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April 15, 2009

Oregon Public Utility Commission  
Attn: Filing Center  
550 Capital St, NE #215  
Salem, OR 97308-2148

Re: UM 1416; Joint Comments of CenturyTel and Embarq on Proposed Conditions

Dear Commission,

Enclosed for filing are an original and three copies of the Joint Comments of CenturyTel, Inc. and Embarq Corporation on the proposed merger conditions sent out by Judge Arlow on April 10, 2009.

If you have any questions regarding this filing, please don't hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Charles L. Best", with a long horizontal line extending to the right.

Charles L. Best

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**BEFORE THE PUBLIC UTILITY COMMISSION OF**

**OREGON**

UM 1416

In the Matter of

EMBARQ CORPORATION and  
CENTURYTEL, INC.

Joint Application for Approval of Merger  
between the two companies and their  
regulated subsidiaries

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Joint Comments of CenturyTel, Inc.  
and Embarq Corporation on ALJ  
Memo and Proposed Conditions

Pursuant to the e-mail Memorandum from the Administrative Law Judge (“ALJ”) dated April 10, 2009, CenturyTel, Inc. and Embarq Corporation (“Applicants”) provide the following Joint Comments on the proposed conditions attached to that Memorandum.

- 1. CenturyTel shall provide the Commission access to all books of account, as well as, all documents, data, and records that pertain to the merger of the two companies.

**Applicants’ Comments:** None.

- 2. The Commission reserves the right to review, for reasonableness, all financial aspects of this transaction in any rate proceeding or earnings review under an alternative form of regulation.

**Applicants’ comments:** None

3. The Applicants shall immediately notify the Commission of any substantive changes to the merger terms and conditions from those set forth in their application that: (1) are planned to, or in fact do occur while a Commission order approving the merger is pending, or (2) occur before the merger is closed, but after the Commission issues its order approving the merger. The Applicants must also submit a supplemental application for an amended Commission order in this docket if the merger conditions and terms change as set forth in this condition.

**Applicants' comments:** None

4. CenturyTel shall commit to the following and submit any necessary filings to effect such changes at the appropriate time:
  - a. Post-Merger, CenturyTel will maintain an organizational structure that includes the three regulated ILECs in Oregon (no change from current certification) - United Telephone Company of the Northwest (UTNW) dba Embarq, CenturyTel of Oregon, Inc., and CenturyTel of Eastern Oregon, Inc., both dba CenturyTel (Operating Companies). Any change in certification will require the proper Commission filings.

**Applicants' comments:** None

- b. The merger will be transparent to the Operating Companies' Oregon regulated retail customers. Immediately after the merger, the carrier name on all applicable retail customer bills will remain unchanged.

**Applicants' comments:** None

- c. The Company will keep Staff apprised of organizational structure changes as they occur.

**Applicants' comments:** None

- d. No changes will be made by CenturyTel or its Operating Companies to any rate, rule or regulation currently included in the Operating Companies' access tariff, retail tariff or any retail price list without properly filing a rate application.

**Applicants' comments:** None

- e. If an Operating Company files a general rate proceeding in Oregon, it will file based upon its own individual regulated telecommunications utility rate base, earnings requirement, rates, etc.

**Applicants' comments:** None

- f. An Operating Company will not advocate in any general rate case proceeding for a higher cost of capital as compared to what its cost of capital would have been, using appropriate financial analysis absent the merger.

**Applicants' comments:** Applicants propose the condition be limited to three years. It would be impractical to estimate what an Operating Company's cost of capital would have been on a non-merged basis more

than three years after the fact. Applicants propose this condition be limited to only three years before a waiver request can be filed. Please see the proposed changes to subsection (s) below.

- g. CenturyTel will not seek recovery of one-time merger, branding, or transaction costs in rate proceedings in Oregon.

**Applicants' comments:** Applicants would like to clarify that this condition only applies to "intrastate regulated rate proceedings."

Applicants also propose this condition be limited to three years before a waiver can be requested. Please see the proposed changes to subsection (s) below.

- h. All existing agreements with other carriers and customers will continue in force and will be honored by the Company.

