

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Joint Application of	)	DOCKET UT-082119
)	
EMBARQ CORPORATION AND	)	ORDER 05
CENTURYTEL, INC.)	
	)	FINAL ORDER APPROVING AND
For Approval of Transfer of Control of	)	ADOPTING SETTLEMENT
United Telephone Company of the	)	AGREEMENT; AUTHORIZING
Northwest d/b/a Embarq and Embarq	)	TRANSACTION SUBJECT TO
Communications, Inc.	)	CONDITIONS; RESCINDING
	)	ORDER 03; APPROVING AND
	)	REJECTING SIDE-AGREEMENTS;
	)	GRANTING AND DENYING
	)	PENDING REQUESTS FOR
	)	LEAVE TO WITHDRAW;
.....	)	DISMISSING PARTY

1 *Synopsis: The Commission approves and adopts subject to conditions, a Settlement Agreement filed by the Applicants (Embarq Corporation and CenturyTel, Inc.), Public Counsel and Staff on April 22, 2009, in resolution of the issues in this proceeding. The Commission authorizes the proposed merger between Embarq Corporation and CenturyTel, Inc., subject to the terms of the Settlement Agreement and the additional reporting requirements imposed by this Order.*

SUMMARY

2 **PROCEEDINGS:** On November 24, 2008, Embarq Corporation (Embarq) and CenturyTel, Inc. (CenturyTel)¹ filed a joint application with the Washington Utilities and Transportation Commission (Commission) for expedited approval of an indirect transfer of control of Embarq’s regulated Washington State operating subsidiaries to CenturyTel. Following the Applicants’ waiver of consideration at a regularly scheduled open meeting, the Commission convened a prehearing conference at Olympia, Washington on January 5, 2009, before Administrative Law Judge Dennis J. Moss. The Commission, among other things, granted petitions to intervene by Comcast Phone of Washington, LLC (Comcast), Level 3 Communications, LLC (Level 3), and the International Brotherhood of Electrical Workers Local 89 (IBEW).

¹ In this Order, we refer collectively to Embarq and CenturyTel as “Applicants.”

Comcast and Level 3 are CLECs (competitive local exchange carriers) that do business in Washington. IBEW is a labor union. The Commission established a procedural schedule in Order 01.

- 3 The intervenors, prior to the scheduled date for filing response testimony, each sought leave to withdraw from the proceeding. Although not filed for approval as required under the Commission's procedural rules, it came to light that the Applicants had made certain concessions in individual "side-agreements" in exchange for the intervenors' agreements to withdraw.
- 4 On April 13, 2009, two days prior to the previously scheduled evidentiary hearing, the parties that remained active in this proceeding—Applicants, Staff and Public Counsel—informally notified the Commission that they had reached a global settlement in principle. The Commission suspended the procedural schedule in response to these parties' request.
- 5 Applicants, Staff and Public Counsel filed their Settlement Agreement on April 22, 2009. The Commission conducted a hearing on May 19, 2009, before Chairman Jeffrey D. Goltz and Commissioner Patrick Oshie, assisted by Judge Moss.
- 6 **PARTY REPRESENTATIVES:** Charles L. Best, Attorney at Law, Portland, Oregon, represented CenturyTel. William E. Hendricks III, Embarq in-house counsel, Hood River, Oregon, represented his employer.
- 7 Arthur A. Butler, Ater Wynne LLP, Seattle, Washington, represented Comcast Phone of Washington, LLC, d/b/a Comcast Digital Phone. Mr. Butler also appeared at the settlement hearing for Level 3. Gregory L. Rogers, Senior Corporate Counsel, Broomfield, Colorado, also represented Level 3 Communications, LLC in this proceeding. Scott J. Rubin, attorney, Bloomsburg, Pennsylvania, represented the International Brotherhood of Electrical Workers Local 89.
- 8 Sarah Shifley, Assistant Attorney General, Seattle, Washington, represented the Public Counsel Section of the Washington Office of Attorney General (Public Counsel). Jonathon Thompson, Assistant Attorney General, Olympia, Washington, represented the Commission's regulatory staff (Commission Staff or Staff).²

² In formal proceedings, such as this, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as other parties to the proceeding. There is an "ex parte wall" separating the Commissioners, the presiding

- 9 **COMMISSION DETERMINATIONS:** The Commission approves and adopts the Settlement Agreement filed by Applicants, Public Counsel and Staff on April 22, 2009, subject to conditions, in resolution of the issues in this proceeding. The Commission approves the Application of Embarq Corporation and CenturyTel, Inc. for Approval of Transfer of Control of United Telephone Company of the Northwest d/b/a Embarq and Embarq Communications, Inc., subject to the conditions set forth in the Settlement agreement and the conditions of this Order.
- 10 The Commission approves the side-agreement between Applicants and Level 3 and the side-agreement between Applicants and Comcast, subject to the condition the Applicants will make available to any person requesting similar treatment the terms and conditions included in their agreements with Level 3 and Comcast. Pursuant to the terms of their agreements, Level 3 and Comcast are granted leave to withdraw. The Commission rescinds Order 03, which is superseded by the terms of this Order.
- 11 The Commission rejects the side-agreement between Applicants and IBEW, and denies IBEW's request for leave to withdraw. IBEW's side-agreement demonstrates that the union had no substantial interest in the subject matter of this proceeding, despite its representations to the contrary in its petition to intervene and at prehearing. IBEW's participation did not promote the public interest. The Commission, on its own motion, dismisses IBEW as a party.

