

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Applications Filed for the Transfer of Control of
Embarq Corporation to CenturyTel, Inc.
WC Docket No. 08-238

MEMORANDUM OPINION AND ORDER

Adopted: June 24, 2009

Released: June 25, 2009

By the Commission: Acting Chairman Copps and Commissioners Adelstein and McDowell issuing
separate statements.

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## I. INTRODUCTION

1. Embarq Corporation (Embarq) and CenturyTel, Inc. (CenturyTel) (together, the Applicants) filed a series of applications<sup>1</sup> seeking Commission approval to transfer control of certain wireless licenses and domestic and international section 214 authorizations from Embarq and CenturyTel to a reorganized CenturyTel, which would combine the two companies.<sup>2</sup> Grant of these applications will result in the transfer of domestic and international section 214 authorizations and the assignment of certain spectrum licenses.

2. Under the Communications Act of 1934, as amended (the Act), we must determine whether the Applicants have demonstrated that the proposed transaction would serve the public interest, convenience, and necessity.<sup>3</sup> As each transaction considered by the Commission has a unique set of facts, we evaluate the discrete evidence in the record to assess any public interest harms that may arise from this transaction. In the instant transaction, we are mindful that rural areas face particular challenges when it comes to the deployment of basic and advanced telecommunications services. The Commission must remain vigilant in ensuring that technological advances are extended to these areas. We note that the Applicants principally serve rural areas, and it is essential to assess whether the benefits of the merged company outweigh the harms to consumers and businesses of all sizes in their combined, primarily rural territory. In addition, some parties filing comments opposing the proposed transaction argue that the transaction may pose a threat to competition in various wholesale markets. After careful consideration, we conclude that opponents have presented a theory of harm under which the proposed transaction might result in increased anticompetitive behavior. In response to these concerns, the Applicants have offered certain voluntary commitments. We find that the Applicants' voluntary commitments address these potential harms, and that, on balance, the proposed transaction will benefit the public interest. Accordingly, we grant our consent to the transfer and assignment applications conditioned on compliance with the voluntary commitments listed in Appendix C, which shall constitute binding and enforceable conditions of our approval.<sup>4</sup>

## II. BACKGROUND

### A. Description of the Applicants

#### 1. Embarq Corporation

3. Embarq, a Delaware holding company, owns subsidiaries that operate as incumbent local exchange carriers (incumbent LECs) in 18 states and provides local exchange services over nearly 5.9 million telephone access lines and broadband service to 1.4 million subscribers.<sup>5</sup> The company's operating subsidiaries offer residential customers local and long distance phone service, high-speed

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<sup>1</sup> 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 (filed Nov. 26, 2008) (Embarq/CenturyTel Application or Application); see also *Applications Filed for the Transfer of Control of CenturyTel, Inc. and its Subsidiaries*, WC Docket No. 08-238, Public Notice, DA 09-791 (rel. Apr. 7, 2009) (Embarq/CenturyTel Second Public Notice).

<sup>2</sup> See *infra* note 11. We refer herein to both the transfer of control of Embarq and the transfer of control of CenturyTel to a reorganized CenturyTel as "the transaction" or as "the merger."

<sup>3</sup> See 47 U.S.C. §§ 214(a), 310(d).

<sup>4</sup> These conditions are effective as of the Transaction Closing Date, which is defined for these purposes as the date on which the Applicants consummate the proposed transaction.

<sup>5</sup> Embarq's subsidiaries provide service in the following states: Florida, Indiana, Kansas, Minnesota, Missouri, Nebraska, Nevada, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington, and Wyoming. Embarq's subsidiary incumbent LECs and the states in which they operate are listed in Exhibit 3 of the Application.

Internet access, and satellite video from DISH network.<sup>6</sup> For business customers, Embarq's subsidiaries offer local voice and data services, long distance services, business class high-speed Internet services, satellite video services from DIRECTV, enhanced data network services, voice and data communication equipment, and managed network services.<sup>7</sup> Embarq also offers payphone services in various parts of the United States.<sup>8</sup>

## 2. CenturyTel, Inc.

4. CenturyTel, a Louisiana holding company, conducts its business operations principally through subsidiaries offering communications, high-speed Internet, and entertainment services in small-to-mid-size cities through its copper and fiber networks.<sup>9</sup> CenturyTel operates in 25 states and provides local exchange services over roughly two million telephone access lines and high-speed Internet connections to approximately 630,000 subscribers.<sup>10</sup> CenturyTel's offerings include long distance services, cable television services, satellite television services, Internet Protocol Television (IPTV) service, and wireless services. In certain local and regional markets, CenturyTel also provides services as a competitive local exchange carrier (competitive LEC), along with other communications and business services.<sup>11</sup> In addition, CenturyTel operates a fiber network that provides wholesale and retail fiber-based transport services to customers in the central United States.<sup>12</sup>

### B. Description of the Transaction

5. On October 26, 2008, Embarq, CenturyTel, and Cajun Acquisition Company (CAC), a Delaware corporation and CenturyTel subsidiary created to facilitate the transaction's consummation, entered into an Agreement and Plan of Merger (Merger Agreement).<sup>13</sup> In accordance with the terms of the Merger Agreement, Embarq and CAC will merge, with Embarq becoming the surviving corporation and CAC ceasing to exist.<sup>14</sup> As a result of the transaction, Embarq will become a direct, wholly owned subsidiary of CenturyTel.<sup>15</sup> Applicants state that the stockholders of pre-transaction Embarq expect to own approximately 66 percent of post-transaction CenturyTel, and the shareholders of pre-transaction CenturyTel expect to own approximately 34 percent of post-transaction CenturyTel.<sup>16</sup> The post-

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<sup>6</sup> See Embarq/CenturyTel Application at 3.

<sup>7</sup> See *id.*

<sup>8</sup> See *id.*

<sup>9</sup> See Embarq/CenturyTel Application, Exh. 2 (listing CenturyTel subsidiaries with domestic 214 authority).

<sup>10</sup> CenturyTel's subsidiaries provide service in the following states: Alabama, Arkansas, Colorado, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Tennessee, Texas, Washington, Wisconsin, and Wyoming. See *id.* at 3.

<sup>11</sup> See *id.* at 2. CenturyTel has a regional fiber optic network it utilizes to provide Internet, data, video and voice communications. CenturyTel's LightCore facilities abut or overlap existing Embarq wire centers in Florida, Indiana, Missouri, Minnesota and Kansas. See Embarq/CenturyTel Reply at 9-10.

<sup>12</sup> See *id.*

<sup>13</sup> See Embarq/CenturyTel Application at 3.

<sup>14</sup> Embarq will be the surviving corporation but will adopt the By-Laws and Certificate of Incorporation of CAC. See *id.* at 4, n.5.

<sup>15</sup> See *id.* at 4.

<sup>16</sup> See *id.* at n.6.

transaction CenturyTel board will be composed of eight CenturyTel-appointed directors and seven Embarq-appointed directors.<sup>17</sup>

6. Because the current shareholders of Embarq will acquire an approximate 66 percent interest in CenturyTel, the proposed merger involves a “substantial change in ownership” of CenturyTel and its subsidiaries.<sup>18</sup> At the same time, the former Embarq subsidiaries will become wholly-owned subsidiaries of CenturyTel and the former CenturyTel directors will make up a majority of the post-transaction board. Accordingly, the proposed merger involves the transfer of control of the licenses and authorizations held by both companies’ respective subsidiaries.<sup>19</sup>

7. The Applicants contend that the merger will serve the public interest. Specifically, they claim that: (1) the merger is likely to result in “more rapid deployment of advanced services, including IPTV and next-generation broadband-based services;”<sup>20</sup> (2) the combined entity will adopt CenturyTel’s automated retail billing systems, thereby improving its services to retail customers;<sup>21</sup> (3) the merged entity will adopt Embarq’s wholesale operations support systems (OSS), which will result in better service to wholesale customers, and make it easier for other carriers to compete in the local service market;<sup>22</sup> and (4) the merger will generate synergies of approximately \$400 million annually within the first three years of operation.<sup>23</sup> The Applicants also assert that the merger will not result in any anticompetitive harm.<sup>24</sup> Finally, the Applicants state that the merger will not disrupt services that CenturyTel and Embarq customers currently receive.<sup>25</sup>

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<sup>17</sup> See *id.*

<sup>18</sup> 47 U.S.C. § 309(c)(2)(B); see *In the Matter of Existing Shareholders of Citadel Broadcasting Corp. and of The Walt Disney Co., etc. for Consent to Transfers of Control*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 7083, 7085, 7107, paras. 2, 55 (2007) (*Citadel-Disney Order*); *Reading Broadcasting, Inc.*, Decision, 17 FCC Rcd 14001, 14017, para. 44 (2002).

<sup>19</sup> *Citadel-Disney Order*, 22 FCC Rcd at 7107, para. 55. In the *Citadel-Disney Order*, the result of the Disney shareholders’ acquiring more than 50% of Citadel’s stock was that Citadel lost its ability to maintain certain grandfathered ownerships interests that no longer complied with the Commission’s radio ownership rules. *Id.* at 7085, 7108-09, paras. 2, 58.

<sup>20</sup> Embarq/CenturyTel Application at 7–9; Embarq/CenturyTel Reply at 8–9.

<sup>21</sup> *Id.*

<sup>22</sup> The record indicates that CenturyTel’s pre-merger wholesale ordering and provisioning systems are obstacles to wholesale providers seeking to compete in the local telephone market. See, e.g., Letter from Charles W. McKee, Director, Government Affairs, Sprint Nextel Corp., *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 08-238, at 5 (filed Apr. 3, 2009) (Joint Commenters Apr. 3 *Ex Parte* Letter) (stating that “it is hard to imagine interconnection and provisioning getting worse in CenturyTel areas”).

<sup>23</sup> See Embarq/CenturyTel Application, Ewing Declaration, para. 2.

<sup>24</sup> See Embarq/CenturyTel Application at 13–17. On November 21, 2008, the Federal Trade Commission terminated the waiting period mandated by the Clayton Act for the proposed transaction. See Federal Trade Commission, Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules, 73 Fed. Reg. 75,117 (Dec. 10, 2008).

<sup>25</sup> See Embarq/CenturyTel Application at 11–12, 17.

### C. Comments on the Transaction

8. On December 9, 2008, the Wireline Competition Bureau released a public notice seeking comments and reply comments on the Application.<sup>26</sup> Several commenters contend that, unless the Commission imposes conditions on the merger, the proposed transaction will not serve the public interest. More specifically, commenters opposing the merger argue that the merger benefits claimed by the Applicants are speculative and will not result in verifiable, tangible benefits.<sup>27</sup> They further argue that the merged entity will have an increased incentive and ability to discriminate against its wholesale customers by leveraging its increased footprint and adopting the worst practices of CenturyTel in the Embarq service territories.<sup>28</sup> In response to these allegations, the Applicants offer certain voluntary commitments to enhance the ability of CenturyTel's wholesale customers to compete in the local telephone service market following the merger, and to provide consumers with certain assurances regarding broadband service deployment and speeds.<sup>29</sup>

## III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

### A. Public Interest Review

9. Pursuant to sections 214(a) and 310(d) of the Act,<sup>30</sup> the Commission must determine whether the proposed transfer of control of certain licenses and authorizations held and controlled by Embarq and CenturyTel will serve the public interest, convenience, and necessity.<sup>31</sup> In making this determination, we first assess whether the proposed transaction complies with the specific provisions of

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<sup>26</sup> See *Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, WC Docket No. 08-238, Public Notice, DA 08-2681 (rel. Dec. 9, 2008); see also *Embarq/CenturyTel Second Public Notice* (seeking comment on the transfer of licenses and authorizations from pre-merger CenturyTel to reorganized CenturyTel).

<sup>27</sup> See, e.g., COMPTTEL Comments at 3–5 (arguing that conditions were necessary to make the merger benefit the public interest); NuVox/Socket Comments at 8 (arguing that claimed benefits are not tangible); Joint Commenters Apr. 3 *Ex Parte* Letter at 1, 2 (arguing that vague claims of efficiency are not verifiable benefits); Sprint Reply at 4 (stating that Applicants' generic claims of customers benefiting from subscription to current and new services are not verified merger specific benefits).

