

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

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

REPLY OF COMCAST PHONE OF TENNESSEE, LLC

Comcast Phone of Tennessee, LLC d/b/a Comcast Digital Phone (“Comcast”) hereby replies to the Response by Embarq Corporation and CenturyTel, Inc. to Comcast Phone of Tennessee, LLC’s Petition for Leave to Intervene filed in the above-captioned docket (“Response”).^{1/} Embarq Corporation and CenturyTel, Inc. (collectively, the “Applicants”) claim in the Response that Comcast’s concerns regarding its ongoing ability to interconnect with the merged entity is irrelevant to this proceeding. The Applicants’ arguments are without merit.

I. The Merger Will Potentially Impair Comcast Business Processes - Adversely Affecting Competition to the Detriment of the Consuming Public

Applicants argue on the one hand that Comcast failed to identify any facts showing that its interests would be impaired by the outcome of this proceeding, and on the other, that any facts it could identify as impairing its interests should not be considered in this proceeding but in the context of specific interconnection disputes. The Applicants cannot have it both ways.

In fact, the acquisition of Embarq by the smaller CenturyTel raises profound issues that will uniquely affect cable companies. A stated purpose of the merger is to

^{1/} Docket No. 08-00219, *Response by Embarq Corporation and CenturyTel, Inc. to Comcast Phone of Tennessee, LLC’s Petition for Leave to Intervene* (filed Jan. 22, 2009).

bolster the Applicants' ability to compete with cable companies like Comcast, which represent a vital facilities-based alternative to ILEC voice services. Embarq and CenturyTel have the ability, however, through their market power over interconnection, to hinder Comcast's continued ability to compete and, by doing so, preserve their incumbent position to the detriment of consumer choice. This is not, as the Applicants contend, simply a dispute over interconnection to be resolved through expensive and interminable proceedings. It is a merger specific problem with potentially significant adverse consequences for the citizens of this State who will be denied a choice in service providers and face increased rates and diminished service that come with monopoly power.

The merger specific problem is that CenturyTel's policies and practices are generally far more restrictive than Embarq's. With its takeover, CenturyTel will be in a position to export its worst practices to Embarq's legacy territories. To prevent this from occurring, the Tennessee Regulatory Authority ("Authority") should consider imposing conditions on the merger that are designed to preserve best practices and to curb the merged entities' ability to increase competitive provider's like Comcast's costs and delay or forestall their ability to provide competitive choice to Tennessee consumers.

II. Anticompetitive Interconnection and Wholesale Services Practices are Merger-Related Concerns Relevant to the Authority's Review

T.C.A. Section 65-4-113(b) provides the Authority specific jurisdiction to review "all relevant factors" in its determination of whether a transfer of authority "furthers the public interest."^{2/} Whether the public has access to a competitive service provider is certainly of public interest. As discussed in detail below, the issues raised by Comcast in

^{2/} T.C.A. § 65-4-113(b).

its Petition to Intervene directly address the concerns that the competitive marketplace would be harmed by the merger absent certain conditions. Thus, Comcast's concerns are relevant to this proceeding and to the Authority's examination of the public interest.

The Applicants' assertions that interconnection has no affect on a merger analysis is incorrect. The Federal Communications Commission ("FCC") has found that mergers of incumbent local exchange carriers ("ILECs"), like CenturyTel and Embarq, present unique competitive problems because such mergers increase the ILECs' ability and incentive to use their market power to hinder interconnection and competition in general.^{3/} Thus, interconnection - or the threat to withhold or delay interconnection - is clearly a relevant factor in determining whether a merger is in the public interest.

Comcast's petition explicitly raises concerns that the post-merger entity will have increased incentives and ability to withhold interconnection, which, in turn, could "undermin[e] competition and deny[] consumers, particularly rural consumers, the ability to choose their service provider."^{4/} These concerns are not fabrications. To the contrary, both CenturyTel and Embarq, through mutual membership in various associations, have

^{3/} See, e.g., *Ameritech Corp., Transferor, and SBC Communications Inc., Transferee*, 14 FCC Rcd 14712, ¶¶ 60, 107 (1999) (noting that incumbent LECs have a strong economic incentive to restrict competition by delaying the provisioning of interconnection, facilities and services to competitors and that such incentive may be increased post merger) ("*Ameritech/SBC Merger Order*"); see also *Application of GTE Corporation Transferor, and Bell Atlantic Corporation Transferee For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, 15 FCC Rcd 14032, ¶¶ 201, 202 (2000) ("*GTE/Bell Atlantic Merger Order*") (finding that because incumbent "LECs compete with competitive LECs for the provision of retail local exchange services, incumbent LECs have the incentive to discriminate against competitive LECs that depend on the incumbents' inputs (such as interconnection and UNEs) to compete.").

^{4/} Petition to Intervene ¶ 3.

recently sought declaratory rulings in other states to eliminate their obligation to provide interconnection to Comcast altogether.^{5/}

The Applicants state that the merger will have no impact on Comcast's "existing interconnection agreement,"^{6/} however, they do not guarantee that Comcast's future interconnection rights would not be affected. In light of the fact that the Applicants have questioned their obligation to interconnect with Comcast in other state proceedings, it is certainly reasonable to assume any entity resulting from their merger may do so in the future. Thus, Comcast should be afforded the opportunity in this proceeding to raise its concerns, provide further evidentiary information, and suggest merger conditions to the Authority.