MEMORANDUM

I. Background and Procedural History

- 12 CenturyTel and Embarq, on November 24, 2008, filed jointly with the Commission their application for approval of what they characterize as "an indirect transfer of control of Embarq's regulated Washington State operating subsidiaries to CenturyTel." In more straightforward terms, they sought approval of a merger between the two holding companies, including various operating affiliates and subsidiaries, some of which are subject to the Commission's jurisdiction. CenturyTel will be the surviving holding company following the merger. We will refer to the

combined companies as “New CenturyTel.”³ Commission review of the merger is governed under RCW 80.12 and WAC 480-143, the statutes and rules concerning jurisdictional transfers of property.⁴

13 CenturyTel, headquartered in Monroe, Louisiana, currently is a multi-state provider of a wide range of communications services. It is a holding company that conducts its business in 25 states principally through operating subsidiaries. CenturyTel provides service to approximately 2.1 million access lines and 600,000 broadband connections via a network infrastructure that includes more than 37,000 miles of fiber capable of providing high speed internet to over 89 percent of its access lines. The company has approximately 6500 employees and annual sales of approximately \$2.6 billion. The CenturyTel operating company subsidiaries regulated by the Commission are CenturyTel of Washington, Inc., CenturyTel of Inter Island, Inc., and CenturyTel of Cowiche, Inc. These are indirect subsidiaries of CenturyTel operating as ILECs (incumbent local exchange carriers) in Washington. CenturyTel provides service to approximately 149,225 access lines throughout the state of Washington.⁵

14 Embarq Corporation currently is a Delaware corporation headquartered in Overland Park, Kansas. It is a holding Company that conducts its business operations principally through subsidiaries offering a variety of communications services. As of September 30, 2008, Embarq had ILEC operations in 18 states, providing local exchange service to nearly 5.9 million telephone access lines and broadband service to 1.4 million subscribers. Embarq offers a portfolio of services that includes local and long distance home phone service, high-speed internet access, and satellite video from DISH Network. The Embarq Corporation operating company subsidiaries

³ This descriptive reference is used only to promote clarity in this Order. So far as the Commission is aware, there is no corporate entity that actually bears this name.

⁴ The Commission has previously discussed in detail the breadth of its jurisdiction in the context of mergers and acquisitions involving both telecommunications and energy companies. *See, e.g., In re Application of US West, Inc., and Qwest Communications International, Inc., for an Order Disclaiming Jurisdiction or in the Alternative Approving the US West, Inc. – Qwest Communications International, Inc., Merger*, Docket No. UT-991358, Ninth Supp. Order (June 19, 2000); *In the Matter of the Application of GTE Corporation and Bell Atlantic Corporation for an Order Disclaiming Jurisdiction or, in the Alternative, Approving the GTE Corporation–Bell Atlantic Corporation Merger*, Docket No. UT-981367, Fourth Supp. Order (December 16, 1999); *In the Matter of the Application of PacifiCorp and ScottishPower PLC for an Order (1) Disclaiming Jurisdiction or, in the Alternative, Authorizing the Acquisition of Control of PacifiCorp by ScottishPower and (2) Affirming Compliance with RCW 80.08.040 for PacifiCorp's Issuance of Stock in Connection with the Transaction*, Docket No. UE-981627, Second Supp. Order (March 16, 1999).

⁵ Exhibit GCB-1T (Bailey) at 4:11-23.

regulated by the Commission are United Telephone of the Northwest (UTNW) and Embarq Communications Inc. (ECI). UTNW is an ILEC serving approximately 73,000 access lines in Washington.⁶

15 On January 2, 2009, shortly before the initial prehearing conference on January 5, 2009, Applicants filed their direct testimony. They contended through the testimony of three witnesses that the Commission should approve the merger without conditions. Applicants asserted that the proposed transaction would not harm the public interest and, in fact, would provide benefits to customers.

16 The Commission set March 4, 2009, as the filing date for response testimony by Staff, Public Counsel, and any intervenor who wished to submit evidence. Before that deadline, each of the three intervenors sought leave to withdraw from the proceeding. As discussed separately below, the intervenors entered into private side-agreements with the Applicants, gaining commitments of various sorts in exchange for their agreements to withdraw. Although two of the intervenors' requests for leave to withdraw remained pending at the time, none of the intervenors filed response testimony on March 4, 2009.⁷ Staff and Public Counsel, however, filed testimony. Their witnesses contended that, because there would be some risk of harm if the merger were to take place, the proposed transaction would be consistent with the public interest only if certain conditions were imposed.

17 Staff recommended the following five conditions through Mr. Weinman:

- That certain "ring fence restrictions and reporting requirements" be applied to Embarq and the CenturyTel LECs in Washington. (This essentially means slight modifications to the conditions imposed in connection with the Commission's approval during March 2006 of Sprint's spin-off of Embarq in Docket

⁶ Exhibit TRR-1T (Roycroft) at 6:12-26 (quoting from *Application to Transfer of Control of Domestic Authorizations Held by Embarq Corporation to CenturyTel, Inc. Under Section 214 of the Communications Act*, Federal Communications Commission, WC Docket 08-238, November 25, 2008, pp. 2 and 5).

⁷ The Commission granted Level 3's request prior to it being disclosed that the company had entered into a side-agreement with the Applicants. Considering the subsequent filing of the side-agreement, we reconsider Order 03 below.

UT-051291, and extension of those requirements to CenturyTel's LEC subsidiaries).⁸

- Embarq and the CenturyTel LECs must file results of operations with proper restating and pro forma adjustments no later than five years from the date of any order approving the transaction.
- Embarq and the CenturyTel LECs must not seek to recover merger costs in rates. If Embarq and the CenturyTel LECs are being allocated merger, transaction or branding costs, those companies must make a quarterly report to Staff of the accounts and amounts of such expenditures recorded in each company.
- Embarq and the CenturyTel LECs must provide additional reporting regarding changes in affiliated interest transactions during the five year period the other conditions will be in effect.
- Embarq and the CenturyTel LECs must offer a customer service guarantee modeled after Embarq's Washington service guarantee and provide additional business office and repair answering system reporting.

18 Similar to Staff, Public Counsel's witness, Dr. Roycroft argued that there would be some harm should the merger be undertaken as proposed, which could be mitigated if certain conditions were imposed. He recommended that the conditions imposed in connection with Sprint's spin-off of Embarq be required here and expanded to encompass the combined company. Dr. Roycroft also contended that there should be conditions to monitor and ensure the sharing of any synergy savings that result from the merger. His analysis suggests \$26.4 million in synergies associated with Washington operations through 2012 as a reasonable expectation. He recommended that one-half of these synergy savings be flowed through to ratepayers in the form of rate credits on monthly bills. Dr. Roycroft also proposed a condition to ensure that any merger, branding or transaction costs are not recovered in rates.