<sup>28</sup> See, e.g., Joint Commenters Apr. 3 *Ex Parte* Letter at 3–4, 8–9 n.42.

<sup>29</sup> See Letter from Gregory J. Vogt, Counsel for CenturyTel, Inc., and Samuel L. Feder, Counsel for Embarq Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 08-238, (filed June 22, 2009) (Embarq/CenturyTel June 22 *Ex Parte* Letter). The commitments in this letter are reproduced in Appendix C. These conditions are voluntary, enforceable commitments but are not general statements of Commission policy and do not alter Commission precedent or bind future Commission policy or rules.

<sup>30</sup> 47 U.S.C. §§ 214(a), 310(d).

<sup>31</sup> Section 310(d) of the Act, 47 U.S.C. § 310(d), requires that we consider applications for transfer of Title III licenses under the same standard as if the proposed transferee were applying for licenses directly under section 308 of the Act, 47 U.S.C. § 308. See, e.g., *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5672, para. 19 (2007) (*AT&T/BellSouth Order*); *SBC Communications, Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18300 n.60 (2005) (*SBC/AT&T Order*); *Verizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433, 18443 n.59 (2005) (*Verizon/MCI Order*); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, WT Docket 04-70, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21542, para. 40 (2004) (*Cingular/AT&T Wireless Order*); *General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee*, MB Docket No. 03-124, Memorandum Opinion and Order, 19 FCC Rcd 473, 485, para. 18 (2004) (*News Corp./Hughes Order*). Thus, we must examine the Applicants' qualifications to hold licenses. See *infra* Part III.B.

the Act, other applicable statutes, and the Commission's rules. If the proposed transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes. The Commission then employs a balancing test weighing any potential public interest harms of the proposed transaction against the proposed public interest benefits.<sup>32</sup> The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.<sup>33</sup> If we are unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, we must designate the application for hearing.<sup>34</sup>

10. Our public interest evaluation necessarily encompasses the "broad aims of the Communications Act,"<sup>35</sup> which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, ensuring a diversity of license holdings, and generally managing the spectrum in the public interest.<sup>36</sup> Our public interest analysis may also entail assessing whether the merger will affect the quality of communications services or will result in the provision of new or additional services to consumers.<sup>37</sup> In conducting this analysis, the Commission may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.<sup>38</sup>

11. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.<sup>39</sup> The Commission and the Department

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<sup>32</sup> See, e.g., *AT&T/BellSouth Order*, 22 FCC Rcd at 5672, para. 19; *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee*, CC Docket No. 98-184, Memorandum Opinion and Order, 15 FCC Rcd 14032, 14046, paras. 20, 22 (2002) (*Bell Atlantic/GTE Order*); *Applications of Ameritech Corp. and SBC Communications Inc.*, WC Docket No. 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14712, 14737-38, para. 48 (1999) (*SBC/Ameritech Order*); *Applications of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries*, File No. NSD-L-96-10, Memorandum Opinion and Order, 12 FCC Rcd 19985, 19987, para. 2 (1997) (*Bell Atlantic/NYNEX Order*).

<sup>33</sup> See, e.g., *AT&T/BellSouth Order*, 22 FCC Rcd at 5672, para. 19; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21542-44, para. 40; *News Corp./Hughes Order*, 19 FCC Rcd at 483, para. 15; *Application of EchoStar Communications Corporation (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporations) (Transferors) and EchoStar Communications Corporation (a Delaware Corporation) (Transferee)*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 25 (2002) (*EchoStar/DirectTV Order*).

<sup>34</sup> We are not required, in any event, to designate for hearing applications for the transfer or assignment of Title II authorizations. See *ITT World Commc'ns, Inc. v. FCC*, 595 F.2d 897, 901 (2d Cir. 1979). We may do so, however, if we find that a hearing would be in the public interest. With respect to the applications to transfer licenses subject to Title III of the Act, however, if we are unable to find that the proposed transaction serves the public interest, or if the record presents a substantial and material question of fact, section 309(e) of the Communications Act requires that we designate the application for hearing. 47 U.S.C. § 309(e); see also *EchoStar/DirectTV Order*, 17 FCC Rcd at 20574, para. 25; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21542-44, para. 40.

<sup>35</sup> *AT&T/BellSouth Order*, 22 FCC Rcd at 5673, para. 20.

<sup>36</sup> See Telecommunications Act of 1996, Pub. L. No. 104-104, § 706, 110 Stat. 56, 153 (1996 Act), codified at 47 U.S.C. § 157 nt; 47 U.S.C. §§ 254, 332(c)(7); 1996 Act, Preamble; *SBC/AT&T Order*, 20 FCC Rcd at 18301, para. 17; see also *Application of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control of MCI Communications Corp. to WorldCom Inc.*, WC Docket No. 97-211, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18030-31, para. 9 (1998) (*WorldCom/MCI Order*); cf. 47 U.S.C. §§ 301, 303, 309(j), 310(d), 521(4), 532(a).

<sup>37</sup> See *AT&T/BellSouth Order*, 22 FCC Rcd at 5673, para. 20.

<sup>38</sup> See *id.*

<sup>39</sup> See, e.g., *AT&T/BellSouth Order*, 22 FCC Rcd at 5673, para. 21.

of Justice (DOJ) each have independent authority to examine the competitive impacts of proposed communications mergers and transactions involving transfers of Commission licenses, but the standards governing the Commission's competitive review differ somewhat from those applied by DOJ.<sup>40</sup> Like DOJ, the Commission considers how a transaction will affect competition by defining a relevant market, looking at the market power of incumbent competitors, and analyzing barriers to entry, potential competition and the efficiencies, if any, that may result from the transaction. DOJ, however, reviews telecommunications mergers pursuant to section 7 of the Clayton Act, and if it wishes to block a merger, it must demonstrate to a court that the merger may substantially lessen competition or tend to create a monopoly.<sup>41</sup> Under the Commission's review, the Applicants must show that the transaction will serve the public interest; otherwise the application is set for hearing.<sup>42</sup> DOJ's review is also limited solely to an examination of the competitive effects of the acquisition, without reference to other public interest considerations.<sup>43</sup> The Commission's competitive analysis under the public interest standard is somewhat broader, for example, considering whether a transaction will enhance, rather than merely preserve, existing competition, and takes a more extensive view of potential and future competition and its impact on the relevant market.<sup>44</sup>

12. Our analysis recognizes that a proposed transaction may lead to both beneficial and harmful consequences.<sup>45</sup> For instance, combining assets may allow a firm to reduce transaction costs and offer new products, but it may also create market power, create or enhance barriers to entry by potential competitors, and create opportunities to disadvantage rivals in anticompetitive ways.<sup>46</sup> Our public interest authority enables us, where appropriate, to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.<sup>47</sup> Section 303(r) of the Communications Act authorizes the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Act.<sup>48</sup> Similarly, section 214(c) of the Act authorizes the Commission to attach to the certificate "such terms and conditions as in its judgment

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<sup>40</sup> See, e.g., *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, WT Docket No. 08-95, File Nos. 0003463892, et al., ITC-T/C-20080613-00270, et al., ISP-PDR-20080613-00012, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17462, para. 28 (2008) (*Verizon Wireless/Alltel Order*).

<sup>41</sup> 15 U.S.C. § 18.

<sup>42</sup> See *Verizon Wireless/Alltel Order*, 23 FCC Rcd. at 17462, para. 28; *Applications for Consent to the Transfer of Control of Licenses XM Satellite Radio Holdings Inc., Transferor to Sirius Satellite Radio Inc., Transferee*, MB Docket No. 07-57, Memorandum Opinion and Order and Report and Order, 23 FCC Rcd 12348, 12365-66, para. 32 (2008) (*XM/Sirius Order*).

<sup>43</sup> See *Verizon Wireless/Alltel Order*, 23 FCC Rcd. at 17462, para. 28; *XM/Sirius Order*, 23 FCC Rcd 12364, para. 30.

<sup>44</sup> See, e.g., *Verizon Wireless/Alltel Order*, 23 FCC Rcd. at 17462, para. 28; *XM/Sirius Order*, 23 FCC Rcd at 12365-66, para. 32.

<sup>45</sup> See, e.g., *Verizon Wireless/Alltel Order*, 23 FCC Rcd. at 17462, para. 29; *XM/Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 21.

<sup>46</sup> See, e.g., *Verizon Wireless/Alltel Order*, 23 FCC Rcd. at 17462, para. 29; *XM/Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 21.

<sup>47</sup> See, e.g., *Verizon Wireless/Alltel Order*, 23 FCC Rcd. at 17463, para. 29; *XM/Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 22.

<sup>48</sup> 47 U.S.C. § 303(r); see also *Verizon Wireless/Alltel Order*, 23 FCC Rcd. at 17463, para. 29; *XM/Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 22.

the public convenience and necessity may require.”<sup>49</sup> Indeed, unlike the role of antitrust enforcement agencies, our public interest authority enables us to rely upon our extensive regulatory and enforcement experience to impose and enforce conditions to ensure that the transaction will yield overall public interest benefits.<sup>50</sup> Despite this broad authority, the Commission has held that it will impose conditions to remedy harms that arise from the transaction and that are related to the Commission’s responsibilities under the Act and related statutes.<sup>51</sup>

## B. CenturyTel’s Qualifications to Hold Licenses

13. As a threshold matter, we must determine whether the Applicants meet the requisite qualifications to hold and assign and transfer licenses under section 310(d) of the Act and the Commission’s rules. In general, when evaluating assignments under section 310(d), we do not re-evaluate the qualifications of the transferor.<sup>52</sup> The exception to this rule occurs where issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.<sup>53</sup> This is not the case here. In the case of the transfer

<sup>49</sup> 47 U.S.C. § 214(c); see also *Verizon Wireless/Alltel Order*, 23 FCC Rcd. at 17463, para. 29; *XM/Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 22.

<sup>50</sup> See, e.g., *Verizon Wireless/Alltel Order*, 23 FCC Rcd. at 17463, para. 29; *XM/Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 22; see also *Schurz Communications, Inc. v. FCC*, 982 F.2d 1043, 1049 (7th Cir. 1992) (discussing Commission’s authority to trade off reduction in competition for increase in diversity in enforcing public interest standard).

<sup>51</sup> See, e.g., *Verizon Wireless/Alltel Order*, 23 FCC Rcd. at 17463, para. 29; *XM/Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 22.

<sup>52</sup> See *Applications of Sprint Nextel Corporation and Clearwire Corporation For Consent to Transfer Control of Licenses, Leases and Authorizations*, WT Docket No. 08-94, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17570, 17582–83, para. 23 (2008) (*Sprint Nextel/Clearwire Order*); *Verizon Wireless/Alltel Order*, 23 FCC Rcd at 17464, para. 31; *Applications of Guam Cellular and Paging, Inc., and DoCoMo Guam Holdings, Inc., for Consent to Transfer Control of Licenses and Authorizations; Applications of Guam Cellular and Paging, Inc., and Guam Wireless Telephone Company, LLC, for Consent to Assignment of Licenses and Authorizations; Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, File Nos. 0002556700, ITC-T/C-20060405-00234, 002553437, ITC-ASG-20060404-00181, ISP-PDR-20050404-00005, WT Docket No. 06-96, 21 FCC Rcd 13580, 13590, para. 14 (2006) (*DoCoMo/Guam Cellular Order*); *Applications of Midwest Wireless Holdings, L.L.C. and Alltel Communications, Inc.*, WT Docket No. 05-339, Memorandum Opinion and Order, 21 FCC Rcd 11526, 11536, para. 17 (2006) (*Alltel/Midwest Wireless Order*); *Applications of Nextel Partners, Inc., Transferor, And Nextel Wip Corp. and Sprint Nextel Corporation, Transferees*, Memorandum Opinion and Order, 21 FCC Rcd 7358, 7362, para. 10 (*Sprint Nextel/Nextel Partners Order*); *Verizon/MCI Order*, 20 FCC Rcd at 18526, para. 183; *SBC/AT&T Order*, 20 FCC Rcd at 18379, para. 171; *Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-63, Memorandum Opinion and Order, 20 FCC Rcd 13967, 13979, para. 24 (2005) (*Sprint/Nextel Order*); *Applications of Western Wireless Corporation and Alltel Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-50, Memorandum Opinion and Order, 20 FCC Rcd 13053, 13063–64, para. 18 (2005) (*Alltel/Western Wireless Order*); *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21546, para. 44; *Applications of VoiceStream Wireless Corporation and Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee*, IB Docket No. 00-187, Memorandum Opinion and Order, 16 FCC Rcd 9779, 9790, para. 19 (2001) (*Deutsche Telekom/VoiceStream Order*).

