Dorothy Menasco

From: Ann Bassett [abassett@lawfla.com]
Sent: Friday, January 16, 2009 4:36 PM
To: Filings@psc.state.fl.us
Cc: Jeff Wahlen; Samuel F. Cullari; Sandy Khazraee; Susan Masterton; Floyd Self
Subject: Docket No. 080692-TP
Attachments: 2009-01-16, 080692, Comcast Comments.pdf

Please disregard the previous e-mail. The document was not attached. I'm so sorry for the confusion.

The person responsible for this electronic filing is:

Floyd R. Self
Messer, Caparello & Self, P.A.
P.O. Box 15579
Tallahassee, FL 32317
(850) 222-0720
fself@lawfla.com

The Docket No. is: 080692-TP - Joint Application for Approval of Indirect Transfer of Control of Telecommunications Facilities by Embarq corporation, CenturyTel, Inc., Embarq Florida, Inc. and Embarq Payphone Services, Inc.

This is being filed on behalf of Comcast Phone of Florida, L.L.C. d/b/a Comcast Digital Phone

Total Number of Pages is 12

Comcast Phone of Florida, L.L.C.'s Comments

Ann Bassett
Messer, Caparello & Self, P.A.
2618 Centennial Place (32308)
P.O. Box 15579
Tallahassee, FL 32317
Direct Phone: 850-201-5225
Fax No. 850-224-4359
Email Address: <abassett@lawfla.com>
Web Address: <www.lawfla.com>

M C & S

MESSER CAPARELLO & SELF, P.A.

Attorneys At Law

www.lawfla.com

January 16, 2009

BY ELECTRONIC FILING
Ms. Ann Cole, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 080692-TP

Dear Ms. Cole:

Enclosed for filing on behalf of Comcast Phone of Florida, L.L.C. d/b/a Comcast Digital Phone ("Comcast") is an electronic version of Comcast Phone of Florida, L.L.C.'s Comments in the above referenced docket.

Thank you for your assistance with this filing.

Sincerely yours,

Floyd R. Self

FRS/amb
Enclosure
cc: Parties of Record

Regional Center Office Park / 2618 Centennial Place / Tallahassee, Florida 32308
Mailing Address: P.O. Box 15579 / Tallahassee, Florida 32317
Main Telephone: (850) 222-0720 / *Fax:* (850) 224-4359

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Joint Application for Approval of Indirect Transfer of Control of Telecommunications Facilities by Embarq Corporation, CenturyTel, Inc., Embarq Florida, Inc., and Embarq Payphone Services, Inc.	Docket No. 080692-TP

COMMENTS

Comcast Phone of Florida, LLC d/b/a Comcast Digital Phone ("Comcast"), hereby submits these comments in the above-captioned proceeding for consideration by the Florida Public Service Commission ("Commission"). Embarq Corporation, Embarq Florida, Inc., and Embarq Payphone Services, Inc. (collectively, "Embarq") and CenturyTel, Inc. ("CenturyTel"), collectively "Applicants," seek expedited treatment of the proposed transfer of control and assert that the merger is in the public interest. Pursuant to the schedule adopted in this proceeding, Commission staff must provide a recommendation by January 29th. Although it does not oppose the merger, Comcast files these comments to convey its concerns about the merger's potential anti-competitive effects. These effects may ultimately harm the public by limiting access to competitive providers and services, resulting in increased prices and inferior service. Comcast asks the Commission to consider these Comments as a part of its review of the proposed transfer.

INTRODUCTION AND SUMMARY

On November 26, 2008 Embarq and CenturyTel filed a Joint Application for Expedited

Approval of an Indirect Transfer of Control of Telecommunications Facilities.[1/] Pursuant to Section 364.33 of the Florida Statutes, the Commission has jurisdiction to grant an application for approval to transfer control.[2/] The Commission staff has previously implied that it may apply a public interest standard when reviewing transactions.[3/] The Commission has also found that it must review the "management, technical, [and] financial capability of the companies within the framework of sections 364.33 and 364.335 [of the] Florida Statutes."[4/] And although the Commission has found that Section 364.33 does not give it "the ability to protect the interests asserted by [competitors],"[5/] it may review the transaction with respect to its obligation, pursuant to Section 364.01, to promote competition.[6/]

With approximately 1.75 million access lines, Embarq is the third largest incumbent carrier in Florida. As a result of this transaction, Embarq will be taken over by the much smaller CenturyTel. The transfer application does not identify any current operations by CenturyTel in Florida. Following the merger, CenturyTel, a company with roughly 2 million access lines today, will control the largest independent telephone company in the country, with some 8.4 million access lines and operations in 33 states.