19 Dr. Roycroft recommended that the Applicants be required to file a broadband improvement plan for their Washington state service areas. He stated this was

⁸ *In the Matter of the Request of Sprint Nextel Corporation for an Order Declining to Assert Jurisdiction Over or, in the Alternative, Application of Sprint Nextel Corporation for Approval of the Transfer of Control of United Telephone Company of the Northwest and Sprint Long Distance, Inc. From Sprint Nextel Corporation to LTD Holding Company*, Docket UT-051291, Order 06 Approving and Adopting Settlement Agreement (March 14, 2006).

necessary to improve digital subscriber line availability in Embarq's service areas to achieve a similar level to that currently available in CenturyTel's service territory.⁹ In addition, Dr. Roycroft testified the Commission should require stand-alone DSL service.

20 In addition, Dr. Roycroft recommended conditions regarding:

- Call center and billing system changes.
- Network maintenance and repair.
- Service quality reporting.
- LifeLine programs.
- Marketing of basic telephone service.

21 The Applicants filed their rebuttal testimony on March 18, 2009. Conceding none of the points raised by Staff and Public Counsel, the Applicants' witnesses maintained their position that the Commission should approve the proposed transaction without imposing any conditions.

22 On April 13, 2009, two days prior to the previously scheduled evidentiary hearing, the parties that remained active—Applicants, Staff and Public Counsel—informally notified the Commission that they had reached a global settlement in principle. The Commission suspended the procedural schedule, as requested by these parties. The settling parties filed their Settlement Agreement and Narrative Supporting Settlement Agreement on April 22, 2009. The Settlement Agreement is attached to this Order as Appendix 1 and is incorporated into and made part of this Order by this reference.

23 The Commission conducted its settlement hearing on May 19, 2009. The settling parties stipulated to the admission of all prefiled testimony and exhibits, and to various bench exhibits and exhibits offered in support of the Settlement Agreement. The settling parties made available a panel of witnesses including Mr. Clay Bailey and Ms. Barbara Young for Applicants, Ms. Stephanie Johnson for Public Counsel

⁹ Messrs. Bailey and Gast testified at hearing that DSL service is currently available to 89 percent of CenturyTel customers and 78 percent of Embarq customers.

and Mr. Bill Weinman for Staff. Other witnesses who prefiled testimony were available in the hearing room or by telephone to respond to questions from the Bench.

24 The Commission's authority and responsibility regarding transfers of ownership and control of public service companies are found in RCW 80.12 and WAC 480-143.¹⁰ These statutes require Commission approval whenever a public service company agrees to a change-of-control transaction. The standard governing our review is:

If, upon the examination of any application and accompanying exhibits, or upon a hearing concerning the same, the commission finds the proposed transaction is not consistent with the public interest, it shall deny the application.

25 *WAC 480-143-170*. Applying this legal standard, we turn now to our consideration of the Settlement Agreement and the evidence presented.

II. Discussion and Decisions

A. Transfer of Property

1. Settlement Agreement

26 The Settlement Agreement includes conditions related to the following issue areas raised by Public Counsel and Staff in their respective response testimonies:

- Continuation of conditions approved in the Commission's order authorizing the separation of Embarq from Sprint (Separation Order) in 2006.¹¹
- Financial fitness of the merged company.

¹⁰ No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public, and no public service company shall, by any means whatsoever, directly or indirectly, merge or consolidate any of its franchises, properties or facilities with any other public service company, without having secured from the commission an order authorizing it so to do. RCW 80.12.020. Any such sale, lease, assignment, or other disposition, merger or consolidation made without authority of the commission shall be void. RCW 80.12.030.

¹¹ See, *supra*, fn. 8.

- Service guarantees.
- Merger synergies and future treatment of synergy benefits.
- Recovery of merger, branding and transaction costs.
- Customer notice.
- Transfer of long distance customers.
- Broadband service improvement.
- Affiliated interest transactions.
- One-time Lifeline notification; and,
- Milestone reporting.

Section E of the Settlement Agreement sets forth the specific terms, which we summarize below.¹²

- 27 As previously discussed, Staff and Public Counsel advocated that the conditions imposed via the Separation Order be continued as to United as an operating division within the combined companies and extended to CenturyTel. The parties now agree that these conditions will continue to apply to United subject to their expiration under the terms of the Commission-approved settlement agreement in Docket UT-051291, and subject to certain modifications related to service quality and financial protections.
- 28 With regard to the Separation Order's service guarantee, there is no change until CenturyTel and Embarq combine their billing and customer care systems. Once these billing and customer care systems are integrated, the provisions of the Settlement Agreement will take effect and supersede the Separation Order's service guarantee. The new service guarantee will apply to all New CenturyTel ILECs.
- 29 CenturyTel and Embarq agree that for a period of twelve (12) months following the projected date for conversion to the CenturyTel billing and customer care system, the New CenturyTel ILECs will provide bill credits in their service territories based on

¹² To the extent of any inconsistency between the descriptions here and the settlement terms, the language of the Settlement Agreement controls.

the same structure as those currently provided by UTNW under the terms of the settlement agreement approved in the Separation Order. Automatic credits will be provided to customers for each repair and/or installation commitment missed due to reasons within the New CenturyTel ILECs' control. The credit will be \$15 for residential customers and \$25 for basic business customers. The New CenturyTel ILECs must have in effect tariffs providing for these credits by the beginning of the conversion to the CenturyTel billing and customer care system.

