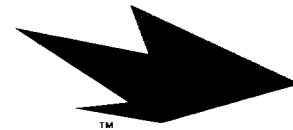


Voice | Data | Internet | Wireless | Entertainment



EMBARQTM

Embarq
Mailstop: NCWKFR0313
14111 Capital Boulevard
Wake Forest, NC 27587-5906
embarq.com

January 22, 2009

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

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 Comcast Phone of Tennessee, LLC's 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
Charles B. Welch, Jr., 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 COMCAST PHONE OF TENNESSEE, LLC'S
PETITION FOR LEAVE TO INTERVENE**

I. INTRODUCTION

On January 16, 2009, Comcast Phone of Tennessee, LLC ("Comcast" or "Petitioner") filed a petition for leave to intervene ("Petition") 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") and CenturyTel, Inc. ("CenturyTel") filed a Joint Application for approval of a merger that would transfer ultimate ownership of Embarq Corporation to CenturyTel, with Embarq continuing to own its Tennessee operating subsidiaries United Telephone Southeast LLC d/b/a Embarq ("UTSE"), Embarq Communications, Inc. and Embarq Payphone Services. Since the transaction is at the parent company level CenturyTel will obtain indirect ownership of Embarq's Tennessee operating

subsidiaries. The transaction will have no impact on CenturyTel's Tennessee operating subsidiaries.¹

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. Comcast's allegations concerning potential interconnection issues with the merged entity will not further the Authority's review of the merger. Rather, Comcast seeks participation in this proceeding merely as a means to leverage concessions from Embarq based on vague allegations and perceived fears. The Authority should not permit this proceeding or judicial resources to be used in such a manner.

B. Comcast 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. Comcast provides no facts to make the necessary statutory demonstration. Indeed, Comcast explicitly states that it "does not oppose the merger."² Instead of providing facts about how its legal rights and interests could be impaired by the proposed transaction, Comcast expresses vague concerns about its interconnection rights under §§ 251 and 252 of the federal telecommunications act.³ Specifically,

¹ CenturyTel's Tennessee operating subsidiaries are CenturyTel Solutions, LLC, CenturyTel Acquisition d/b/a KMC Telecom III, LLC, CenturyTel of Claiborne, Inc., CenturyTel of Adamsville, Inc. and CenturyTel of Ooltewah-Collegedale, Inc.

² *Id.* ¶ 3, at p. 2.

³ See the Federal Telecommunications Act of 1996 at 47 USC §§ 251 and 252.

Comcast expresses its unfounded fear that the merger “heightens incentives and ability of the Applicants to withhold such interconnection.”⁴ Comcast’s statement is a baseless allegation and not a statement of fact that supports a grant of intervention. Moreover, Comcast’s relationship with the merged entity on a going-forward basis is governed by 47 U.S.C. §§ 251 and 252.

If Comcast does in fact encounter some sort of difficulty in future interconnection arrangements or negotiations with the merged entity, it can certainly seek relief from the Authority. Since Comcast fails to articulate facts necessary to make any real demonstration that its rights, privileges, immunities or other legal interest will in fact be impaired due to the merger, the Authority must deny the petition.

In short, Comcast is asking the Authority to protect Comcast’s interconnection rights as part of this proceeding. How competitors interconnect their networks is addressed by the federal Telecommunications Act of 1996 and not Tennessee’s merger statute. If Comcast believes a company’s wholesale policies or practices are somehow anti-competitive, Comcast should substantiate its allegations with facts, and do so in a separate and appropriate venue or proceeding. The Authority’s consideration of this transaction is certainly not the appropriate proceeding. The legal requirement here is to determine if this transaction will benefit the consuming public and that the transferee is capable, suitable and has the financial wherewithal to provide the services being transferred to it. Allowing Comcast to interject its vague and unfounded fears would serve no purpose except to delay realization of the transactions’ benefits.

As Comcast admits in its Petition to Intervene, it has an Authority approved Traffic Exchange Agreement with CenturyTel’s Tennessee operating subsidiaries.⁵ This Authority-approved agreement was found “not to discriminate against a telecommunications carrier not a

⁴ See Petition to Intervene at p.1.

⁵ See Authority Docket No. 06-00027. The Traffic Exchange Agreements between Comcast and CenturyTel’s Tennessee subsidiaries were approved by order of the Authority entered on April 19, 2006.

party to the agreement.”⁶ CenturyTel’s operating subsidiaries are not affected by this transaction and this agreement is not at issue in this proceeding.

Also, Comcast and UTSE interconnect pursuant to an Interconnection, Collocation and Resale Agreement approved by the Authority.⁷ This transaction will in no way impact the existing interconnection agreement between Comcast and UTSE. The Embarq and CenturyTel parent companies are merging, and not their Tennessee subsidiaries. Comcast’s existing interconnection rights cannot be harmed by this transaction. Therefore, given that there is no change to the terms and conditions of the existing agreement, there is no real impact to Comcast from this merger.

Finally, regarding new interconnection agreements that might be negotiated, Comcast will have the full protection of 47 U.S.C. §§ 251 and 252 as it had when negotiating its existing contracts. As it can today, Comcast will be able to ask the Authority to arbitrate disputes that might arise.

III. CONCLUSION

The Authority must deny Comcast’s Petition for Leave to Intervene. Comcast fails to set forth any specific facts that demonstrate any of its rights, duties, privileges, immunities or other legal interests will be determined in this proceeding 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 Comcast’s request for intervention and proceed with consideration of the Joint Application without any undue delay.

⁶ See the Authority’s April 19, 2006 order at ¶ 4, p.2.

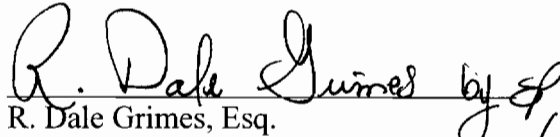
⁷ See the Authority’s March 31, 2008 order in Docket No. 08-00037.

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



w/permission

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 Comcast Communications, LLC's Petition for Leave to Intervene by depositing a copy in the United States Mail, first-class postage prepaid.

Charles B. Welch, Jr.
Attorney for Comcast Communications, LLC
FARRIS MATHEWS BOBANGO PLC
618 Church Street, Suite 300
Nashville, Tennessee 37219

This 22nd day of January, 2009.

A handwritten signature in black ink, appearing to read "Edward Phillips", is written over a horizontal line.

Edward Phillips
Embarq Corporation