**Applicants' comments:** None

- i. Under the current operating structure, financial reporting will remain unchanged, i.e., two Form-Os for the CenturyTel, Inc. ILECs, one Form-O for the Embarq ILEC, one Form-I for the CenturyTel, Inc. ILECs, and one Form-I for the Embarq ILEC.

**Applicants' comments:** None

- j. The Operating Companies of the merged company will limit payments of dividends on common equity distributed to any company (including affiliates and subsidiaries of Century Tel) holding shares of the operating companies in any year to an amount not more than 50% of net income in any prior fiscal year. The Operating Companies will limit payment of dividends on common equity in any quarter to not more than one-fourth of the annual limitation amount.

The average market value of CenturyTel's common equity is less than 50 percent of the book value of CenturyTel's net debt. The average market value of CenturyTel's common equity will be calculated using the average stock price and the average number of fully diluted shares outstanding during the preceding 120 calendar days. As used in this section, "net debt" means total long-term debt less cash. This test will be calculated prior to the determination of each declaration of dividend, whether quarterly, special, or other.

**Applicants' comments:** Applicants urge the Commission to use the original language proposed in Staff's recommendation. First, it appears that the reference to the triggering event description for this condition ("...at any time when the condition in subsection 4j(i) exists. . .") has been inadvertently omitted from this most recent version. Without Staff's original language from paragraph 4(j) and reference to the triggering event in 4(j)(i) of the original Staff's Report, the condition as drafted just becomes an unwarranted limitation on dividends without any justification.

It is critical that CenturyTel's dividend not be impacted without a triggering event. Second, Staff's original language appropriately limited the condition to a three-year period. The Applicants would be agreeable to language that indicates that should the merged company experience a triggering event, the restriction would remain in place until the merged company obtained a waiver of the condition from the Commission. Applicants also request that the end of the first sentence of both this and Staff's version of the condition be revised to state: "...not more than 50% of net income in *the preceding fiscal year*." Finally, reference to this condition should be removed from subsection (s) below as it should exist as a stand alone provision in 4(j). Given the financial stability of both Applicants, this compromise should adequately allay any concerns the Commission has regarding the merged company's dividend policy. The Applicants propose the condition be modified and written as follows:

- j. For the period of three years after the merger, at any time when the condition in subsection 4j(i) exists, the Operating Companies of the merged company will limit payments of dividends on common equity distributed to any company (including affiliates and subsidiaries of Century Tel) holding shares of the operating companies in any year to an amount not more than 50% of net income in the preceding fiscal year. The Operating Companies will limit payment of dividends on common equity in any quarter,

if dividends are distributed quarterly, to not more than one-fourth of the annual limitation amount.

(i) The average market value of CenturyTel's common equity is less than 50 percent of the book value of CenturyTel's net debt. The average market value of CenturyTel's common equity will be calculated using the average stock price and the average number of fully-diluted shares outstanding during the preceding 120 calendar days. As used in this section, "net debt" means total long-term debt less cash. This test will be calculated prior to the determination of each declaration of dividend, whether quarterly, special, or other.

k. Neither CenturyTel nor the Operating Companies of the merged company will pledge the assets of the Operating Companies to secure any borrowing undertaken by CenturyTel (including affiliates and subsidiaries other than the operating companies) without approval of the Commission.

**Applicants' comments:** None

l. The acquisition premium paid by CenturyTel Inc. for Embarq Corporation will be excluded from the utility accounts of the operating companies. Further, CenturyTel commits that it will not propose to recover the acquisition premium in Oregon retail and access rates.



**Applicants' comments:** The Applicants wish to clarify that the condition is intended to apply only to "Oregon intrastate regulated retail and access rates."

- m. CenturyTel will notify the Commission if goodwill impairment (fair value less than book value) exceeds 20 percent in any annual testing year.

**Applicants' comments:** This restriction should only have a three year limit before a waiver can be requested. Please see Applicants' comments on subsection (s) below.

- n. Service Quality reporting for the Operating Companies, both content and frequency, will remain unchanged. However, pursuant to Commission Order No. 08-205, the Commission continues to reserve the right to revoke CenturyTel's current reporting exemption should a Staff investigation reveal poor CenturyTel network performance.