- 30 The Separation Order's finance conditions will continue to apply to UTNW and ECI, except that the financial evaluations and restrictions included in the Separation Order's provisions 6ai, 6aai, 6c and 6f will be based on the post-merger combined companies. All of the finance conditions from the Separation Order will apply to UTNW and ECI until their expiration on May 17, 2010. At that time, UTNW and ECI will become subject to the finance conditions contained in the Settlement Agreement. CenturyTel ILECs will be subject to the finance conditions contained in the Settlement Agreement at the close of the merger. The finance conditions for all New CenturyTel ILECs will expire three years after the merger closes.
- 31 The Settlement Agreement further provides that for three years after the close of the merger the New CenturyTel ILECs will limit annual payments of dividends on common equity distributed to New CenturyTel, or any other subsidiary or affiliate of New CenturyTel, to no more than 50 percent of net income in the prior fiscal year at any time when the average market value of CenturyTel's common equity is less than 50 percent of the book value of CenturyTel's net debt.¹³ The New CenturyTel ILECs will limit dividend payments on common equity in any quarter, if dividends are distributed quarterly, to not more than one-fourth of the annual limitation amount.
- 32 The Settlement Agreement also provides that the Merged Company will not pledge the assets of the New CenturyTel ILECs to secure borrowing undertaken by it, or any other subsidiary, without Commission approval.
- 33 Finally, in terms of financial commitments, the Settlement Agreement provides that for three years after the close of the merger, the New CenturyTel ILECs will not

¹³ The average market value of CenturyTel's common equity will be calculated by multiplying the average stock price by the average number of fully-diluted common stock shares outstanding during the preceding 120 calendar day period. 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 dividends by the Merged Company ILECs, whether quarterly, special, or other.

advocate in any general rate case for a higher cost of capital as compared to what its cost of capital would have been absent the merger.

34 Sections 4 and 12 of the Settlement Agreement require the New CenturyTel ILECs to file a petition for an alternative form of regulation (“AFOR”) under RCW 80.36.135, or subsequent AFOR law, within five years after the close of the merger. Section 4 also provides that the New CenturyTel ILECs will not seek to increase stand alone residential local exchange service rates for one year from the merger close date except for occurrence of certain “exogenous events.”¹⁴ Section 12 of the Settlement Agreement preserves the parties’ ability to address any synergy benefits resulting from the merger in any future revenue requirement review or general rate case proceeding before the Commission. Further, CenturyTel and Embarq have agreed to not oppose any effort by Staff and Public Counsel to initiate and conduct an earnings review “consistent with the then prevailing legal requirements applicable to AFORs.”¹⁵

35 Section 5 of the Settlement Agreement provides that CenturyTel and Embarq will not seek to recover any of the merger-related branding and transaction costs in intrastate regulated rates established for the New CenturyTel ILECs. The Applicants have also agreed to account separately for such costs in New CenturyTel’s records.

36 Section 6 of the Settlement Agreement provides that CenturyTel and Embarq will send notices to customers of any names changes relevant to CenturyTel or Embarq. The Applicants also agree to work with Staff and Public Counsel on the specific language to be contained in any required notice.

37 In Section 7, Applicants agree to give 30-day advance notice to customers of any change in their long distance carrier as a consequence of the merger. Further, Applicants agree to waive any primary interexchange carrier (PIC) charge for ninety

¹⁴ “Exogenous Events” are defined as any orders, rules, or other actions, individually or in combination, by a governmental body that have an annual impact of \$1 million or more on either (a) CenturyTel of Washington, Inc., and CenturyTel of Inter Island, Inc., on a combined basis, (b) CenturyTel of Cowiche, Inc., or (c) United. An operating company (or in the case of CenturyTel of Washington, Inc., and CenturyTel of Inter Island, Inc., which utilize a combined revenue requirement) would be entitled to seek recovery of the financial impact of such Exogenous Events during the Stay Out Period in a general rate proceeding as defined by WAC 480-07-505 or in an AFOR. All other rates may be adjusted at any time pursuant to existing statutes and rules or in conjunction with an earnings review.

¹⁵ Settlement Agreement, Section 12.

days if a customer decides to change to a different, unaffiliated, long distance carrier as a result of a merger-related conversion.

- 38 Section 8 of the Settlement Agreement requires that after the merger is completed, UTNW will expand broadband service to an additional 2,200 residential lines over a three year period and provide an annual report to Staff and Public Counsel showing (1) the number of lines enabled through this commitment, (2) the wire centers of the newly enabled lines, (3) the data speed for each upgraded wire center, and (4) the number of lines in each upgraded wire capable of various download speeds.
- 39 Section 9 of the Settlement Agreement “requires” the New CenturyTel ILECs to comply with all applicable statutes and rules relating to affiliated interest transactions, including timely filing of any applications or reports.¹⁶
- 40 Section 10 of the Settlement Agreement requires the New CenturyTel ILECs to notify “Lifeline” and tribal agencies of a name change if or when it occurs. Should a name change occur, the New CenturyTel ILECs are required to update and communicate all Lifeline materials for the new name including, but not limited to, agency contact letters, social service agencies, an “FYI Bulletin,” bill messages, and newspaper advertising.
- 41 Section 11 of the Settlement Agreement requires the Joint Applicants to provide Staff and Public Counsel with advance written notice of any major system conversions that may have an effect on Washington customers.¹⁷

2. Commission Determination

- 42 CenturyTel and Embarq filed pleadings and testimony at the outset of this proceeding contending the Commission should approve the proposed transaction without conditions, arguing that it causes no harm to the public interest and, in fact, benefits customers. Public Counsel and Staff took a contrary view, finding the potential for harm to the public interest unless certain conditions were imposed. As discussed above, the conditions proposed included continuation for Embarq’s operating

¹⁶ We note that the New CenturyTel ILECs are required to comply with *all* applicable provisions of law regardless of anything in the Settlement Agreement, so this portion of the Settlement Agreement is simply surplusage, and we assume there was no “quid pro quo” for this provision.