1/ Docket No. 080692, *Embarq Corporation; CenturyTel, Inc.; Embarq Florida, Inc.; Embarq Payphone Services, Inc. - Joint Application for Expedited Approval of Indirect Transfer of Control* (filed Nov. 26, 2008) ("*Transfer Application*").

2/ FLA. STAT. § 364.33.

3/ *See* Docket No. 060308-TP, Memorandum, at 4 (June 12, 2006) ("*AT&T/SBC Merger Memorandum*") (stating that Section 364.33 does not "provide specific standards which the Commission may follow in making its decision to approve a transfer of control. However, staff believes that Section 364.01, Florida Statutes, implies a public interest standard that the Commission may follow when deciding whether to approve or deny transfers of control, among other transactions.").

4/ *Id.*

5/ *Id*; *see also* Docket No. 971604-TP, Order No. PSC-98-0702-FOF-TP (May 20, 1998).

6/ *AT&T/SBC Merger Memorandum* at 7-8.

Mergers of incumbent local exchange carriers ("ILECs") present unique competitive problems, as the Federal Communications Commission ("FCC") has repeatedly found.[7/] This is because effective competition with such carriers requires competitors to obtain the incumbents' cooperation, even for facilities-based competitors such as cable companies. Comcast, like many other competitors, is wholly reliant on ILECs for interconnection, number porting and other wholesale services. To obtain such services and facilities, a competitive local exchange carrier ("CLEC") must establish an interconnection agreement with the ILEC pursuant to Section 251 of the Communications Act of 1934, as amended ("Act"). Obtaining interconnection is often a lengthy and expensive process. ILEC mergers compound the problem because they increase the ILECs' ability and incentive to use their market power to hinder interconnection and competition in general.[8/]

There are ample reasons to be concerned about the anticompetitive effects of this ILEC merger. The merger would dramatically increase CenturyTel's scale and scope, and hence its power to thwart competitive entry. In Comcast's experience, an experience shared by other competitive entrants,[9/] CenturyTel's wholesale practices are far more anticompetitive than

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7/ *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, ¶ 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.").

8/ *Ameritech/SBC Merger Order* ¶ 60; *GTE/Bell Atlantic Merger Order* ¶ 201.

9/ *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, Comments of Nuvox and Socket Telecom, LLC, at 12 (filed Jan. 8, 2009) (noting problems associated with CenturyTel's "non-standard and largely manual OSS, neglectful maintenance

Embarq's. The merger would enable CenturyTel to supplant Embarq's relatively more pro-competitive policies.

The merger creates particular incentives to target these anticompetitive practices at cable companies, which are effectively the only facilities-based competitors for local residential voice services. The Transfer Application specifically notes the increased competition from cable companies in the so-called triple play of voice, video and broadband.[10] The merger is designed to enhance Embarq and CenturyTel's ability to meet this competition. Indeed, one of the primary benefits touted by CenturyTel and Embarq is the ability to more quickly roll out their own television services in order to better compete against cable companies.[11] This competition is a benefit to consumers, but it also creates an increased incentive to discriminate in instances where one entity controls wholesale inputs that another entity needs to provide its services. ILECs have the ability to act on this incentive through their continuing market power over interconnection.

The recent trend indicates that incumbents like CenturyTel and Embarq are increasing their efforts to frustrate cable competition. CenturyTel and Embarq, through their trade associations, have recently filed pleadings in certain states designed to eliminate their obligation to provide interconnection altogether.[12] CenturyTel has adopted a number of practices that

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and repair practices, unreliable or nonexistent information regarding customer service records and serving areas, obstructive section 251 interconnection agreement opt-in processes, manual and error-prone directory listings processes, error-prone billing, and a history of anticompetitive conduct with respect to number porting in particular") ("*NuVox Comments*").

[10] *Transfer Application* at 4, ¶ 7.

[11] *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, at 7-8 (filed Nov. 25, 2008).

[12] *See, e.g.*, 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*

hamper competitive entry, some of which are detailed below. The merger raises the possibility that CenturyTel will supplant the more benign policies and practices of Embarq with these anti-competitive policies. The Commission should thus take a hard look at this transaction and avoid the calls for speedy approval.