**Applicants' comments:** None

- o. CenturyTel will hold customers harmless for increases in management costs incurred by the operating companies that result from the merger.

**Applicants' comments:** This is also governed by the time limitation found in subsection (s) below. Applicants believe three years is an appropriate limit before a waiver can be requested.

p. The Operating Companies will comply with all applicable Commission statutes and regulations regarding affiliated interest transactions, including timely filings of applications and reports. To the extent affiliated interest changes do occur, the Company will make the appropriate affiliated interest filings pursuant to ORS 759.390.

**Applicants' comments:** None

q. The certificates of all CenturyTel entities certified as Competitive Providers in Oregon will remain in effect and unchanged as of the date the merger is effective. Thereafter, CenturyTel will report any changes affecting those certificates in compliance with applicable Commission statutes and regulations.

**Applicants' comments:** None

r. The Commitments may be expanded or modified as a result of regulatory decisions in other states, including decisions based upon settlements, that impose conditions or commitments related to this merger proposal. The Commission may adopt any commitments or conditions that are related to addressing harms of this transaction to Oregon customers, including commitments and conditions that are imposed or agreed to after the Commission enters its order in this docket. This Commitment does not apply to conditions designed to ensure another state's net benefits standard

is met. To facilitate a prompt decision from the Commission under this section, CenturyTel will commit to the following process:

- Within five calendar days after a stipulation with new or amended commitments is filed by CenturyTel and Embarq Corporation with a commission in another state jurisdiction, CenturyTel and Embarq Corporation will send a copy of the stipulation and commitments to the Parties.
- Within five calendar days after a commission in another state jurisdiction issues an order concerning CenturyTel and Embarq Corporation's merger proposal that imposes new or modified commitments or conditions, that order, together with all commitments and conditions of any type agreed to by CenturyTel and Embarq Corporation or ordered by the commission in such other state, will be filed with the Commission and served on all parties to this docket.
- Within ten calendar days after the last such filing from the other states ("Final Filing"), any party to the docket wishing to do so shall file with the Commission its response, including its position as to whether any of the covenants, commitments and conditions from the other jurisdictions (without modification of the language thereof except such non-substantive changes as are necessary to make the commitment or condition applicable to Oregon) should be adopted in Oregon.
- Within five calendar days after any such response filing, any party to the docket may file a reply with the Commission. If the 5th calendar

day falls on Saturday, Sunday, or a holiday, the next business day will be considered as the 5th day.

**Applicants' comments:** The Applicants oppose the imposition of condition 4(r) for a number of reasons:

1. The proposed condition is unnecessary due to:
  - a. The protections already given to customers under the conditions originally proposed by Staff; and
  - b. The fact that the Commission may reconsider any order it issues pursuant to ORS 756.568.
2. The proposed condition also appears to be inconsistent with the statutory process for amending orders set forth by the legislature in ORS 756.568. Before an amended order can be issued, the statute requires the Commission to initiate the amendment process and also to provide Applicants with an “opportunity to be heard as provided in ORS 756.500 to 756.610.” As drafted, the proposed condition places the burden of initiating the amendment process on the Applicants and eliminates the opportunity to be heard as described by the statute.
3. Applicants are also concerned that an order with this condition might not meet the statutory definition of a “final order.” ORS 183.31(6)(b) provides:

Final order means final agency action expressed in writing. ‘Final order’ does not include any tentative or preliminary agency declaration or statement that:  
(A) Precedes final agency action; or  
(B) Does not preclude further agency consideration of the subject matter of the statement or declaration.

If the Commission was notified of an order from another state and amended its order in this case to adopt portions of the other state's order, there is reason to doubt the finality of the original order since by its terms, it contemplated being amended or superseded.