<sup>53</sup> See *Sprint Nextel/Clearwire Order*, 23 FCC Rcd at 17582–83, para. 23; *Verizon Wireless/Alltel Order*, 23 FCC Rcd at 17464, para. 31; *DoCoMo/Guam Cellular Order*, 21 FCC Rcd at 13590, para. 14; *Alltel/Midwest Wireless Order*, 21 FCC Rcd 11536, para. 17; *Sprint Nextel/Nextel Partners Order*, 21 FCC Rcd at 7362, para. 10; *Verizon/MCI Order*, 20 FCC Rcd at 18526, para. 183; *SBC/AT&T Order*, 20 FCC Rcd at 18379, para. 171; *Sprint/Nextel Order*, 20 FCC Rcd at 13979, para. 24; *Alltel/Western Wireless Order*, 20 FCC Rcd at 13063–64, para. 18; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21546, para. 44; *Deutsche Telekom/VoiceStream Order*, 16 FCC Rcd at 9790, para. 19.

of control applications involving the Embarq subsidiaries, we need not re-evaluate Embarq's basic qualifications. In the case of the transfer of control applications involving the CenturyTel subsidiaries, we need not re-evaluate the basic qualifications of the current CenturyTel shareholders.

14. Section 310(d) also requires that the Commission consider the qualifications of the proposed transferee as if the transferee were applying for the license directly under section 308 of the Act.<sup>54</sup> In this proceeding, no issues have been raised with respect to the basic qualifications of either CenturyTel or the current Embarq shareholders (who will be obtaining majority ownership of CenturyTel under the terms of the Merger Agreement), both of which previously have been found qualified to control entities holding FCC licenses and authorizations. Thus, we find that, at this time, there is no reason to re-evaluate the qualifications of these entities.

#### IV. POTENTIAL PUBLIC INTEREST HARMS

15. We consider first the potential public interest harms arising from this proposed transaction, before turning to potential benefits. Because Embarq and CenturyTel currently compete for customers in at least some service territories, we first consider the potential horizontal effects of the transfers.<sup>55</sup> We consider the risk that allegedly anti-competitive practices will spread from CenturyTel into Embarq territories, and we consider whether the combined entity's larger footprint will enhance its incentive and ability to spread or perpetuate discriminatory practices that would have been geographically or temporally confined absent the transaction.

##### A. Potential Horizontal Effects

16. Because CenturyTel and Embarq currently compete against each other in certain local markets, we consider the potential horizontal effects of this merger.<sup>56</sup> Based on the record evidence, we find that the proposed transaction is unlikely to harm competition or potential competition in those local markets where the Applicants currently compete.<sup>57</sup>

17. There are 54 Embarq service territories that abut 59 CenturyTel territories; these adjacent service territories affect less than three percent of the exchanges involved in the transaction and only 281,000 out of more than 7.3 million lines served.<sup>58</sup> Despite the adjacencies, direct competition between

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<sup>54</sup> Section 308 requires that applicants for Commission licenses set forth such facts as the Commission may require as to citizenship, character, and financial, technical, and other qualifications. *See* 47 U.S.C. § 308. Our rules implementing the provisions of section 308 regarding an applicant's qualifications to hold the Commission licenses involved in this transfer are set forth in Parts 5, 25, and 63 of the Commission's rules. *See* 47 C.F.R. Parts 5, 25, 63; *see also DoCoMo/Guam Cellular Order*, 21 FCC Rcd at 13590, para. 14; *Alltel/Midwest Wireless Order*, 21 FCC Rcd at 11536, para. 17; *Sprint Nextel/Nextel Partners Order*, 21 FCC Rcd at 7362, para. 10; *Verizon/MCI Order*, 20 FCC Rcd at 18526, para. 183; *SBC/AT&T Order*, 20 FCC Rcd at 18379, para. 171; *Alltel/Western Wireless Order*, 20 FCC Rcd at 13063-64, para. 18; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21546, para. 44.

<sup>55</sup> *AT&T/BellSouth Order*, 22 FCC Rcd at 5675, para. 23. We note that there are no competitive issues associated with the wireless licenses involved in the subject transaction.

<sup>56</sup> A merger is horizontal when the merging firms sell competing products that are in the same relevant markets and are therefore viewed as reasonable substitutes by purchasers of the products. *News Corp./Hughes Order*, 19 FCC Rcd at 507, para 69.

<sup>57</sup> *Cf. Joint Applications of Telephone and Data Systems, Inc. and Chorus Communications, Ltd. for Authority to Transfer Control of Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 22, 63 and 90 of the Commission's Rules*, CC Docket No. 01-73, Memorandum Opinion and Order, 16 FCC Rcd at 15297, paras. 8-9 (CCB/WTB 2001) (granting transfer of control involving an incumbent LEC and competitive LEC providing in-region service where merger would not harm competition).

<sup>58</sup> Embarq/CenturyTel Application at 13. Most of the adjacencies are located in four states: Missouri, Oregon, Washington, and Minnesota. *See id.* at 15.

the two carriers is minimal: CenturyTel's competitive LEC subsidiaries provide service in only three Embarq incumbent LEC markets to only 130 enterprise customers, and Embarq does not currently compete in any CenturyTel markets.<sup>59</sup>

18. This lack of present competition between these two incumbent LECs is hardly surprising — both carriers largely serve rural local exchanges<sup>60</sup> and the adjacent exchanges are almost all small and rural.<sup>61</sup> Only five adjacent exchanges have over 10,000 access lines, with the largest being Embarq's Jefferson City, Missouri, exchange.<sup>62</sup> We recognize that carriers are generally less likely to compete in such territories because of the high costs of reaching consumers and the lower potential revenues of serving fewer customers,<sup>63</sup> and we thus acknowledge that here each carrier's incentive to encroach on the other's territories is small.

19. We are also not concerned that the merger will have significant anticompetitive effects in the three local markets where CenturyTel currently competes with Embarq for enterprise customers. First, as the Commission has previously observed, mid-sized and large enterprise customers tend to be sophisticated purchasers of communications services<sup>64</sup> and hence more likely to pick their local exchange carrier based on all competitive options. Given the enhanced revenue opportunities in serving enterprise customers,<sup>65</sup> we recognize that competitive LECs are more likely to target such customers when entering an area.<sup>66</sup> Indeed, we see such competition in the three local markets where CenturyTel and Embarq currently compete. In the Chaska, Minnesota exchange, for example, Applicants assert that they compete with Level 3, ITC Deltacom, Paetec, Verizon, AT&T, ALEC, and Bandwidth.com, among others.<sup>67</sup> Other competitors in the overlapping and adjacent exchanges include Alltel,<sup>68</sup> AT&T Wireless, Digital Telecommunications Inc., Granite Telecommunications LLC, Lakedale Link, Inc., Midwest Wireless, Qwest Corporation, Sprint Nextel Communications, and US Cable Corporation.<sup>69</sup> Thus, it appears that, even after the merger, there will be a significant number of carriers competing for enterprise customers in

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<sup>59</sup> *Id.* at 13–14.

<sup>60</sup> *Id.* at 2.

<sup>61</sup> The median size of adjacent exchanges is only 1,021 access lines. *Id.* at 15.

<sup>62</sup> That exchange has 18,945 residential and 26,544 business access lines. *Id.* at 16 n.33.

<sup>63</sup> See *GTE/Bell Atlantic Order*, 15 FCC Rcd at 14095, para. 117.

<sup>64</sup> See *AT&T/BellSouth Order*, 22 FCC Rcd at 5708, para. 82.

<sup>65</sup> For example, a price cap LEC's monthly charge for each primary residential or single-line business local exchange service subscriber line cannot exceed \$6.50, 47 C.F.R. § 69.152(d)(1)(ii)(D), whereas a price cap LEC's monthly line charge for a multi-line business cannot exceed \$9.20, 47 C.F.R. § 69.152(k)(1)(i), not including up to an additional \$4.31 per line per month that price cap carriers can recover either from a multi-line business's pre-subscribed interexchange carrier or from a multi-line business itself, 47 C.F.R. § 69.153(a). Thus, looking only at the interstate portion of a carrier's costs in a high-cost area, competitive LECs are best able to compete on price for multi-line business customers (who pay subscriber line and pre-subscribed interexchange carrier charges of up to \$13.51 to the incumbent) rather than residential customers (whose subscriber line charge is capped at \$6.50 a line).

<sup>66</sup> *Cf. AT&T/BellSouth Order*, 22 FCC Rcd at 5690–91, para. 55 (“When competitive LECs seek to enter a new special access market, they generally concentrate their efforts in high density areas where the revenue opportunities are the greatest — such as locations where enterprise customers are located.”).

<sup>67</sup> See *Embarq/CenturyTel Application* at 14.

<sup>68</sup> Verizon Wireless recently acquired Alltel and hence should be competing in its stead. See *Verizon Wireless/Alltel Order*, 23 FCC Rcd 17444.

<sup>69</sup> See Letter from Mark D. Schneider, Counsel for Embarq Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 08-238, Exh. 1 at 1 (filed Dec. 10, 2009) (Embarq/CenturyTel Supplement) (listing competitors in Embarq's Plainview, MN exchange); *id.*, Exh. 2 at 6 (listing competitors in CenturyTel's Kellogg, MN exchange).

the three local markets at issue. Accordingly, we conclude that the limited horizontal aspects of the proposed transaction do not raise competitive concerns.

## B. Perpetuation and Spread of Discriminatory Practices

### 1. Alleged Harms

20. Commenters opposing the merger contend that anticompetitive effects in the Embarq and CenturyTel service territories are likely for two reasons. First, citing the Commission's *SBC/Ameritech Order* and its *Bell Atlantic/GTE Order*, commenters claim that, after the merger, the merged entity will have an increased incentive and ability to discriminate against competitors in local retail markets.<sup>70</sup> Second, opponents of the merger claim that "CenturyTel lacks the wholesale support infrastructure, commitment and experience necessary to serve wholesale customers as required," and they claim that the "comparatively better practices and capabilities in place at Embarq will be replaced with those CenturyTel uses to stymie competition in its service areas."<sup>71</sup>

21. In addition to presenting these general theories of competitive harm, commenters opposing the merger make a number of specific allegations, which fall into four general categories: (1) those resulting from CenturyTel's manual OSS; (2) those involving local number portability; (3) those involving interconnection agreements and obligations; and (4) those involving wholesale pricing and fees. We discuss below each of the four categories of alleged harm and the voluntary commitments that the Applicants offered in response to these allegations.

22. *Operations Support Systems (OSS)*. Commenters, as well as Embarq and CenturyTel, agree that CenturyTel's OSS "are largely manual with little if any automated or interactive capabilities"<sup>72</sup> and that CenturyTel's OSS "cannot provide as rapid and efficient processing as the Embarq systems."<sup>73</sup> The problems with CenturyTel's OSS appear to disadvantage competitors in several ways.

23. For example, CenturyTel admits that its antiquated OSS has led it to adopt a policy limiting the number of service requests, including number ports, any given competitor could make to 50 in a single day, the purpose being to "maintain[] parity of treatment for all submitting carriers."<sup>74</sup> Similarly, it does not deny allegations that, because of its problematic OSS, the information in CenturyTel's Customer Service Record (CSR) database "is often missing, inaccurate, or contradicts information contained in CenturyTel's other databases."<sup>75</sup>

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<sup>70</sup> See, e.g., NuVox/Socket Comments at 14; COMPTTEL Comments at 3; Sprint Nextel Reply Comments at 5–6.

<sup>71</sup> NuVox/Socket Comments at 3; see also Joint Commenter April 3 *Ex Parte* Letter at 5 citing *SBC/Ameritech Order*, 14 FCC Rcd at paras. 15[1]–155; NuVox/Socket Comments, Kohly Declaration, para. 8.