I. BEST PRACTICES MUST PREVAIL

Comcast is concerned that the merger will further harm competition if the post-merger entity adopts CenturyTel's anti-competitive practices. Of particular concern are CenturyTel's policies relating to number porting and its more antiquated and wholly inadequate OSS systems. CenturyTel also forces CLECs to pay additional interconnection charges. As described in detail below, these practices can delay and increase the costs of competitive entry.

A. CenturyTel's Number Porting Practices are Anticompetitive

CenturyTel will only process 50 wholesale service orders per day nationwide. This limit includes requests to port numbers, directory listing requests, and change orders. Under this policy, all Comcast state-level CLEC entities, in aggregate for all CenturyTel states, are limited to submitting 50 requests for simple ports – requests to port a single telephone number when Comcast wins a new customer – per day, assuming it submits no other types of service orders. CenturyTel will not process orders in excess of 50 within any standard intervals, even those set by regulatory agencies. Through these arbitrary, unilaterally imposed limits, CenturyTel dictates the pace of competitive entry. As a result of the merger, CenturyTel will be able to do so 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

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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.

service to 33 states thereby gating the number of consumers in Florida who can be provided competitive choice. A company of this size should not be allowed to place artificial limitations on competitive entry.

CenturyTel's number porting policies are anticompetitive in other respects. The company refuses to adopt industry-standard mechanisms designed to minimize the possibility of customer disruptions during the number porting process. Specifically, CenturyTel has not adopted the industry-recognized 10-digit trigger process as part of interconnection agreements with Comcast. This process provides a "safety net" during the porting timeframe whereby telephone numbers that are ready to be ported are queried in a database to ensure the most up-to-date routing instructions are followed. The 10-digit trigger process ensures that calls to and from a ported number are routed to their correct destination during the span of time when the port may occur and also ensures continued access to 911 emergency services. CenturyTel's refusal to adopt an industry-standard, which would benefit consumers, is yet another example of how the public could be harmed by the merger.

B. CenturyTel Employs Inadequate OSS to the Detriment of Competitors

CenturyTel's ordering processes and systems are less efficient than Embarq's. CenturyTel still processes certain types of orders manually, causing delay and increasing the chance for mistakes. The Commission should explore whether, post-merger, CenturyTel will adopt Embarq's OSS systems and procedures.

Moreover, Embarq and CenturyTel 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 systems 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 as a barrier to competition.[13/] And other carriers have reported similar problems concerning the OSS systems of Embarq, and in particular, CenturyTel.[14/] Embarq has begun to address this problem by transitioning to an OSS which is capable of providing electronic bonding. The staff should confirm that CenturyTel has no plans to scuttle Embarq's proposed e-bonding deployment.

C. CenturyTel's Porting and Interconnection and Charges are Excessive

CenturyTel also charges excessive rates for service orders that are made by an acquiring carrier to initiate the porting process (referred to as a Local Service Requests ("LSRs")). While the work associated with processing an LSR is de minimus, CenturyTel historically assessed unusually high rates. In particular, CenturyTel charges anywhere from $10 to $44 per order. By contrast, many carriers do not charge for a port order or have rates that are well under a dollar. These wholesale services are not intended to be separate profit centers. Instead, rates for mandated interconnection services should be based on forwarding-looking costs.

Comcast is reliant on interconnection with the Applicants to provide its services. Although Embarq and CenturyTel allow for indirect interconnection for the exchange of traffic, the criteria limiting the use of indirect interconnection largely undermines its availability. For example, CenturyTel has historically precluded a CLEC from using indirect interconnection if the CLEC ports telephone numbers in the same exchange – absent any consideration as to the volume of traffic. In other words, the CLEC must extend its facilities into the ILEC's exchange

13/ *See SBC/Ameritech Merger Order* ¶ 107.

14/ NuVox Comment at 13 (characterizing CenturyTel's OSS as "woefully inadequate" and describing problems with CenturyTel's address validation system). *Id.* at 27.

in order to pick up traffic. This is inefficient and unfairly increases costs. The Commission should explore whether the post-merger entity will similarly impair interconnection or whether it is willing to permit indirect interconnection, at least until certain reasonable traffic thresholds are met.

D. CenturyTel's Directory Assistance Policies are Anticompetitive

CenturyTel's directory listings services are also anticompetitive. Directory listings publishers historically provide ILECs with drafts, known as Galley Proofs, of proposed directory service listings. CenturyTel only allows Comcast five business days to review the Galley Proof for its customers. Based on the size of Comcast's presence in certain areas, there is the potential that Comcast could have tens of thousands listings which need to be reviewed before publishing. This is a woefully inadequate amount of review time. CenturyTel's Galley Proof process harms the public because it prohibits Comcast from having adequate time to review the accuracy of directory service listings.