¹⁷ “Major systems” include business office and trouble reporting call centers, maintenance systems that monitor central office and transport equipment, engineering systems, outside plant record systems, and billing systems.

subsidiaries UTNW and ECI, and extension to the CenturyTel's ILECs, of certain conditions from the Separation Order approving the Embarq spin-off from Sprint in Docket UT-051291,¹⁸ several conditions related to the continued financial health of the New CenturyTel ILECs, service quality reporting and guarantees, prohibitions on the ability to recover merger transaction or branding costs from ratepayers, affiliated interest transaction reporting, a requirement to file an earnings review, and broadband improvement obligations.

43 Although the Applicants did not concede on rebuttal the necessity for conditions related to any of these matters, they nevertheless agreed in settlement negotiations to a set of conditions that address the concerns raised by Public Counsel and Staff. Staff and Public Counsel believe that the conditions CenturyTel and Embarq have accepted ensure that the proposed merger results in no harm to the Washington customers of the CenturyTel and Embarq local exchange companies, and that the Settlement Agreement is therefore consistent with the public interest.¹⁹ We note that the Commission is concerned with the broader public interest, not simply the interests of the customers. The question of potential harm to customers, however, is central to our consideration of the proposed transaction.

44 While we agree generally with the parties that the Settlement Agreement includes conditions that help protect the public interest, they are not adequate for us to find that the proposed transaction is consistent with the public interest and therefore should be approved. Three aspects of the Settlement Agreement cause us concern: the conditions related to synergies, dividends and the expansion of DSL service. These warrant more detailed discussion.

Synergies

45 Conditions 4 and 12, labeled "Merger Synergies" and "Synergy Benefits," require the merged company ILECs to file a petition for an alternative form of regulation ("AFOR") under RCW 80.36.135, or subsequent AFOR law, within five years after the close of the merger. All of the parties appear to support the idea of transitioning the merged companies to an AFOR, arguing that it would provide New Century Tel

¹⁸ See *supra*, fn. 8.

¹⁹ Exhibit JT-2T ¶¶ 10 and 19.

with more flexibility to compete effectively in the future with cable and wireless companies that offer similar or identical services.²⁰

46 Apparently recognizing up to point the relationship between consideration of an AFOR and the determination of fair, just and reasonable rates for regulated services,²¹ these Settlement Agreement conditions preserve the parties' ability to address any synergy benefits resulting from the merger in a future earnings (*i.e.*, revenue requirement) review or general rate case proceeding before the Commission. CenturyTel and Embarq have agreed to not oppose any effort by Staff and Public Counsel to initiate and conduct an earnings review "consistent with the then prevailing legal requirements applicable to AFORs."²²

47 We find these provisions in the Settlement Agreement to be less definitive than is preferable.

48 According to testimony at our hearing, the parties contemplate this AFOR filing will use the Qwest AFOR, approved by the Commission in 2007,²³ as a starting point or even a model. That may be all well and good, but the parties should not consider the Commission's decision in that case to not undertake a full-blown earnings review as suggestive of what will be required when the New CenturyTel files for an AFOR. The decision in the Qwest AFOR proceeding was based on particular facts specific to Qwest. Here, the Commission is faced with consideration of an AFOR for what is an entirely new company from a financial perspective; a new company that results from the combination of two companies, neither of which have been before the Commission for a full earnings review in more than 20 years. Moreover, the merger partners estimate that approximately \$400 million in annual merger synergy savings will be realized within a few years following the merger. This means, first, that we

²⁰ An AFOR, among other things, can give a rate-regulated telecommunications company greater control over its rates for most services, while maintaining tariff rates for basic retail telephone service to residential and business customers.

²¹ RCW 80.36.135(2) provides in part:

The commission shall consider, in determining the appropriateness of any proposed alternative form of regulation, whether it will: . . . (e) provide for rates and charges that are fair, just, reasonable, sufficient, and not unduly discriminatory or preferential.

²² Settlement Agreement, Section 12.

²³ *In the Matter of the Petition of Qwest Corporation for an Alternative Form of Regulation Pursuant to RCW 80.36.135*, Order 06 Accepting Settlement and Approving Alternative Form of Regulation, on Conditions, Docket UT-061625 (July 24, 2007).

do not have a very complete or thoroughgoing understanding of the current financial situation of these companies and, second, that we face a financial picture for the combined companies that is dynamic and susceptible to a wide range of changes in the near term. These circumstances compel an earnings review consistent with that required in a general rate case. The “public interest” requires the Commission be vigilant in review of the finances of the New CenturyTel companies before they are relieved on any substantial rate oversight.

- 49 We are concerned in this context that conditions 4 and 12 of the Settlement Agreement are not supported by any requirements for recordkeeping and reporting such as are necessary to ensure the Commission will have the information it needs to carry out its regulatory responsibilities going forward. The pace at which merger synergy savings will be realized is uncertain. If they are quickly realized, and New CenturyTel has not filed a general rate case or petitioned for an AFOR it will be important for Staff to consider filing a complaint to initiate an earnings review sooner than five years from now. Regardless of when merger synergy savings are realized, when New CenturyTel does file an AFOR, as it is required to do within the next five years, it will be important for the Commission to have a complete and up-to-date understanding of relevant financial measures and accounting entries.
- 50 In light of these concerns, we will require the combined companies to file a report on the third anniversary of the closing date that includes a normalized, *pro forma* results of operations for regulated services in Washington that captures merger synergies realized through the relevant periods (test year and pro forma year). In addition, having considered the Staff and Public Counsel joint response to Bench Request No. 3, and the Applicants’ response to Staff and Public Counsel, we will require New CenturyTel to track and report annually to the Commission the costs and synergy savings of the merger on both a company-wide basis and a Washington basis. These reports should be in the form and include the data identified in the Staff and Public Counsel response to our bench request, which we attach to this Order as Appendix 4 and incorporate into this Order by this reference.²⁴ We will make these reports due each year for five years, 120 days after the anniversary date of the merger closing.

²⁴ Appendix 4 is the redacted version of the bench request response. We further adopt by reference, without publication here, the highly confidential attachment to Staff and Public Counsel’s joint response to Bench Request No. 3.