<sup>72</sup> NuVox/Socket Comments, Kohly Declaration, para. 11; DeltaCom Reply, Mastando/Sharp Declaration, para. 11.

<sup>73</sup> Embarq/CenturyTel Reply at 10.

<sup>74</sup> Letter from Gregory J. Vogt, Counsel for CenturyTel, Inc., and Samuel L. Feder, Counsel for Embarq Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 08-238, at 2 (filed Apr. 10, 2009) (Embarq/CenturyTel Apr. 10 *Ex Parte* Letter); see also NuVox/Socket Comments, Kohly Declaration, para. 36; Sprint Reply at 10; Letter from John J. Heitmann, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 08-238, Cox/Hankins Declaration, para. 7 (filed Feb. 27, 2009) (Charter Feb. 27 *Ex Parte* Letter).

<sup>75</sup> NuVox/Socket Comments, Kohly Declaration, para. 18; *id.* ("This is especially true with respect to customers with multiple locations."); see also DeltaCom Reply, Mastando/Sharp Declaration, para. 13. Because of these issues and other problems with CenturyTel's Location Service Request (LSR) validation system, commenters further allege that simple ports can take multiple days or even weeks to process. Letter from Michael H. Pryor, Counsel for Bresnan, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 08-238, at 7 (filed Apr. 20, 2009) (Bresnan Apr. 20 *Ex Parte* Letter); *id.*, Hould/Strouf Declaration, paras. 5–12; see also NuVox/Socket Comments, Kohly Declaration, para. 43 (noting that CenturyTel's system "provide[s] no real-time or near real-time information when placing an order"); DeltaCom Reply, Mastando/Sharp Declaration, para. 11 (same); NuVox/Socket Comments, Kohly

24. Commenters further allege that CenturyTel's system for directory listings is "more manual" and hence "error prone,"<sup>76</sup> and that CenturyTel's manual OSS has hampered its ability to respond to competitors' requests for repairs and installations in a timely manner.<sup>77</sup> These allegations, if true, put competitors at a disadvantage in the marketplace in competing for time-sensitive business customers.

25. *Local Number Portability.* Commenters assert that CenturyTel has implemented several anti-competitive practices with regard to local number portability. As noted, commenters allege, and CenturyTel admits, that, because of its antiquated OSS, it has had to limit the number of service requests, including number ports, that a given competitor could make in a single day.<sup>78</sup> In addition, commenters allege that CenturyTel has imposed several outright anti-competitive practices against them.<sup>79</sup> For example, opponents claim that CenturyTel has proposed, but not yet implemented, a requirement that competitive LECs include "a CenturyTel subscriber's Personal Identification Number" (PIN) — "a randomly generated 11-digit number that appears only on the first bill that CenturyTel sends to a subscriber" — "as one of the four fields required for all LSRs for porting submitted to CenturyTel."<sup>80</sup> Because customers are unlikely to remember that PIN or save their initial bill, commenters argue that such a requirement, in practical effect, would force many customers to contact CenturyTel to retrieve the PIN before being able to port their number to a new provider. This contact then gives CenturyTel personnel an opportunity to try to retain the customer. Finally, Socket claims that its "customer[s] [have]

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Declaration, para. 11 (noting that CenturyTel's system "cannot provide addressing information or even whether a specific customer location can even be served out of a particular end-office on a real-time or near real-time basis," creating processing delays of "several days").

<sup>76</sup> DeltaCom Reply, Mastando/Sharp Declaration, para. 15; *see also* NuVox/Socket Comments, Kohly Declaration, para. 25. At most, CenturyTel explains that inaccuracies are unintentional, Embarq/CenturyTel Apr. 10 *Ex Parte* Letter at 5 n.13 ("Inaccuracies in directory lists are simply clerical accidents that must be resolved as the inaccuracy is identified, and they are not caused by any intent to undermine competitive service providers."), uncommon, *id.* (claiming a "statistically minimal number of actual instances"), and someone else's fault, *id.* ("CenturyTel and Embarq have only limited control over the accuracy of the third party database providers' listings, and they are constantly vigilant in seeking that the listings are accurate.").

<sup>77</sup> According to competitors, CenturyTel takes, on average, more than twice as long as Embarq to install DS1 lines and to fulfill EEL orders. *See* NuVox/Socket Comments, Walsh/Cadieux Declaration, para. 7 ("From the time of order, it takes CenturyTel, on average, sixteen (16) days to install a DS1. From the time of order it takes Embarq, on average, seven (7) days."); NuVox/Socket Comments, Kohly Declaration, para. 10 ("Embarq has a five-business day interval for DS1 loop and EEL orders. In contrast, CenturyTel has a fifteen-business day interval for DS1 loop and EEL orders."); DeltaCom Reply, Mastando/Sharp Declaration, para. 14 (same); *but see* CenturyTel Reply, Glover Declaration, para. 6 (CenturyTel consistently meets a nine business day interval."). Moreover, commenters allege that CenturyTel has failed to complete circuit installation in a timely manner 30% of the time in a recent survey, NuVox/Socket Comments, Kohly Declaration, para. 16, and that CenturyTel has, in some instances, begun "marking orders for xDSL-capable loops as complete when they, in fact, were not complete," NuVox/Socket Comments, Kohly Declaration, para. 16.

<sup>78</sup> Embarq/CenturyTel Apr. 10 *Ex Parte* Letter at 10.

<sup>79</sup> *See, e.g.,* NuVox/Socket Comments, Kohly Declaration, para. 33 ("In Socket's second complaint related to CenturyTel's refusal to port numbers in situations that CenturyTel maintained constituted location portability, the MO PSC found that CenturyTel's refusal violated its interconnection agreement with Socket. Specifically, the MO PSC found that 'The evidence shows that CenturyTel stands alone in its refusal to make such ports.'").

<sup>80</sup> Charter Feb. 27 *Ex Parte* Letter, Cox/Hankins Declaration, paras. 9–10; *see* Embarq/CenturyTel Apr. 10 *Ex Parte* Letter at 11.

indicat[ed] they were contacted by CenturyTel's sales personnel and indicat[ed] the sales call was in response to a Socket loop or port order."<sup>81</sup>

26. *Interconnection Agreements and Obligations.* Commenters allege that CenturyTel has manipulated the interconnection agreement process to disadvantage interconnecting competitors. Charter claims that CenturyTel has not always negotiated in good faith with competitors but instead "has a history of slow rolling the interconnection agreement negotiation process."<sup>82</sup> In addition, commenters contend that CenturyTel at times has kept the corporate forms of its acquisitions, allegedly so that its competitors must "maintain separate interconnection agreements, separate interconnection arrangements, and generally conduct business separately with each," even when those companies are "managed jointly with many of the same people performing the same functions for each entity."<sup>83</sup>

27. Commenters further allege that CenturyTel maintains separate corporate subsidiaries as a shield against efficient interconnection arrangements. In Missouri, for example, CenturyTel uses a non-incumbent LEC affiliate to manage its tandems and dedicated transport services, which commenters argue sometimes causes unnecessary delays in maintenance and repairs and lets CenturyTel exempt itself from unbundling interoffice transport for use in enhanced extended links (EELs).<sup>84</sup> In cases where CenturyTel's interoffice transport is owned by this separate affiliate, CenturyTel insists that competitors establish separate points of interconnection with each local operating company.<sup>85</sup>

28. *Wholesale Pricing and Fees.* Commenters allege that both CenturyTel and Embarq have set prices and fees for certain wholesale services at anticompetitively high rates.<sup>86</sup> Charter claims that CenturyTel has imposed charges on certain service requests, indirectly raising the costs of porting a number<sup>87</sup> and complains that Embarq has charged it fees for listing a Charter customer in the Embarq directory without providing any cost justification.<sup>88</sup> Commenters also allege that both companies have

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<sup>81</sup> NuVox/Socket Comments, Kohly Declaration, para. 35; *see also* Bresnan Apr. 20 *Ex Parte* Letter, Brester Declaration, paras. 2–3 (explaining that when a customer called to disconnect her CenturyTel line, the representative "told her that she would not be able to make 911 emergency calls if she used Bresnan's phone service.").

<sup>82</sup> Charter Feb. 27 *Ex Parte* Letter Cox/Hankins Declaration, para. 26. *See also* NuVox/Socket Comments, Kohly Declaration, para. 33.

<sup>83</sup> NuVox/Socket Comments, Kohly Declaration, para. 30.

<sup>84</sup> *Id.*, paras. 30–31; DeltaCom Reply, Mastando/Sharp Declaration, para. 18.

<sup>85</sup> NuVox/Socket Comments, Kohly Declaration, para. 30. *See also* DeltaCom Reply, Mastando/Sharp Declaration, para. 18; Charter Feb. 27 *Ex Parte* Letter, Cox/Hankins Declaration, paras. 22, 25.

<sup>86</sup> *See, e.g.*, Letter from CTI Networks, Inc., WC Docket No. 08-238 at 2 (Mar. 6, 2009); Letter from Michael H. Pryor, Counsel for Bresnan Communications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 08-238, Attach. at 2 (June 18, 2009) (alleging that CenturyTel charges excessive fees to obtain CSRs, including \$31.20 in Montana and \$20.00 in Colorado).

<sup>87</sup> Charter Feb. 27 *Ex Parte* Letter, Cox/Hankins Declaration, para. 8 ("In Texas, for example, CenturyTel charges \$11.29 for each LSR, including those for porting. In Wisconsin, CenturyTel charges an 'Initial Service Order Charge' of \$41.58 for each LSR, including port requests. . . . CenturyTel charged Charter a fee of \$19.78 for port requests from 2003 to 2007."); Charter Feb. 27 *Ex Parte* Letter, Cox/Hankins Declaration, para. 8 ("CenturyTel has proposed (and in all cases has advocated in arbitrations) the following Service Order Charges for port requests to be applied in all three states: an Initial Service Order Charge of \$14.02 for simple ports; an Initial Service Order Charge of \$65.77 for complex ports; and a Subsequent Service Order Charge of \$7.53 for modification of an existing port request.").

<sup>88</sup> Charter Feb. 27 *Ex Parte* Letter, Cox/Hankins Declaration, para. 20; *see also id.* ("In recent interconnection agreement negotiations, Embarq has attempted to impose a monthly recurring charge of between \$0.40 and more than \$3.00 for each Charter customer listing that Embarq stores and maintains in Embarq's directory assistance database.").

leveraged their “monopol[ies] in the provision of critical special access facilities”<sup>89</sup> to charge unreasonably high special access rates and to squeeze resale competitors out of the market.<sup>90</sup> Commenters further allege that both companies have engaged in price-squeezing behavior.<sup>91</sup>

## 2. Voluntary Commitments

29. In response to these alleged harms of the proposed merger, the Applicants offer a number of voluntary commitments.<sup>92</sup> In order to address concerns about CenturyTel’s wholesale operations, the Applicants commit to “integrate, and adopt for CenturyTel CLEC orders, the automated [OSS] of Embarq within fifteen months of the transaction’s close,” and in the interim, to “devote additional resources to its existing manual CLEC order processing system to ensure that all local number portability requests are promptly processed.”<sup>93</sup> Applicants also commit to processing CenturyTel’s wholesale LNP orders through Embarq’s OSS.<sup>94</sup> Further, the CenturyTel companies commit to no longer limit the number of ports that can be processed.<sup>95</sup>

30. In order to address allegations that CenturyTel insisted that competitors negotiate separate interconnection negotiations for CenturyTel LECs within the same state, the Applicants commit to “negotiate all [r]ural company interconnection contracts in a state at the same time and all [n]onrural company interconnection contracts in a state at the same time.”<sup>96</sup> In these unified negotiations, the Applicants commit to limit requests for terms unique to individual operating companies in a state to “rates, different physical interconnection points reflecting network configurations, or where unified terms are otherwise technically infeasible.”<sup>97</sup>

31. In order to address concerns that Embarq’s wholesale performance might deteriorate following the merger, the Applicants commit to “maintain substantially the service levels that Embarq has provided for wholesale operations, subject to reasonable and normal allowances for the integration of CenturyTel and Embarq systems.”<sup>98</sup> They further commit, for a period of two years following the transaction closing date, to make available to competitive LECs, and to the FCC upon request, quarterly performance metric data comparing Embarq service levels to a benchmark value set at the 12-month

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<sup>89</sup> Sprint Reply at 9; NuVox/Socket Comments at 35 (citing NuVox/Socket Comments, Walsh/Cadieux Declaration, para. 4); NuVox/Socket Comments at 35 (“[T]here are few, if any, competitive sources of these facilities . . .”). For present purposes, we define special access as a dedicated transmission link between two places. *See Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994, 1997, para. 7 (2005); *see also SBC/AT&T Order*, 20 FCC Rcd at 18304, para. 24; *Verizon/MCI Order*, 20 FCC Rcd at 18447, para. 24.

