petition to Intervene, Embarq denies that it is failing to maintain its poles. In 2008, Embarq enhanced its pole inspection program, requiring technicians to test poles before climbing and, where a pole failed these tests, to have the pole replaced. For the second half of 2008 alone, Embarq's Tennessee technicians have recorded inspection results on 3,163 poles. In fact, Embarq conducted 342 engineering work activities for pole replacement at a cost of \$1.75 million in 2008. To the extent any other allegations contained in Paragraph No. 5. D of the Petition to Intervene have not been denied, such allegations are hereby denied.

6. As to the allegations contained in Paragraph No. 5. E of the Petition to Intervene, Embarq denies that it refuses to share in maintenance expense. The joint-pole-use agreements require Embarq to participate in right-of-way maintenance equal to the benefit Embarq receives. Embarq no longer operates any open wire circuits in Tennessee, and as a result, there is no benefit for right-of-way maintenance, including trimming. Nevertheless, Embarq does engage in vegetation management, which includes both ground treatment for invasive plants and overhead trimming. To the extent any other allegations contained in Paragraph No. 5. E of the Petition to Intervene have not been denied, such allegations are hereby denied.

7. As to the allegations contained in Paragraph No 5. F, Embarq denies that it has failed to react to emergency-callout situations or has created an environment that endangers the public safety. Further, Embarq is not aware of any outstanding safety issues that have not been addressed. In fact, Embarq made requests to the Electric Distributors for specific instances of safety violations and the location of poles that need correcting as recently as January 12, 2009. To date none have been provided. Embarq considers safety of utmost importance and vehemently denies the Electric Distributors claim that Embarq has endangered the public safety.

8. Further, Embarq has not been made aware of any National Electric Safety Code (“NESC”) violations. The NESC is the guiding specification for the joint-pole-use agreements, and indeed, Embarq includes the NESC as one of the standard specifications in all of its new joint-pole-use agreements. Embarq requires that any known NESC violations be corrected without delay. Once again, on January 12, 2009, Embarq made a specific request to the Distributors for information about specific instances of NESC violations and the location of poles that need correcting. To date, the Distributors have not provided any such information. Embarq is committed to ensuring that it continues to correct any safety concerns or violations of the NESC. To the extent any other allegations contained in Paragraph No. 5. F of the Petition to Intervene have not been denied, such allegations are hereby denied.

9. As to the allegations contained in Paragraph No. 5. G of the Petition to Intervene, Embarq states that its project engineers have established consistent processes of submitting attachment requests in connection with new line extensions and rebuilds. However, Embarq acknowledges that its process for reporting drop attachments (lines to service individual locations) was less reliable. Having acknowledged this process issue, Embarq has taken steps to educate its technicians as to the proper process for reporting such attachments, and remains committed to further improvement. To the extent any other allegations contained in Paragraph No. 5. G of the Petition to Intervene have not been denied, such allegations are hereby denied.

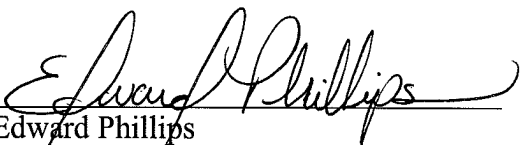
10. Finally, even though Embarq has responded to the allegations contained in the Petition to Intervene, Embarq reserves its rights to fully respond to any and all allegations laid against it.

IV. CONCLUSION

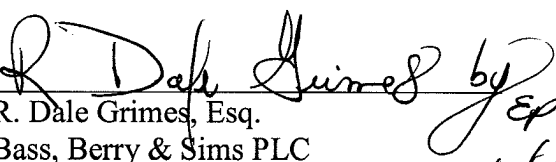
The Authority must deny the Electric Distributors’ Petition for Leave to Intervene since the Electric Distributors have failed to demonstrate that this dispute must be heard in the context

of a merger proceeding. Petitioners fail to establish facts that demonstrate any of their rights, duties, privileges, immunities or other legal interests will be determined herein as required by Tenn. Comp. R. & Regs. 1220-1-2-.08 and Tenn. Code Ann. §§ 4-5-310 and 65-2-107. Therefore, Embarq and CenturyTel respectfully request the Authority deny the Electric Distributors request for intervention and proceed with consideration of the Joint Application without any undue delay. If the Authority chooses to become involved in the contract dispute, Embarq encourages the Authority to do so as a mediator. The Electric Distributors claims should be heard in a separate proceeding in much the same manner as the Authority would consider any complaint.

Respectfully submitted this 22nd day of January, 2009.


Edward Phillips
14111 Capital Boulevard
Wake Forest, North Carolina 27587-5900
Mailstop: NCWKFR0313
Telephone: 919-554-7870
FAX: 919-554-7913
edward.phillips@embarq.com
Tennessee B.P.R. No. 016850

Attorney for Embarq Corporation


R. Dale Grimes, Esq.
Bass, Berry & Sims PLC
315 Deaderick Street #2700
Nashville, Tennessee 37238-3001
Telephone: 615-742-6200
FAX: 615-742-6293
dgrimes@bassberry.com


Attorney for CenturyTel, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the Response of Embarq Corporation and CenturyTel, Inc. to Counsel for The Northeast Tennessee TVA Power Distributors' Petition for Leave to Intervene by depositing a copy in the United States Mail, first-class postage prepaid.

Mr. William C. Bovender, Esquire
Hunter, Smith & Davis, LLP
1212 N. Eastman Road
P.O. Box 3740
Kingsport, TN 37664

This 22nd day of January, 2009.



Edward Phillips
Embarq Corporation