II. EMBARQ'S ILLEGAL AND ANTICOMPETITIVE DIRECTORY ASSISTANCE POLICY SHOULD BE ELIMINATED

In addition to eliminating or reducing the porting and LSR fees, and the interconnection rates, any directory assistance storage fees should be eliminated. Embarq imposes unreasonable and discriminatory, non-cost based directory listing storage and maintenance ("DLSM") fees which affirmatively harms competition. This fee of up to $3.00 *per month per subscriber* for maintaining the directory listing data is applicable only to CLECs such as Comcast who do not purchase unbundled network elements or resell Embarq's finished services. The DLSM charge plainly violates Embarq's statutory duty under Section 251(b)(3) of the Act to provide Comcast with "nondiscriminatory access" to its "directory listing."[15] Thus, this practice is clearly anti-competitive and harmful to consumers.

[15] Three states have agreed with Comcast and found that the charge violated Section 251 of the Act. See, e.g., Petition of Comcast Phone of Texas, LLC for Arbitration of an Interconnection Agreement with United Telephone Company of Texas, Inc., d/b/a Embarq and Central Telephone Company Texas, Inc. d/b/a Embarq Pursuant to Section 252 of the Federal Communications Act of 1934, as Amended and Applicable State Laws, Arbitration Award, at 18-21 (Sept. 22, 2008) (States have agreed with Comcast and found that the charge violates Section 251 of the Act. See, e.g., PUC Docket No. 35402, Petition of Comcast Phone of Texas, LLC for Arbitration of an Interconnection Agreement with United Telephone Company of Texas, Inc., d/b/a Embarq and Central Telephone Company Texas, Inc. d/b/a Embarq Pursuant to Section 252 of the Federal Communications Act of 1934, as Amended and Applicable State Laws, Arbitration Award, at 18-21 (Sept. 22, 2008); Docket No. A-310190, Petition of Comcast Business Communications, LLC d/b/a Comcast Long Distance for Arbitration of an Interconnection Agreement with The United Telephone Company of Pennsylvania, Inc. d/b/a Embarq Pennsylvania, Pursuant to 47 U.S.C. §252(b), Opinion and Order, at 11-13 (Dec. 18, 2008); see also Docket UT-083025, Petition for Arbitration of an Interconnection Agreement Between Comcast Phone of Washington, LLC, with United Telephone Company of the Northwest, Inc. d/b/a Embarq Pursuant to 47 U.S.C. Section 252(b), Arbitrator's Report and Decision, at 1 (Jan. 13. 2009) (Arbitrator's decision finding, in part, that Embarq may not impose a recurring monthly charge on Comcast for provision of DLSM services).

CONCLUSION

For the foregoing reasons, Comcast asks the Commission to consider these comments in determining whether the transfer of control is in the public interest.

Respectfully submitted,

COMCAST PHONE OF FLORIDA, LLC

By:______________________________

Floyd R. Self, Esq.
Messer, Caparello & Self, P.A.
Post Office Box 15579
Tallahassee, FL 32317
Tel: (850) 222-0720
Fax: (850) 558-0656
fself@lawfla.com

Samuel F. Cullari, Esq.
Comcast Cable Communications, LLC
One Comcast Center, 50th Floor
Tel: (215) 286-8097
Fax: (215) 286-5039
Samuel_Cullari@Comcast.com

Michael H. Pryor, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
701 Pennsylvania Ave, N.W., Ste. 900
Washington, DC 20004
Tel: (202) 434-7300
Fax: (202) 434-7400
mhpryor@mintz.com

Dated: January 16, 2009

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on the following parties by Electronic Mail and/or U.S. Mail on this 16th day of January, 2009.

Timisha Brooks, Esq.
Senior Attorney
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Susan Masterton, Esq.
Embarq Florida, Inc.
Mailstop: FLTLHO0102
1313 Blair Stone Road
Tallahassee, FL 32301

Ms. Sandra A. Khazraee
Embarq Florida, Inc.
Mailstop: FLTLHO0201
Post Office Box 2214
Tallahassee, FL 32316-2214

J. Jeffry Wahlen
Ausley McMullen
P.O. Box 391
Tallahassee, FL 32301

CenturyTel, Inc.
100 CenturyTel Drive
Monroe, LA 71211-4065

Floyd R. Self