<sup>90</sup> Sprint Reply at 9 (suggesting that each carrier’s special-access rates are so high as to let them “realize obscene profits”); NuVox/Socket Comments, Kohly Declaration, para. 19 (Embarq imposes “‘line conditioning’ charges on DS1 loops” that “range from \$100 to \$350 per loop and are in addition to the standard non-recurring charge for DS1 loops of \$330.83.”).

<sup>91</sup> *See, e.g.*, NuVox/Socket Comments, Kohly Declaration, para. 38–39; Accelerated Reply at 2.

<sup>92</sup> *See* Embarq/CenturyTel June 22 *Ex Parte* Letter. These voluntary commitments are reproduced in Appendix C.

<sup>93</sup> Appendix C.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

average results achieved from April 1, 2008 through March 31, 2009.<sup>99</sup> Applicants commit that “Embarq will maintain service at a level that is no less than one standard deviation from the benchmark value, 90 percent of the time.”<sup>100</sup>

32. In order to address specific complaints in the record about certain of CenturyTel’s current practices,<sup>101</sup> the Applicants commit to improve CenturyTel companies’ processing of wholesale orders, including provisioning intervals for DS-1 Loops, hot cut processes, maintenance and repair, and unlocking E-911 records.<sup>102</sup> The CenturyTel and Embarq operating companies also commit to offer to “Internet service providers for their provision of broadband Internet access service to ADSL capable retail customer premises, ADSL transmission service in their respective territories that is functionally the same as the services they offered as of the date of the merger closing.”<sup>103</sup> Each local operating company’s wholesale ADSL transmission offering will be set at “a price not greater than its retail price in the same state for ADSL service that is separately purchased by customers who also subscribe to that local operating company’s local telephone service.”<sup>104</sup>

33. We find that, as a theoretical matter, the merger may result in increased anticompetitive behavior on the part of the Applicants. Consistent with the “Big Footprint” theory that the Commission addressed in prior BOC mergers,<sup>105</sup> we find that the increase in the size of CenturyTel’s study area resulting from the merger may increase its incentive to engage in anticompetitive activity, although we think it is likely to have a lesser effect in the instant case than in the prior BOC mergers.<sup>106</sup> Additionally, to the extent that CenturyTel has been less willing to cooperate with competitors than Embarq — as numerous commenters allege — following the merger, CenturyTel may extend this behavior to the Embarq territories.<sup>107</sup> In order to address these potential harms, the Applicants have proposed a series of voluntary commitments, summarized above and included in Appendix C. After consideration of the record, we find that these voluntary commitments adequately address both of these concerns, and as discussed below, we therefore make them enforceable conditions of the merger.

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<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> See, e.g., Letter from John J. Heitmann to Marlene H. Dortch, Secretary, FCC, WC Docket No. 08-238 at 3 (May 21, 2009) (NuVox/Socket May 21 *Ex Parte* Letter) (arguing that the Commission should impose conditions requiring the adoption of Embarq’s “best practices” in the CenturyTel territories).

<sup>102</sup> See Appendix C.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> See *SBC/Ameritech Order*, *SBC/Ameritech Order*, 14 FCC Rcd at 14797–98, paras. 192–93; see also *AT&T/BellSouth Order*, 22 FCC Rcd at 5751–53, paras. 183–85; *Bell Atlantic/GTE Order*, 15 FCC Rcd at 14115–16, paras. 176–78.

<sup>106</sup> As the Commission explained in the *SBC/Ameritech Order*, a merger between two incumbent LECs may increase the merged entity’s incentive to engage in anticompetitive behavior by allowing it to capture or internalize a higher proportion of the benefits of such anticompetitive strategies against regional or national competitors. See *SBC/Ameritech Order*, 14 FCC Rcd at 14798, para. 193. The larger the resulting incumbent LEC is, the greater is its ability to internalize these spillover effects. Because CenturyTel after the merger will still be smaller than AT&T or SBC or Verizon was, it will be unable to internalize as large a proportion of the benefits of anticompetitive activity as those companies. Accordingly, we do not find that the “Big Footprint” theory raises the same concerns here as it did in past mergers.

<sup>107</sup> See *SBC/Ameritech Order*, 14 FCC Rcd at 14950, para. 571 (distinguishing between a determination that an applicant has the requisite “character” qualifications to hold a Commission license and the public interest determination concerning whether the benefits of a particular merger outweigh the harms).

## V. POTENTIAL PUBLIC INTEREST BENEFITS

34. We next consider whether the transaction is likely to generate verifiable, merger-specific public interest benefits.<sup>108</sup> In doing so, we ask whether the combined entity will be able, and is likely, to pursue business strategies resulting in demonstrable and verifiable benefits that could not be pursued but for the combination.<sup>109</sup> As discussed below, we find that the proposed transaction is likely to generate some merger-specific public interest benefits, although in some cases it is difficult to quantify the magnitude of these benefits.

### A. Analytical Framework

35. The Commission applies several criteria in deciding whether a claimed benefit is cognizable. First, the claimed benefit must be transaction or merger specific (*i.e.*, the claimed benefit “must be likely to be accomplished as a result of the merger but unlikely to be realized by other means that entail fewer anticompetitive effects”).<sup>110</sup> Second, the claimed benefit must be verifiable. Because much of the information relating to the potential benefits of a merger is in the sole possession of the Applicants, they are required to provide sufficient evidence supporting each claimed benefit to enable the Commission to verify its likelihood and magnitude.<sup>111</sup> In addition, as the Commission has noted, “the magnitude of benefits must be calculated net of the cost of achieving them.”<sup>112</sup> Furthermore, the Commission will discount or dismiss speculative benefits that it cannot verify. Thus, as the Commission explained in the *EchoStar/DirecTV Order*, “benefits that are to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the more distant future are inherently more speculative than predictions about events that are expected to occur closer to the present.”<sup>113</sup> Third, the Commission “will more likely find marginal cost reductions to be cognizable than

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<sup>108</sup> See, e.g., *AT&T/BellSouth Order*, 22 FCC Rcd at 5760, para. 200; *WorldCom/MCI Order*, 13 FCC Rcd at 18134–35, para. 194.

<sup>109</sup> See, e.g., *Verizon/América Móvil Order*, 22 FCC Rcd at 6210, para. 34; *Bell Atlantic/GTE Order*, 15 FCC Rcd at 14130, para. 209; *SBC/Ameritech Order*, 14 FCC Rcd at 14825, para. 255.

<sup>110</sup> *AT&T/BellSouth Order*, 22 FCC Rcd at 5761, para. 202; *EchoStar/DirecTV Order*, 17 FCC Rcd at 20630, para. 189; see also *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20063–64, para. 158 (“Pro-competitive efficiencies include only those efficiencies that are merger-specific, *i.e.*, that would not be achievable but for the proposed merger. Efficiencies that can be achieved through means less harmful to competition than the proposed merger . . . cannot be considered to be true pro-competitive benefits of the merger.” (footnote omitted)); *SBC/Ameritech Order*, 14 FCC Rcd at 14825, para. 255 (“Public interest benefits also include any cost saving efficiencies arising from the merger if such efficiencies are achievable only as a result of the merger . . .”); *Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, MB Docket No. 02-70, Memorandum Opinion and Order, 17 FCC Rcd 23246, 23313, para. 173 (2002) (explaining that the Commission considers whether benefits are “merger-specific”); cf. DOJ/FTC Guidelines § 4.

<sup>111</sup> See *AT&T/BellSouth Order*, 22 FCC Rcd at 5761, para. 202; *EchoStar/DirecTV Order*, 17 FCC Rcd at 20630, para. 190; see also *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20063, para. 157 (“These pro-competitive benefits include any efficiencies arising from the transaction if such efficiencies . . . are sufficiently likely and verifiable . . .”); *BellSouth/Comcast Order*, 17 FCC Rcd at 23313, para. 173 (explaining that the Commission considers whether benefits are verifiable . . .”); *SBC/Ameritech Order*, 14 FCC Rcd at 14825, para. 255; DOJ/FTC Guidelines § 4 (“[T]he merging firms must substantiate efficiency claims so that the Agency can verify by reasonable means the likelihood and magnitude of each asserted efficiency, how and when each would be achieved (and any costs of doing so), [and] how each would enhance the merged firm’s ability to compete . . .”).

<sup>112</sup> *AT&T/BellSouth Order*, 22 FCC Rcd at 5761, para. 202; *EchoStar/DirecTV Order*, 17 FCC Rcd at 20631, para. 190.

<sup>113</sup> *EchoStar/DirecTV Order*, 17 FCC Rcd at 20631, para. 190.

reductions in fixed cost”<sup>114</sup> because “reductions in marginal cost are more likely to result in lower prices for consumers.”<sup>115</sup>

36. The Applicants bear the burden of demonstrating that the potential public interest benefits of the proposed transfer outweigh the potential public interest harms.<sup>116</sup> As such, the Commission applies a “sliding scale approach” to evaluating benefit claims.<sup>117</sup> Under this sliding scale approach, where potential harms appear “both substantial and likely, the Applicants’ demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand.”<sup>118</sup> On the other hand, where potential harms appear less likely and less substantial, we will accept a lesser showing to approve the merger.<sup>119</sup>

## B. Analysis

37. The Applicants claim that the merger will likely result in several types of benefits. As discussed below, while we do not accept all of the Applicants’ claims or their exact quantification of benefits, we do agree that the merger is likely to result in benefits that will accrue to consumers.

38. The Applicants first claim that the transaction is likely to result in cost savings and greater economies of scale and scope.<sup>120</sup> The Applicants contend that the merger will generate synergies of approximately \$400 million annually within the first three years of operation.<sup>121</sup> The Applicants anticipate that the sources of these synergies include, “reduction of corporate overhead, elimination of duplicate functions, realization of enhanced revenue opportunities, and achievement of increased operational efficiencies through the adoption of best practices and capabilities from each company.”<sup>122</sup> Commenters respond that the claimed benefits from these synergies are vague and not sufficiently verifiable.<sup>123</sup>

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<sup>114</sup> *Id.* at para. 191; *see also AT&T/BellSouth Order*, 22 FCC Rcd at 5761, para. 202.

<sup>115</sup> *AT&T/BellSouth Order*, 22 FCC Rcd at 5761, para. 202; *EchoStar/DirectTV Order*, 17 FCC Rcd at 20631, para. 191; *see also DOJ/FTC Guidelines* § 4.

<sup>116</sup> *See AT&T/BellSouth Order*, 22 FCC Rcd at 5761, para. 201; *SBC/Ameritech Order*, 14 FCC Rcd at 14825, para. 256; *see also Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20063, para. 157.

<sup>117</sup> *AT&T/BellSouth Order*, 22 FCC Rcd at 5761, para. 203 (internal quotation marks omitted).

<sup>118</sup> *EchoStar/DirectTV Order*, 17 FCC Rcd at 20631, para. 192 (quoting *SBC/Ameritech Order*, 14 FCC Rcd at 14825); *cf. DOJ/FTC Guidelines* § 4 (“The greater the potential adverse competitive effect of a merger . . . the greater must be cognizable efficiencies in order for the Agency to conclude that the merger will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly large, extraordinary great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive.”).

<sup>119</sup> *See, e.g., AT&T/BellSouth Order*, 22 FCC Rcd at 5762, para. 203.

<sup>120</sup> *See Embarq/CenturyTel Application* at 6.

<sup>121</sup> *See id.*, Ewing Declaration, para. 2.