The Commission can revisit this requirement at the time of the New CenturyTel AFOR proceeding.²⁵

Dividends

- 51 The second area that concerns us relates to condition 2 of the Settlement Agreement, which imposes dividend restrictions under certain circumstances. Our concern here, again, is again the absence of any reporting requirement.²⁶ There is no readily apparent means by which Staff will be able to easily monitor whether the conditions that trigger dividend restrictions have occurred or, if so, whether dividends have been limited as required. Reliance on publicly available information and the company's annual earnings report, such as was suggested at hearing to be adequate, does not provide in our view a sufficiently timely, rigorous and focused presentation of information to the Commission. Therefore, we will impose by condition a reporting requirement in connection with each dividend declared and paid during the three year period following the effective date of the merger. Specifically, we will require New CenturyTel to submit a report to Commission Staff at least five days prior to the payment of each dividend by any CenturyTel ILEC that calculates the average market value of CenturyTel's common equity as a percent of the book value of the company's net debt in the manner contemplated in Section 2.a.i of the Settlement Agreement regardless of whether the dividend restriction set forth in Section 2.a is triggered. The report must include supporting data sufficient to permit Staff to confirm the calculation. In addition, we will condition our approval of the merger by requiring the combined companies to inform Staff within three business days if the conditions triggering restrictions materialize. Any failure to do so would then, of course, subject the combined companies to penalties.

Expanded DSL Availability

- 52 Our final area of concern relates to condition 8, which provides for expansion of DSL availability to 2200 additional customers in Embarq's service territory. Mr. Bailey and Ms. Young agreed at hearing that the definition of synergy is one that involves

²⁵ These additional conditions are well within the authority of the Commission to impose as reasonable conditions to the approval of this transaction, as they are necessary to permit a finding that the merger is consistent with the public interest. However, even if that were not the case, imposition of these reporting requirements is authorized by RCW 80.04.090.

²⁶ Mr. Bailey testified at hearing that the company would not object to a reporting requirement that would permit the Commission to monitor compliance with this commitment in the Settlement Agreement.

mutual benefits, including benefits to customers. Considering the Applicants' expectation of \$400 million in annual merger synergy savings, expansion of DSL availability to 2200 customers seems a modest benefit indeed. Yet, in the context of the overall Settlement Agreement, it represents the only concrete benefit to customers that will result from this transaction.²⁷ This strengthens our resolve to monitor the combined companies' realization of synergy savings over the coming years, so that such savings can be fully considered in the context of the reporting requirement we impose above the planned AFOR filing and any earnings review. We will not impose any specific condition in connection with this provision of the Settlement Agreement, but we do expect to see in coming years concrete examples of merger synergy savings working to the benefit of Washington customers. The "public interest" would not be served if such synergy savings do not result in tangible benefits, financial and otherwise, to the customers.

53 Essentially, the Settlement Agreement would allow the merger, with the downside risks described in the testimony of Public Counsel witness Roycroft and the Staff witness Weinman, and offset those harms and potential harms with some modest commitments. Granted, the downside risks may be minor, but the proposed offsetting commitments are minimal. They include a commitment by the companies to provide non-regulated DSL service to 2200 customers and an acknowledgement that sometime in the future there would be an opportunity for the ratepayers to realize some of the \$400 million in synergy savings to by an earnings review. We think that the "public interest" demands somewhat more. Accordingly, we will impose the above-described reporting requirements in order to ensure that Staff and Public Counsel have the requisite information to determine whether and when such synergy savings may be available to the ratepayers.

54 The remaining conditions in the Settlement Agreement are straightforward and are sufficient to address the concerns raised by Public Counsel and Staff through their respective response testimonies. These conditions, considered in combination with those we have discussed above at greater length and coupled with the reporting requirements we establish as conditions to our approval of the pending application,

²⁷ We emphasize in this connection that while we encourage the combined companies to take full advantage of funds that may become available under the American Recovery and Reinvestment Act of 2009 (ARRA) to support broadband rollout in new areas, we expect the combined companies to finance the modest expansion of DSL availability provided under the terms of the Settlement Agreement without using such funds and devote any available ARRA funds to greater broadband expansion.

are necessary to support our finding that the proposed transaction is consistent with the public interest. It should, therefore, be approved.

III. Requests for Leave To Withdraw

A. Side Agreements

1. Background

- 55 In addition to the principal matter set for hearing in this docket—whether the Commission should approve the Applicants’ merger—there are pending two requests from intervenors for leave to withdraw; one from Comcast Phone of Washington, LLC (Comcast) and one from the International Brotherhood of Electrical Workers Local 89 (IBEW). Previously, the Commission granted in Order 03 a similar request from the only other intervenor in this proceeding, Level 3 Communications (Level 3). The Commission now has reason to revisit Order 03 at the same time it considers the other intervenors’ requests for leave to withdraw.
- 56 Subsequent to the Commission’s entry of Order 03, granting Level 3’s request for leave to withdraw, Staff brought to the Commission’s attention in its response to Comcast’s similar request the fact that Level 3 had entered into an undisclosed, written side-agreement with the Applicants. Staff provided the Commission a “confidential” copy of the side-agreement that it had obtained during discovery under the protective order in this proceeding. Upon examination, the Commission learned that the Applicants made certain concessions concerning interconnection agreements as *quid pro quo* for Level 3’s withdrawal.
- 57 Staff noted in response to Comcast’s request for leave to withdraw that the company referred to “an agreement” it had reached with the applicants. Staff requested that the Commission issue a bench request to Comcast, requiring the company to provide a copy of the agreement. The Commission issued Bench Request No. 1 on March 3, 2009, requiring applicants to provide any such agreements with any of the intervenors. In the meantime, on February 27, 2009, Comcast supplemented its request for leave to withdraw, providing a copy of its settlement agreement with applicants under a claim of confidentiality. Upon examination, the Commission learned that the Applicants again made certain concessions concerning interconnection agreements as *quid pro quo* for Comcast’s agreement to withdraw.