The Applicants also assert that Comcast has not provided "facts" that support its assertions that it may be harmed by the post-merger entity's practices. Again, this assertion is incorrect. Comcast's Petition offers specific examples of CenturyTel's policies that are more restrictive and processes that are less sophisticated than Embarq's, including CenturyTel's policies related to number porting and its wholesale ordering systems.^{7/} Of primary concern is CenturyTel's policy of only processing 50 wholesale service orders per day *nationwide*, including number porting requests, change orders and

^{5/} See Docket UT-083056, *Washington Independent Telecommunications Association and Lewis River Telephone Company, d/b/a TDS Telecom Petition for Declaratory Ruling* (filed Oct. 28, 2008); see also Docket DR 41, *Oregon Telecommunications Association, Cascade Utilities, Inc. d/b/a Reliance Connects and Clear Creek Mutual Telephone Company Petition for Declaratory Ruling* (filed Dec. 1, 2008). CenturyTel is a named member of the associations in Oregon and Washington. Embarq is a named member of the Washington State association.

^{6/} Response at 4.

^{7/} Petition to Intervene ¶ 4.

directory listings.^{8/} Comcast has had orders rejected or delayed because of this arbitrary limitation by which CenturyTel dictates the pace of competitive entry. As a result of the merger, CenturyTel will be able to assert this control over a much greater footprint. The merger will almost quadruple CenturyTel's size, increasing the number of access lines from approximately 2 million to more than 8 million, and its provision of service to 33 states. A company of this size should not be allowed to place artificial limitations on competitive entry.

CenturyTel's number porting practices are also more limiting, to the detriment of consumers. For example, an industry standard mechanism for minimizing customer disruption during the number porting process is to enable what is called the unconditional 10-digit trigger and to maintain the 10-digit trigger for a period of time after the scheduled telephone number port due date, ideally 48 hours. Doing so helps to ensure that the customer maintains service, including access to 911, during the migration. It is CenturyTel's policy to remove the unconditional 10-digit trigger safety net at 5:00 p.m. on the port due date. This undermines the utility of the 10-digit trigger mechanism by needlessly removing the safety mechanism prematurely. Consumers in Tennessee should not be put at risk because of CenturyTel's restrictive porting policy.

Moreover, CenturyTel's ordering processes and systems are less sophisticated than Embarq's. These systems are the critical interfaces by which Comcast enters orders to be processed by the ILEC to initiate such things as telephone number ports or directory updates. Embarq is in the process of migrating to a much more robust system. The

^{8/} See CenturyTel Service Guide, at 27 *available at* <http://business.centurytel.com/business/Wholesale/InterconnectionServices/Library/CenturyTelServiceGuide.pdf>

industry should not take a giant step backward by allowing CenturyTel to impose their more antiquated systems on Embarq's operations in Tennessee.

Embarq and CenturyTel also do not provide for electronically bonded OSS and their manual procedures cause unnecessary delays and errors. The larger ILECs (Qwest, Verizon, AT&T) have OSS that are electronically bonded to those developed by CLECs – this means that the CLEC's order entry and provisioning system can automatically feed into the ILEC's system; eliminating the need for human intervention for many types of orders. This greatly facilitates the ordering process. The FCC has recognized that inadequate OSS constitutes a barrier to competition.^{9/} And other carriers have reported similar problems concerning the OSS systems of Embarq, and in particular, CenturyTel.^{10/} Embarq has begun to address this problem by transitioning to an OSS which is capable of providing electronic bonding but there is no indication that CenturyTel will do so or even continue Embarq's planned upgrades.

Contrary to the Applicants' assertions, Comcast has provided the Authority more than adequate information concerning the potential anti-competitive effects of the merger. Therefore, the Authority should take Comcast's concerns into consideration when evaluating whether the merger is in the public interest.

III. The Authority Has Jurisdiction to Review the Issues Comcast Raised

The Authority has the jurisdiction to review "all relevant factors" in its determination of whether a transfer of authority "furthers the public interest,"^{11/} and thus,

^{9/} *SBC/Ameritech Merger Order* ¶ 107.

^{10/} *See Embarq Corporation, Transferor and CenturyTel, Inc., Transferee, Application for Transfer of Control of Domestic Authorizations Under Section 214 of the Communications Act, as amended*, WC Docket No. 08-238, NuVox Comments at 7-8 (filed Jan. 8, 2009).

^{11/} T.C.A. § 65-4-113(b).

may grant Comcast's Petition to Intervene. The Applicants have cited no case law or precedent that would suggest that the Authority's jurisdiction is limited in any manner. The Applicants' attempt to limit the Authority's review of the transaction serves only to rid the proceeding of any competitive providers' legitimate concerns. Practically considered, the Comcast Petition, coupled with this response, identifies and articulates relevant facts with more particularity than the vast majority of requests for intervention filed with this Authority. In deference to due process, the Authority has historically permitted the participation of all interested parties in its contested case proceedings.

Accordingly, for the reasons stated above, the Authority should grant Comcast's Petition to Intervene.

Respectfully submitted:



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CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2009, a copy of the forgoing document was served on the following, via the method indicated:

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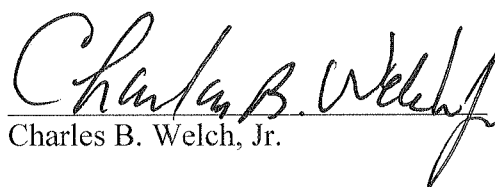
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