<sup>122</sup> *Id.*

<sup>123</sup> *See, e.g., COMPTTEL Comments* at 3–5 (arguing that conditions were necessary to make the merger benefit the public interest); *NuVox/Socket Comments* at 8 (arguing that claimed benefits are not tangible); *Joint Commenters Apr. 3 Ex Parte Letter* at 1, 2 (arguing that vague claims of efficiency are not verifiable benefits); *Sprint Reply* at 4 (stating that Applicant’s generic claims of customers benefiting from subscription to current and new services are not verified merger specific benefits).

39. Second, the Applicants claim that the merger is likely to result in “more rapid deployment of advanced services, including IPTV and next-generation broadband-based services.”<sup>124</sup> Specifically, the Applicants contend that: (1) CenturyTel’s experience and investment in IPTV will be able to be transferred to Embarq; (2) combining CenturyTel’s backbone network with Embarq’s network will enable the realization of “transport” economies of scale; and (3) consumers will benefit from the parties’ ability to share CenturyTel’s 700 MHz spectrum and Embarq’s experience with IP business services.<sup>125</sup>

40. CenturyTel and Embarq both provide broadband to 87 percent of their respective geographic territories today at speeds considered to be first generation data (or higher) per our *2008 Broadband Data Gathering Order*.<sup>126</sup> The Applicants have specifically committed in this proceeding to substantially increasing the broadband service available to consumers in the areas they serve over the next three years. The Applicants will offer retail broadband Internet access to 100 percent of the merged company’s retail single-line residential and single-line business access lines within three years of the transaction closing date.<sup>127</sup> To meet this commitment, the merged company has committed to make available retail broadband Internet access service with a download speed of 768 kbps to 90 percent of such lines within three years using wireline technologies.<sup>128</sup> The merged company will make available retail broadband Internet access service in accordance with the Commission’s current definition of broadband to the remaining 10 percent of lines using alternative technologies and operating arrangements, including but not limited to satellite and terrestrial wireless broadband technologies. In addition, the merged company has committed to make available retail broadband Internet access service with a download speed of (1) 1.5 Mbps to 87 percent of the merged company’s retail single-line residential and single-line business access lines within two years of the transaction closing date and (2) 3 Mbps to 75 percent of such lines within one year of the transaction closing date, 78 percent of such lines within two years, and 80 percent within three years.<sup>129</sup>

41. Third, the Applicants claim that rural consumers will benefit. According to the Applicants, the “combination of two mid-sized local wireline providers with investment grade ratings . . . will position the combined enterprise to capitalize on the collective knowledge of local customers’ needs and to deliver innovative product offerings to these rural and smaller markets.”<sup>130</sup>

42. Fourth, the Applicants claim that the combined entity will utilize the best of current CenturyTel and Embarq systems to improve retail and wholesale systems.<sup>131</sup> For example, the Applicants expect the combined entity to adopt CenturyTel’s automated billing systems, thereby improving its

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<sup>124</sup> Embarq/CenturyTel Application at 7–9; Embarq/CenturyTel Reply at 8–9.

<sup>125</sup> See Embarq/CenturyTel Application at 7–9; Embarq/CenturyTel Reply at 8.

<sup>126</sup> See Embarq/CenturyTel Reply at 15, Closz Declaration, para. 6, Glover Declaration, para. 4; *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 9691, 9700–01, para. 20 & n.66 (2008) (*2008 Broadband Data Gathering Order*).

<sup>127</sup> Appendix C.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> Embarq/CenturyTel Application at 9.

<sup>131</sup> See Embarq/CenturyTel Apr. 29 *Ex Parte* Letter at 3.

services to retail customers.<sup>132</sup> In addition, they have committed that the merged entity will adopt Embarq's wholesale OSS, which will result in better service to wholesale customers, and make it easier for other carriers to compete in the local service market.<sup>133</sup>

43. Fifth, the Applicants claim that the merger will benefit the public interest because CenturyTel's current access rates will "decline further than if it remained separate from Embarq because of its commitment to utilize the CALLS plan \$ 0.0065 Average Traffic Sensitive (ATS) target rate after it converts to price cap status," rather than the higher \$0.0095 ATS target rate that otherwise would apply.<sup>134</sup> In the *CenturyTel Price Cap Order*, the Wireline Competition Bureau determined that "after the merger, the combined company would have more than 19 access lines per square mile at the holding company level" and must therefore lower its ATS rate.<sup>135</sup>

44. We conclude that the transaction is likely to result in some merger-specific benefits. First, although we do not fully accept the Applicants' claim of \$400 million in cost savings, and although we find that many of the claimed savings are likely to be in the form of reduced fixed costs rather than reduced marginal costs, we nevertheless find that the merger is likely to result in savings in fixed and marginal costs, some of which are likely to accrue to the benefit of consumers.<sup>136</sup> Similarly, although we do not necessarily accept all of the Applicants' original claims concerning the broadband benefits likely to result from the merger, we do find that the merger, as conditioned, is likely to result in more rapid deployment of broadband services to consumers in the merged entity's service territory, which is principally rural. Significantly, Applicants commit to offer retail broadband Internet access service to retail single-line residential and single-line business access lines according to a specific deployment timetable that includes minimum speed commitments, as described earlier in this section.<sup>137</sup>

45. We also find that the merger should result in lower access rates because of the change in regulatory status for CenturyTel, which should benefit long-distance callers. Finally, we find that one of the major benefits of the proposed merger is that the Applicants can adopt each other's best practices. In particular, we find that, by adopting CenturyTel's billing software and Embarq's wholesale OSS, the Applicants will be better able to serve both retail and wholesale customers, and that local competitors will be better able to compete. In this regard, we are further encouraged by the Applicants' commitment to

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<sup>132</sup> *Id.*

<sup>133</sup> See, e.g., Appendix C (committing that within 15 months of the Transaction Closing Date, wholesale OSS will be provided through the Embarq companies' automated IRES and successor EASE system. The record indicates that CenturyTel's pre-merger wholesale ordering and provisioning systems are obstacles to wholesale providers seeking to compete in the local telephone market. See, e.g., Joint Commenters Apr. 3 *Ex Parte* Letter at 5 (stating that "it is hard to imagine interconnection and provisioning getting worse in CenturyTel areas").

<sup>134</sup> Embarq/CenturyTel Apr. 29 *Ex Parte* Letter at 3. The Commission recently granted CenturyTel permission to convert its current rate of return properties to price caps. See *CenturyTel, Inc. Petition for Conversion to Price Cap Regulation and Limited Waiver Relief*, WC Docket No. 08-191, Order, DA 09-855 (WCB rel. Apr. 17, 2009) (*CenturyTel Price Cap Order*). Applicants maintain that they made the commitment "even though the rules would have allowed the CenturyTel formerly rate-of-return study areas to retain their primarily rural target rate if the price cap conversion ha[d] been granted prior to the merger." See Embarq/CenturyTel Apr. 29 *Ex Parte* Letter at 3-4.

<sup>135</sup> *CenturyTel Price Cap Order* at para. 7.

<sup>136</sup> Compare *AT&T/BellSouth Order*, 22 FCC Rcd at 5769-72, paras. 215-21 (crediting part of the Applicants' claimed benefits where credible evidences existed to support a finding of some efficiency, but the precise magnitude of the benefits was difficult to quantify), with *GTE/Bell Atlantic Order*, 15 FCC Rcd at 1412, para. 242 (finding vague claims of operational efficiencies to be "difficult to evaluate" and "unpersuasive" where Applicants did not demonstrate or state cost savings would be passed on to consumers).

<sup>137</sup> See Appendix C.

implement Embarq's OSS within 15 months. We find that these benefits will affirmatively advance competition, thereby benefiting the public interest.<sup>138</sup>

## VI. CONCLUSION

46. We find that several significant public interest benefits are likely to result from the proposed transaction. As discussed above, we also find, as several commenters suggest, that the proposed transaction poses certain potential anticompetitive risks. In response to these concerns, the Applicants offered several voluntary commitments. We find that these voluntary commitments adequately address the potential competitive harms, and we therefore make these commitments an express condition of our approval of this merger.

47. We further find that, in light of the commitments made by the Applicants, the potential public interest benefits from the proposed merger, taken as a whole, outweigh any potential public interest harms. We are particularly cognizant of the fact that the Applicants serve primarily rural areas. Furthermore, we recognize that the telecommunications landscape in rural areas appears to be in transition and more changes may result from the American Recovery and Reinvestment Act of 2009,<sup>139</sup> comprehensive reform of the Universal Service Fund, and future transactions. Despite anticipated changes, we stress that this merger is evaluated based on the record before us. It does not set a precedent for future transactions, and we expect that the Applicants will comply with any changes to the law that occur in the future. Accordingly, we find that the transaction, on balance, serves the public interest, convenience and necessity.

## VII. ORDERING CLAUSES

48. Accordingly, having reviewed the applications and the record in this matter, IT IS ORDERED, pursuant to sections 4(i) and (j), 214, 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 214, 309, 310(d), that the applications filed by Embarq and CenturyTel for the transfer of control of the domestic section 214 authorizations set forth in Appendix B and for the transfer of control of licenses and international section 214 authorizations set forth in Appendix B ARE GRANTED.

49. IT IS FURTHER ORDERED, as a condition of this grant and pursuant to section 214(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(c), that Embarq and CenturyTel shall comply with the conditions set forth in Appendix C of this Order, and such compliance shall be enforceable by the Commission.

50. IT IS FURTHER ORDERED that the above grant shall include authority for Embarq Corporation and CenturyTel, Inc. to acquire control of: (a) any license or authorization issued to Embarq Corporation and CenturyTel, Inc. and their subsidiaries during the Commission's consideration of the transfer of control applications or the period required for consummation of the transaction following approval; (b) construction permits held by such licensees that mature into licenses after closing; and (c) applications filed by such licensees and that are pending at the time of consummation of the proposed transfer of control.

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<sup>138</sup> Sprint argues that Applicants must demonstrate that the merger will affirmatively advance competition, rather than merely preserve it. See, e.g., Sprint Reply at 5 (quoting *Verizon Wireless/Alltel Order*, 23 FCC Rcd 11401, para. 28; *SBC/Ameritech Order*, 14 FCC Rcd at 14738, para. 49). Given our finding that the transaction will affirmatively advance competition, as described above, we need not comment on whether such a demonstration is in fact necessary.

<sup>139</sup> American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009).

51. IT IS FURTHER ORDERED, pursuant to section 1.103 of the Commission's rules, 47 C.F.R. § 1.103, that this Memorandum Opinion and Order IS EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## Commenters

<b><u>Comments</u></b>	<b><u>Abbreviation</u></b>
COMPTEL	COMPTEL Comments
New Jersey Division of Rate Counsel	NJ Rate Counsel Comments
NuVox Communications, Inc., NuVox Communications of Missouri, Inc., Socket Telecom, LLC	NuVox/Socket Comments

## Reply Commenters

<b><u>Reply Comments</u></b>	<b><u>Abbreviation</u></b>
Accelerated Data Works, Inc.	Accelerated Reply
Communications Workers of America, International Brotherhood of Electrical Workers <sup>1</sup>	CWA/IBEW Reply
DeltaCom, Inc.	DeltaCom Reply
Embarq Corp., CenturyTel, Inc.	Embarq/CenturyTel Reply
Independent Telephone & Telecommunications Alliance	ITTA Reply
National Association of State Utility Consumer Advocates	NASUCA Reply
New Jersey Division of Rate Counsel	NJ Rate Counsel Reply
Sprint Nextel Corporation	Sprint Reply

<sup>1</sup> See Letter from Debbie Goldman, Telecommunications Policy Director and Jimmy Gurganus, Vice President, Communications Workers of America and Edwin D. Hill, President, International Brotherhood of Electrical Workers to Marlene H. Dortch, Secretary, FCC, WC Docket 08-238 (filed Mar. 5, 2009) (stating that it was no longer necessary to participate in the proceeding).