58 Applicants provided in response to Bench Request No. 1 copies of side-agreements the Applicants entered into with Level 3, Comcast and IBEW²⁸ granting various concessions in exchange for the agreement by each of these intervenors to withdraw from this proceeding. All three side-agreements were designated as “confidential” under the protective order in this proceeding. Applicants declined to respond to the inquiry in Bench Request No. 1 asking whether the provisions of these agreements “provide guarantees or assurances, confer rights, or impose obligations that will not be generally available or applicable to competitive local exchange companies or customers.” With respect to this question, applicants stated they had “not yet determined” the answer. Applicants later supplemented their response, stating that they do intend the provisions of their agreements with Level 3 and Comcast to be generally available to others. Applicants also supplemented their response to Bench Request No. 1 by re-filing their agreements with Level 3 and Comcast, no longer designating them as confidential.²⁹

59 In its response to Comcast’s request for leave to withdraw from this proceeding, Staff discussed Commission precedent on the subject of side-agreements between intervenors and applicants for approval of a merger. Staff quoted from the Commission’s Eighth Supplemental Order in Docket UT-991358, the Qwest/US West merger proceeding, as follows:

Corporations are expected to be good citizens as well as good companies. When corporations elect to participate in proceedings such as this one, we expect them to fulfill their good citizenship obligation by bringing forth evidence and making sound argument that will assist us to make a reasoned decision in the public interest. As a corollary, the Intervenor are encouraged to engage with other parties in settlement discussions that may produce negotiated results to be presented to the

²⁸ Applicant’s side-agreement with IBEW involves the companies making labor-related concessions to IBEW in exchange for IBEW’s agreement to withdraw. IBEW acknowledged at prehearing its understanding that labor relations issues have no place in this proceeding. IBEW committed to limit its participation in this proceeding to issues appropriate to it and within the Commission’s jurisdiction to determine.

²⁹ The Commission, on April 23, 2009, issued its Notice of Commission Challenge to Assertions of Confidentiality and Determination that Confidential Designations are not Warranted and Notice of Intent To Make Documents Public (effective May 4, 2009). This notice was given with respect to the Applicants’ side-agreement with IBEW. Neither the Applicants nor IBEW responded to the notice within the ten-day period it allowed for response. Accordingly, the confidential designation of the IBEW side-agreement with the Applicants was removed and the document became publicly available as of May 4, 2009.

Commission as a means to resolve *in the public interest the previously contested issues in the case.*

Here, the Intervenors purported to enter the proceedings to further public interest considerations, but now they seek to withdraw from the proceedings based on their private interests. They have abdicated their broader responsibility to be good citizens in favor of pursuing their own narrower commercial interests. This threatens to undermine the integrity and credibility of the Commission's adjudicatory process. With respect to the arrangements between Joint Applicants and AT&T, between U S WEST and MetroNet, and between U S WEST and McLeodUSA, these Intervenors to have asked our leave to intervene in the public interest and then agreed privately to withdraw under a veil of confidentiality when offered a concession in what they characterize as a private dispute that is wholly unrelated to the matters before us. Although Level 3 Communications ultimately waived its initial claim of confidentiality, we regard its agreement to withdraw in exchange for a cash payment in the same light.

The side-agreements between U S WEST and the remaining Intervenors who seek to withdraw pursuant to their agreements (*i.e.*, Rhythms Links, Covad Communications, NEXTLINK, and SBC), do touch on some of the issues raised in the merger proceeding. But these private agreements are not intended to, and do not, assist the Commission in its duty to ensure the merger between U S WEST and Qwest is consistent with the public interest. Instead, these agreements promote the narrower commercial ends of those who entered into them. Indeed, the agreements arguably raise the question whether they are contrary to the public interest, to the extent an individual corporate participant in the telecommunications sector gains advantages for itself relative to other corporate participants in the same industry.³⁰

60 Staff also pointed out that the Commission later initiated a penalty proceeding against Qwest and numerous CLECs for failing to file certain agreements with the Commission pursuant to 47 U.S.C. § 252, including agreements that Qwest had made with CLECs in return for those companies' agreement to drop their opposition in the Commission proceeding to review the proposed merger between Qwest and US

³⁰ In Re Application of US WEST, Inc. and Qwest Communications International, Inc., Docket UT-991358, Eighth Supp. Order ¶¶57-66 (June 19, 2000).

WEST. The companies involved agreed to pay penalties totaling millions of dollars to resolve that complaint.³¹

61 The Commission's concerns with "unfiled" or "private" side-agreements entered into by applicants in exchange for the agreement of the intervenors to withdraw from a proceeding are as vital and serious a matter today as in 2000 and 2005. This practice by parties is particularly troubling when, as here, the intervenors entering into the agreements do not disclose their agreements, provide them as part of their requests for leave to withdraw, or otherwise file them requesting Commission review and approval. Our procedural rules are perfectly clear that any such agreements must be filed for review. WAC 480-07-700 states in relevant part:

The commission supports parties' informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest, and subject to approval by commission order. . . .

The commission cannot delegate to parties the power to make final decisions in any adjudicative proceeding. The commission retains and will exercise its authority in every adjudicative proceeding to consider any proposed settlement or agreement for approval.

62 While the Commission understands a party's interest in seeking to address and resolve issues relevant to a matter pending before us in a particular proceeding, we expect that any resolution of such issues will be done in a manner that is transparent and fully consistent with our obligation to protect the public interest. Agreements affecting the rights of parties and, possibly, a broader set of interests that are not filed with a request for Commission review and approval in accordance with the Commission's procedural rules and, in some cases, state and federal statutes, run afoul of this fundamental Commission responsibility.

63 Accordingly, in light of the seriousness of this matter, the Commission has kept the pending requests of Comcast and IBEW for leave to withdraw under advisement and also reconsiders its prior order giving leave to Level 3 to withdraw. Because they present somewhat different issues from a substantive perspective, we provide further background below as to the IBEW side agreement and, separately, the Level 3 and Comcast side-agreements.

³¹ See Order No. 21, Order Adopting and Approving Settlement Agreement; Closing Docket, Docket UT-033011 (Feb. 28, 2005).