In the event the Commission determines the proposed condition should nonetheless be imposed, Applicants ability to comply with such a condition would be improved greatly if condition 4(r) is amended as follows:

- r. The Conditions may be expanded or modified as a result of regulatory decisions in other states, including decisions based upon settlements, that impose conditions or commitments related to this merger proposal. The Commission may adopt any commitments or conditions from other states that are adopted after the final order in UM 1416 is issued that are related to addressing harms of this transaction if:
1. The Commission or Staff had not previously identified the harm to Oregon ratepayers; or
  2. The commitments or conditions in a final order of another state are more effective at preventing a harm previously identified by the Commission or Staff; and
  3. The commitment or condition does not result in the combined company being required to provide a "net benefit."
- Should new commitments or conditions meeting the requirements of subsections 1 – 3 of this paragraph occur, CenturyTel will commit to

the following process to facilitate a prompt decision from the Commission under this section:

- Within fifteen (15) calendar days after a final order adopting a new condition or stipulation with new or amended commitments by a commission in another state jurisdiction, CenturyTel and Embarq Corporation will send a copy of the stipulation and commitment to Oregon Commission staff.
  - CenturyTel and Embarq will notify the Commission that they have received the last such final order from other states adopting new conditions, stipulations or commitments (the “Final Filing”) within fifteen (15) calendar days of receipt and send it to Staff.
  - Within ten (10) calendar days after receipt of the Final Filing, the Commission will notify the parties in this case of the event and schedule a prehearing conference at its earliest opportunity.
- s. CenturyTel may seek a waiver of Conditions (f), (g), (j), (m), and (o) such that any or all of these conditions are no longer in force subsequent to five years from the date of this order.

**Applicants’ comments:** Condition 4 (j) should be excluded from this subsection given the changes proposed above. Applicants further believe that imposition of conditions 4(f), (g), (m) and (o) for five years is longer than necessary given the compliance records of both companies. Three years is a more appropriate time limit for a waiver request, and the Commission can always examine the existing circumstances and

effectively extend any of the conditions by denying the merged company's request.

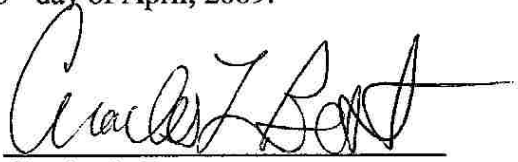
- t. Beginning with the first of the month following six months after close of the transaction, and for three subsequent six-month periods, Embarq shall file with this commission a report describing:
  1. substantive activities undertaken relating to integrating CenturyTel operations with Embarq, as well as achieving synergies made available as a result of this transaction;
  2. costs and projected savings of each such respective activity;
  3. organizational and staff force changes in Oregon operations; and,
  4. impacts on Oregon operations and customers.

This reporting requirement shall end with the submission of the fourth report unless otherwise directed by the Commission.

**Applicants' comments:** Applicants oppose this condition in its current form. The reporting detail and management oversight sought is far more than the Commission should want or need. Applicants instead propose that this condition be modified to require a report biannually on major milestone activities with regard to integration efforts that could potentially impact customers. The Commission's existing service quality rules provide all the tools necessary for the Commission to deal with any customer impacting issues arising out of the merger. Furthermore, since

many of the “synergies” will occur at the corporate level, it will not be possible for the combined company to identify state-specific cost savings. The Commission’s existing authority to review rates gives it the appropriate opportunity to capture merger cost savings via that process. Finally, Applicants are uncertain why the proposed condition specifies Embarq as responsible for filing requested report as CenturyTel is more likely to have the information sought.

Respectfully submitted this 15<sup>th</sup> day of April, 2009.

By:   
Charles L. Best  
Attorney for CenturyTel, Inc.

and

David White  
Tre Hendricks  
Attorneys for Embarq Corporation



## CERTIFICATE OF SERVICE

I certify that on April 15, 2009, I served the foregoing document upon all parties of record in Docket No.UM 1416 by email and for parties who have not waived paper service, by U.S. mail, postage prepaid.

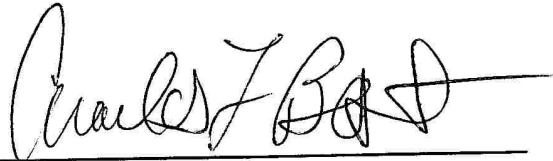
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