## APPENDIX B

**List of Licenses and Authorizations  
Subject to Transfer of Control***Domestic Section 214 Authorizations*

<b><u>File No.</u></b>	<b><u>Authorization Holder</u></b>
See WC Docket No. 08-238	Carolina Telephone and Telegraph Company LLC
	Central Telephone Company of Texas
	Central Telephone Company of Virginia
	Central Telephone Company
	CenturyTel Acquisition, LLC
	CenturyTel Broadband Services, LLC
	CenturyTel Broadband Wireless, LLC
	CenturyTel Fiber Company II, LLC
	CenturyTel Long Distance, LLC
	CenturyTel of Adamsville, Inc.
	CenturyTel of Alabama, LLC
	CenturyTel of Arkansas, Inc.
	CenturyTel of Central Arkansas, LLC
	CenturyTel of Central Indiana, Inc.
	CenturyTel of Central Louisiana, LLC
	CenturyTel of Central Wisconsin, LLC
	CenturyTel of Chatham, LLC
	CenturyTel of Chester, Inc.
	CenturyTel of Claiborne, Inc.
	CenturyTel of Colorado, Inc.
	CenturyTel of Cowiche, Inc.
	CenturyTel of Eagle, Inc.
	CenturyTel of East Louisiana, LLC
	CenturyTel of Eastern Oregon, Inc.
	CenturyTel of Evangeline, LLC
	CenturyTel of Fairwater-Brandon-Alto, LLC
	CenturyTel of Forestville, LLC
	CenturyTel of Idaho, Inc.
	CenturyTel of Inter-Island, Inc.
	CenturyTel of Lake Dallas, Inc.
	CenturyTel of Larsen-Readfield, LLC
	CenturyTel of Michigan, Inc.
	CenturyTel of Midwest - Michigan, Inc.
	CenturyTel of Midwest-Wisconsin, LLC
	CenturyTel of Minnesota, Inc.
	CenturyTel of Missouri, LLC
	CenturyTel of Monroe County, LLC
	CenturyTel of Montana, Inc.
	CenturyTel of Mountain Home, Inc.
	CenturyTel of North Louisiana, LLC
	CenturyTel of North Mississippi, Inc.
	CenturyTel of Northern Michigan, Inc.
	CenturyTel of Northern Wisconsin, LLC

CenturyTel of Northwest Arkansas, LLC  
CenturyTel of Northwest Louisiana, Inc.  
CenturyTel of Northwest Wisconsin, LLC  
CenturyTel of Odon, Inc.  
CenturyTel of Ohio, Inc.  
CenturyTel of Ooltewah-Collegedale, Inc.  
CenturyTel of Oregon, Inc.  
CenturyTel of Port Aransas, Inc.  
CenturyTel of Postville, Inc.  
CenturyTel of Redfield, Inc.  
CenturyTel of Ringgold, LLC  
CenturyTel of San Marcos, Inc.  
CenturyTel of South Arkansas, Inc.  
CenturyTel of Southeast Louisiana, LLC  
CenturyTel of Southern Wisconsin, LLC  
CenturyTel of Southwest Louisiana, LLC  
CenturyTel of the Gem State, Inc.  
CenturyTel of the Midwest-Kendall, LLC  
CenturyTel of the Southwest, Inc.  
CenturyTel of Upper Michigan, Inc.  
CenturyTel of Washington, Inc.  
CenturyTel of Wisconsin, LLC  
CenturyTel of Wyoming, Inc.  
CenturyTel Solutions, LLC  
Coastal Communications, Inc.  
Coastal Long Distance Services LLC  
Coastal Utilities, Inc.  
Embarq Communications, Inc.  
Embarq Communications of Virginia, Inc.  
Embarq Florida, Inc.  
Embarq Minnesota, Inc.  
Embarq Missouri, Inc.  
Embarq Payphone Services, Inc.  
Gallatin River Communications, LLC  
Gallatin River Long Distance Solutions, LLC  
Gulf Coast Services, Inc.  
Gulf Communications, LLC  
Gulf Long Distance LLC  
Gulf Telephone Company  
Madison River Communications, LLC  
Madison River Long Distance Solutions LLC  
Mehtel Long Distance Solutions LLC  
Mehtel, Inc.  
Spectra Communications Group, LLC  
Telephone USA of Wisconsin, LLC  
United Telephone Company of Eastern Kansas  
United Telephone Company of Indiana, Inc.  
United Telephone Company of Kansas  
United Telephone Company of New Jersey, Inc.  
United Telephone Company of Ohio  
United Telephone Company of Pennsylvania LLC

United Telephone Company of Southcentral Kansas  
 United Telephone Company of Texas, Inc.  
 United Telephone Company of the Carolinas LLC  
 United Telephone Company of the Northwest  
 United Telephone Company of the West  
 United Telephone Southeast LLC

***International Section 214 Authorizations***

<b><u>File No.</u></b>	<b><u>Authorization Holder</u></b>	<b><u>Authorization Number</u></b>
ITC-T/C-20081126-00516	Embarq Communications, Inc.	ITC-214-20050816-00337
ITC-T/C-20081126-00517	Embarq Communications of Virginia, Inc.	ITC-214-20050816-00336
ITC-T/C-20090330-00138	CenturyTel Long Distance, LLC	ITC-214-19990224-00099
ITC-T/C-20090330-00139	Coastal Long Distance Services LLC	ITC-214-19930720-00130
ITC-T/C-20090330-00140	Gulf Long Distance LLC	ITC-214-19930622-00106
ITC-T/C-20090330-00141	Madison River Communications Corp	ITC-214-20000706-00385
ITC-T/C-20090330-00142	Madison River Long Distance Solutions LLC	ITC-214-19980820-00614

***Section 310(d) Authorizations***

<b><u>File No.</u></b>	<b><u>Licensee</u></b>	<b><u>Lead Call Sign</u></b>
0003657510	United Telephone Company of Indiana	KN6109
0003663154	United Telephone Company of the Northwest	KOQ78
0003663160	Central Telephone Company of Texas	WLC623
0003663165	United Telephone Southeast LLC	KJH26
0003663168	United Telephone Company of the Carolinas LLC	KIC29
0003663173	Embarq Florida, Inc.	KIB95
0003663174	Carolina Telephone and Telegraph Company LLC	KD53122
0003663176	Embarq Missouri, Inc.	KVI22
0003663178	United Telephone Company of Kansas	WNYU738
0003663179	Central Telephone Company	KPY34
0003663182	United Telephone Company of the West	WBP56
0003663183	Embarq Minnesota, Inc.	KQ5115
0003663187	United Telephone Company of Ohio	KQH49
0003663188	United Telephone Company of Pennsylvania LLC	KNBM625
0003663190	Central Telephone Company of Virginia	KZT930
0003786855	Cascade Autovon Company	KNKH863
0003786963	CenturyTel Broadband Services, LLC	WQGC937
0003786968	CenturyTel Fiber Company II, LLC	WPSR450
0003787027	CenturyTel of Adamsville, Inc.	KNAJ618
0003787075	CenturyTel of Alabama, LLC	WFY653
0003787078	CenturyTel of Arkansas, Inc.	KNKG844
0003787079	CenturyTel of Central Arkansas, LLC	KA53549
0003787082	CenturyTel of Central Indiana, Inc.	WPCK831
0003787083	CenturyTel of Central Louisiana, LLC	KRA982
0003787084	CenturyTel of Claiborne, Inc.	WRM205
0003787085	CenturyTel of Colorado, Inc.	WMQ709
0003787086	CenturyTel of Cowiche, Inc.	WHA647
0003787088	CenturyTel of Eagle, Inc.	KBC96

0003787089	CenturyTel of Eastern Oregon, Inc.	KDJ674
0003787090	CenturyTel of Evangeline, LLC	KZX579
0003787091	CenturyTel of Idaho, Inc.	KNHP406
0003787092	CenturyTel of Inter Island, Inc.	KNKI716
0003787099	CenturyTel of Lake Dallas, Inc.	KB6738
0003787100	CenturyTel of Larsen Readfield, LLC	WNKW579
0003787102	CenturyTel of Michigan, Inc.	KNKS204
0003787104	CenturyTel of Midwest-Michigan, Inc.	KNKS208
0003787669	CenturyTel of Missouri, LLC	KJE503
0003787670	CenturyTel of Montana, Inc.	KPG94
0003787671	CenturyTel of Mountain Home, Inc.	KDK315
0003787673	CenturyTel of Northern Wisconsin, LLC	WNSU421
0003787674	CenturyTel of Northwest Arkansas, LLC	WNSD631
0003787675	CenturyTel of Northwest Wisconsin, LLC	WNDD228
0003787676	CenturyTel of Odon, Inc.	WPCK886
0003787678	CenturyTel of Ohio, Inc.	KKK916
0003787680	CenturyTel of San Marcos, Inc.	KFD427
0003787683	CenturyTel of Southeast Louisiana, LLC	KZX578
0003787684	CenturyTel of Southern Wisconsin, LLC	KNGX448
0003787686	CenturyTel of the Gem State, Inc.	WDZ806
0003787687	CenturyTel of the Midwest-Kendall, LLC	KPRG595
0003787688	CenturyTel of the Midwest-Wisconsin, LLC	KNAZ701
0003787691	CenturyTel of the Southwest, Inc.	KNKG836
0003787692	CenturyTel of Upper Michigan, Inc.	KNKP350
0003787693	CenturyTel of Washington, Inc.	KGN894
0003787695	CenturyTel of Wisconsin, LLC	WPHN901
0003787696	CenturyTel of Wyoming, Inc.	KNKH883
0003787700	CenturyTel Security Systems, Inc.	WPCI524
0003787736	Coastal Utilities, Inc.	KNKK960
0003787737	Gallatin River Communications, LLC	KA6609
0003787740	Gulf Telephone Company	WPTC630
0003787744	Spectra Communications Group, LLC	KNCX720
0003788071	CenturyTel Service Group, LLC	WPJK533
0003788276	Actel, LLC	WPLM449
0003788283	CenturyTel Solutions, LLC	WPLM450
0003788286	CenturyTel Broadband Wireless, LLC	WQGB236
0003788287	CenturyTel Investment of Texas, Inc.	KNLG238

*Earth Station License*

<u>File No.</u>	<u>Authorization Holder</u>	<u>Call Signs</u>
SES-T/C-20090330-00383	CenturyTel Televideo, Inc.	E5214, WY78

## APPENDIX C

### Conditions

The Applicants have offered certain voluntary commitments, enumerated below. Because we find these commitments will serve the public interest, we accept them as conditions of our approval. Unless otherwise specified herein, these commitments are effective as of the Transaction Closing Date, which is defined for these purposes as the date on which the Applicants consummate the proposed transaction approved herein. The commitments described herein shall be null and void if CenturyTel and Embarq do not consummate the proposed transaction, and there is no Transaction Closing Date. Unless otherwise specified herein, these commitments will expire three years from the Transaction Closing Date.

It is not the intent of these commitments to restrict, supersede, or otherwise alter state or local jurisdiction under the Communications Act of 1934, as amended, or over the matters addressed in these commitments, or to limit state authority to adopt rules, regulations, performance monitoring programs, or other policies that are not inconsistent with these commitments.

#### CenturyTel and Embarq Commitments

*For Embarq operating companies, the merged company will maintain substantially the service levels that Embarq has provided for wholesale operations, subject to reasonable and normal allowances for the integration of CenturyTel and Embarq systems.*

- For two years after the Transaction Closing Date, the merged company will maintain service levels for the Embarq operating companies that are comparable to those Embarq wholesale customers experienced pre-merger.
- Orders will be processed in compliance with federal and state law, as well as the terms of applicable interconnection agreements.
- For two years after the Transaction Closing Date, Embarq will continue to produce and make available CLEC service performance reporting via its wholesale website consistent with state commission requirements, except during system integration. Such performance data is available to any requesting CLEC today with respect to its carrier specific data for each respective state. In addition, access to the system and/or performance data will be made available to the FCC upon request.
- For two years after the Transaction Closing Date, the Embarq operating companies will maintain the following service metrics on a quarterly basis, separately for the states of Florida, Nevada, Ohio, North Carolina, Virginia, and all other states in the aggregate:
  - Pre-ordering – average response time to pre-order queries calculated in seconds, which measures the number of seconds from Embarq’s receipt of a query from a CLEC to the time Embarq returns the requested data to the CLEC.
  - Provisioning – average completed interval measured in days, which measures the average number of business days from receipt of a valid, error-free service request to the completion date in the service order entry system for new, move and change service orders, separately for all UNE, resale, and other CLEC services;
  - Repair/Maintenance – customer trouble report rate, which measures the total number of network customer trouble reports received within a calendar month per 100 units/UNEs, separately for all UNE, resale, and other CLEC services;

- Repair/Maintenance – average time to restore (service), which measures the average duration from the receipt of the customer trouble report to the time the trouble is cleared, separately for all UNE, resale, and other CLEC services; and
- Work Center – center responsiveness, which measures the average time it takes Embarq’s work center to answer a call expressed as the percentage of calls that are answered within 20 seconds.
- For the above-described metrics, Embarq will maintain a comparison of actual quarterly results to a benchmark value to be set at the 12-month average results achieved from April 1, 2008 through March 31, 2009. Embarq will maintain service at a level that is no less than one standard deviation from the benchmark value, 90 percent of the time.
- These metrics will be reported manually during system integration and made available to CLECs and the FCC as described above.
- The Applicants will combine each company’s wholesale systems into a single platform for the merged company. To integrate systems, new code must be developed and implemented. It is possible that wholesale customers may experience temporary conversion related issues as systems are converted. The merged company will use best efforts to minimize any potential impacts on wholesale customers.
- A reasonable transition is anticipated whereby the Applicants intend to migrate onto their new systems on a market-by-market basis to facilitate a smooth transition.
- Applicants will notify wholesale customers 30 days in advance of the anticipated integration of wholesale OSS on a market-by-market basis.

*CenturyTel will integrate, and adopt for CenturyTel CLEC orders, the automated Operation Support Systems (“OSS”) of Embarq within fifteen months of the transaction’s close.*

- This condition means that wholesale OSS will be provided through the Embarq companies’ automated IRES and successor EASE system.

*In the interim, CenturyTel will devote additional resources to its existing manual CLEC order processing system to ensure that all local number portability requests are promptly processed.*

- As of April 20, 2009, CenturyTel had already added 36% more employees to the existing 14 employees to handle port orders from carriers, for a total of 19. This number of employees will be maintained during the interim until integration. The merged company will continue to monitor the resources required to meet this commitment and will increase the number of employees necessary to port numbers in four business days and provide a firm order confirmation within one business day for normal levels of orders in compliance with FCC rules, subject to any requests by interconnectors for a later number porting date.
- CenturyTel companies will not limit the number of ports that can be processed.
- All CenturyTel CLEC customers are covered under this commitment.

*Applicants will improve CenturyTel companies' processing of wholesale orders as follows:*

- Local number portability orders will be processed through Embarq OSS within fifteen months of the Transaction Closing Date.
- Provisioning intervals for DS1 loops may be amended, upon request, to include a 9 business day provisioning interval maximum.
- No later than thirty months after the Transaction Closing Date, the CenturyTel companies will provision DS1 loops within 6 business days, 80 percent of the time.
- Within 120 days of the Transaction Closing Date, the merged company will implement and make available to CLECs Embarq's TELRIC-compliant coordinated loop and bulk loop hot cut processes for use with UNE loops, xDSL-capable UNE loops and x-DSL capable UNE subloops offered by Embarq and CenturyTel operating companies.
- Within fifteen months of the Transaction Closing Date, maintenance and repair calls for DS1 or higher UNE services will be answered at the Embarq wholesale services operations center. In addition, the merged company will provide dedicated resources to handle wholesale maintenance and repair calls.
- When a number is ported from CenturyTel, E-911 records will be unlocked at the time of porting. Trouble reports involving locked E-911 records will be addressed within 24 hours.

*The Applicants are willing to negotiate multiple interconnection contracts in a state at the same time in most circumstances when such consolidated negotiations will aid in addressing common issues.*

- In many states, the Applicants operate both Rural and Nonrural companies with unique network and cost characteristics. For a period of two years after the Transaction Closing Date, the merged company is willing to negotiate all Rural company interconnection contracts in a state at the same time and all Nonrural company interconnection contracts in a state at the same time. These unified negotiations will include negotiation of common terms, but the company reserves the right during those unified negotiations to ask for individual terms which are unique to each operating company in the state. These individual terms are limited to rates, different physical interconnection points reflecting network configurations, or where unified terms are otherwise technically infeasible.
- Each legal entity will continue to have its own interconnection contract, but these contracts will be negotiated jointly as indicated above. Joint negotiations will substantially ease the burden on interconnecting carriers.
- As the carriers integrate operations, the companies expect that the merged company will naturally gravitate toward consistent terms in a state, albeit separately for Rural and Nonrural operating companies, subject to the necessary unique terms described above.
- No Embarq or CenturyTel legal entity shall terminate or change the conditions of a currently effective interconnection agreement that is in its initial term as of the Transaction Closing Date, including the point of interconnection (POI), for a period of three years after the Transaction Closing Date, unless requested by the interconnecting party.

- No Embarq or CenturyTel legal entity shall terminate or change the conditions of any other effective interconnection agreement, including the POI, for a period of two years after the Transaction Closing Date, unless requested by the interconnecting party. This commitment excludes inactive agreements, which are those agreements that are not used by an interconnector to obtain service or for which a termination notice was sent prior to May 10, 2009.
- A party may use § 252(i) to opt in to an interconnection agreement for no more than the remaining length of that particular agreement pursuant to the previous two bullets. No opt-ins are permitted for inactive agreements.
- Neither the Applicants nor the interconnected carrier waive any rights to seek an amendment to reflect prior and future changes of law.
- During this period, the interconnection agreement may be terminated only via the interconnected carrier's request unless terminated pursuant to the agreement's "default provisions."

*For a period of 12 months after the Transaction Closing Date, the merged company agrees not to file a forbearance petition that seeks to alter the current status of any facility currently offered as a loop or transport UNE under Section 251(c)(3) of the Act or to request any new pricing flexibility for special access services in any market.*

*For three years after the Transaction Closing Date, the CenturyTel and Embarq operating companies will offer to Internet service providers, for their provision of broadband Internet access service to ADSL-capable retail customer premises, ADSL transmission service in their respective territories that is functionally the same as the services they offered as of the Transaction Closing Date. Each local operating company's wholesale offering will be at a price not greater than its retail price in the same state for ADSL service that is separately purchased by customers who also subscribe to that local operating company's local telephone service.*

- An ADSL transmission service shall be considered "functionally the same" as the service the CenturyTel or Embarq local operating company offered within its individual local operating company territory as of the Transaction Closing Date if the ADSL transmission service relies on ATM transport from the DSLAM (or equivalent device) to the interface with the Internet service provider, and provides a maximum asymmetrical downstream speed of up to 3.0 Mbps, where available (the "Broadband ADSL Transmission Service").
- Nothing in this commitment shall require any CenturyTel or Embarq local operating company to serve any geographic areas it currently does not serve with Broadband ADSL Transmission Service or to provide Internet service providers with broadband Internet access transmission technology that was not offered by that local operating company to such providers in its operating company territory as of the Transaction Closing Date.

*The merged company expects to make substantial additional investment in broadband services. The merged company will offer retail broadband Internet access service to 100 percent of its broadband eligible access lines within three years of the Transaction Closing Date.*

- To meet this commitment the merged company will make available retail broadband Internet access service with a download speed of 768 kbps to 90 percent of its broadband eligible access lines using wireline technologies within three years of the Transaction Closing Date. The merged company will make available retail broadband Internet access service in accordance with the FCC's current definition of broadband to the remaining broadband eligible access lines using alternative technologies and operating arrangements, including but not limited to satellite and terrestrial wireless broadband technologies.
- In addition, the merged company will make available retail broadband Internet access service with a download speed of (1) 1.5 Mbps to 87% of the broadband eligible access lines within two years of the Transaction Closing Date and (2) 3 Mbps to 75% of broadband eligible access lines within one year of the Transaction Closing Date, 78% of broadband eligible lines within two years of the Transaction Closing Date, and 80% of broadband eligible lines within three years of the Transaction Closing Date.
- Broadband eligible access lines are defined as retail single-line residential and single-line business access lines.

**STATEMENT OF  
ACTING CHAIRMAN MICHAEL J. COPPS**

RE: *Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, WC Docket No. 08-238

Today, we consider the merger of CenturyTel and Embarq—two wireline telecommunications companies operating in largely rural areas. A key question presented by the proposed transaction is: will rural America fare better or worse as a result of this transaction? Having looked at both the potential benefits and the potential harms that could result from this merger, I find that the scale tips in favor of permitting it to proceed.

As one example, I believe that rural consumers and wholesale customers will benefit from the merged entity's commitment to maintain service levels consistent with the better of the management and operating practices of the pre-merger companies. The service levels that Embarq has provided for wholesale operations will be maintained and, with the adoption of Embarq's Operation Support Systems by CenturyTel, the newly merged company will be wholly modernized in its order processing. In addition, the merged company will improve specific practices, including local number portability order processing, and will streamline interconnection agreement negotiations.

A major focus here is broadband and making sure that every corner of the country has high-speed, value-laden technology and service. I believe that the steps which the applicants make toward realization of this objective will move us in the right direction. As a result, the merged company will provide consumers in its territory with services they may not have seen before and had not expected to see in the near future.

This particular commitment goes significantly beyond the commitments of previous mergers, but it should not be construed as ideal. It should be regarded by no one as a standard or indicative of what to expect from the Commission when it considers future mergers or, for that matter, the national broadband plan that the Commission is currently pursuing. Our country is woefully behind many others in delivering real broadband to our citizens and, going forward, will have to raise its aspirations and expectations appreciably. Consumers, businesses, innovators and all of us as citizens should expect much more from national broadband policy than we have seen in recent years. Fortunately, we now, finally, have a genuine national commitment to get the job done.

I thank the Commission staff, the applicants, stakeholders and other concerned parties, and my Commission colleagues who put in significant time and effort to make sure that this transaction is consistent with the needs of rural America and, more generally, the public interest.

**STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN**

RE: *Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, WC Docket No. 08-238

I am pleased to support the merger of Embarq and CenturyTel with a key set of pro-consumer, voluntary, enforceable commitments. These commitments tip the public interest balance toward approval because they address the concerns raised in the record that the combination will harm competition.

The parties have agreed to measures that are essential to ensure the merger is in the public interest. I am particularly pleased by the commitment to bring broadband at speeds of at least 3 Mbps to at least 80 percent of their combined region, which is mostly rural, within three years, and 87 percent at 1.5 Mbps within two years, along with strong commitments to the remainder of its combined territory. These buildout commitments go far toward bringing broadband and all its economic opportunities to those the company will serve in rural America.

Further, the combined company will reduce competitors' costs of negotiating interconnection agreements by using template contracts and granting more opt-in rights. The combined company will also use pre-merger "best practices" to ensure that the new company's wholesale operations improve upon – not simply combine – legacy systems. The record is heavy with complaints that CenturyTel's largely manual OSS and number porting processes thwart competition. Today's commitments will bring Embarq's automated processes to the CenturyTel region.

Finally, I am especially pleased that the parties have agreed to additional commitments on key wholesale products. The parties have agreed to make their retail ADSL offerings available on a wholesale basis at prices at or below retail, thereby addressing a major competitive concern. The parties have also agreed for 12 months to not seek either forbearance for UNE loops and transport, nor to seek pricing flexibility for special access throughout their combined region. These commitments ensure a measure of stability for competitors and consumers alike.

With these commitments, today's action is a win for consumers that would not have happened without Chairman Copps leading from the top the type of merger review that has been missing from the Commission for quite a while now. I also want to thank the Wireline Competition Bureau for the detailed analysis that made the quality of this item and the voluntary commitments possible.

**STATEMENT OF  
COMMISSIONER ROBERT M. McDOWELL**

RE: *Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, WC  
Docket No. 08-238

I am pleased to support this merger and look forward to the consumer benefits that will result from the combination of Embarq and CenturyTel. The merger will benefit consumers in many ways, including creating synergies that will spur network investment and speeding the roll-out of broadband and other advanced services throughout the combined entity's service area.

I am, however, concerned by the nature of some of the conditions that are attached to this merger. I have repeatedly stated, and our precedent requires, that conditions should be narrowly-tailored to remedy only merger-specific harms, not to implement policies that are better addressed in a rulemaking of general applicability.

Finally, as we work to reform FCC processes going forward, I hope that the Commission will endeavor to meet its 180-day "shot clock" for merger reviews more consistently.