2. IBEW Side-Agreement

64 The IBEW side-agreement is in the form of a Letter Agreement provided to the IBEW by CenturyTel and Embarq on February 25, 2009. The letter opens with the following (emphasis added):

We have appreciated the engagement of your two labor organizations (“CWA” and “IBEW”) *in our discussions of the proposed merger* between CenturyTel, Inc. of Monroe, LA, and Embarq Corporation of Overland Park, KS. This letter is written to *set forth the agreements we have reached with respect to that merger* and the relationship among the CWA, IBEW, and “NewCo,” which will refer to CenturyTel, the surviving parent, and its consolidated subsidiaries, including Embarq Corporation.

65 The agreements reached “with respect to [the] merger” are set forth in detail in the letter. The Applicants make a series of labor relations concessions to the unions. In exchange the unions agree to give up their opposition to the merger in all state and federal regulatory proceedings, to withdraw from such proceedings and to “acknowledge that the merger meets all applicable approval standards without conditions.”

66 On April 13, 2009, the IBEW filed with the Commission a letter responding to the Commission’s Notice Concerning Agenda for Hearing, which informed the parties that the side-agreements and pending requests for leave to withdraw would be considered during the hearing. IBEW’s response is both procedurally inappropriate and substantively disingenuous, claiming that the union adhered to its commitment to not use its participation in this proceeding in any fashion related to matters outside the scope of the proceeding and the Commission’s jurisdiction when, in fact, it did not adhere to that commitment. IBEW’s response states, in part:

Local 89 also takes issue with the implication in the Notice that Local 89 had an obligation to provide a copy of the agreement to the Commission as an attachment to its request to withdraw from this proceeding. As discussed above, the agreement relates primarily to labor relations and collective bargaining issues. Local 89 was cautioned at the outset of this case, and readily agreed, that it should not raise any matters related to collective bargaining or labor relations in this proceeding. Local 89 was not trying to hide something from the

Commission; it was simply complying with the procedures set forth at the beginning of this case to keep labor relations matters completely separate from this proceeding.

- 67 This is simply sophistry. On the one hand, considering the language of its agreement with the Applicants and IBEW's argument quoted above, the union admits that "the agreements ... reached with respect to [the] merger" "relate primarily to labor relations and collective bargaining issues." On the other hand, having acknowledged its early agreement to "not raise any matters related to collective bargaining or labor relations in this proceeding," IBEW asserts that by withholding the side-agreement from Commission scrutiny "it was simply complying with the procedures set forth at the beginning of this case to keep labor relations matters completely separate from this proceeding." The paucity of reason inherent in these statements, considered together and in relation to the side-agreement that describes itself as having been reached in the context of IBEW's participation in this proceeding and "reached with respect to [the] merger" is baffling.
- 68 We have two principal concerns about the IBEW side-agreement. One, in common with our concerns about the other side-agreements discussed below, is that by entering into such an agreement and not insisting that it be filed for Commission review, the Applicants exhibit either an insufficient knowledge of our statutory mission and our procedural rules or their willingness to skirt around regulatory requirements. Either way, this reduces our confidence in the Applicants' managerial fitness, one of the key considerations we must review in the context of a proposed merger. We expect, in the wake of this proceeding, that New CenturyTel will give greater attention to building and maintaining a strong working relationship with the Commission, and to internal compliance monitoring insofar as satisfaction of the requirements of our statutes and rules is concerned. We expect no procedural gaffes in the forthcoming AFOR application and any earnings review proceeding associated with the AFOR or prior to it.
- 69 Our second principal concern relates specifically to IBEW, and its counsel. Despite IBEW's representations at prehearing that it would keep labor relations out of this case, and its unreasoned argument later that it did so, the language of the side-agreement and IBEW's own arguments show beyond peradventure that the union used its status as a party in this proceeding principally, if not exclusively, to extract labor concessions from the Applicants. While union-management negotiations are important, and we would not want to interfere with them in any way, their insertion in the regulatory process can undermine the integrity of our processes. The Commission

is charged in proceedings such as this one with furthering the public interest. If parties dwell on issues outside the Commission's regulatory purview, then it is possible that the timeliness of our proceedings, and their substance, may be impacted to the detriment of the greater public interest we must promote. It also undermines the credibility of counsel who made representations to the tribunal that were disingenuous at best. The principles of the Rules of Professional Conduct, and common professional courtesy, require attorneys appearing before us to be honest and forthright in their representations and actions. The public interest deserves no less.

3. Level 3 and Comcast Side-Agreements

- 70 The Level 3 side-agreement, memorialized by a letter from Embarq to Level 3 dated January 13, 2009, gives us less concern substantively than the IBEW or the Comcast side-agreements.³² It basically memorializes their understanding that existing interconnection agreements between Embarq and Level 3 will be left in place for up to 12 months and that both parties will "use their best efforts to negotiate new interconnection agreements" within that period of time. In exchange, Level 3 agrees to withdraw from this docket.
- 71 As previously discussed, we are concerned about this side-agreement from a process perspective. It undermines the integrity of the Commission's adjudicatory process for parties to intervene, ostensibly in the public interest, principally, or only, to gain leverage to extract private concessions. Failure by Level 3 to disclose the side-agreement at the time of its request for leave to withdraw from this proceeding is equally troubling. The Commission's procedural rules require that all agreements parties reach to resolve their interests in contested proceedings be filed with supporting documents, be reviewed by the Commission for consistency with the public interest, and be the subject of a Commission order accepting them, accepting them subject to conditions, or rejecting them.³³ Failure to file the side-agreement violates these rules. Violations of Commission rules are a serious matter that can lead to penalties of up to \$1,000 per day for each day of a continuing violation.
- 72 On a substantive level, our main concern is that to the extent this side-agreement confers a benefit with respect to Level 3's interconnection agreements with Embarq,

³² The Level 3 side-agreement is attached to this Order as Appendix 2 and is incorporated into the body of this order by this reference.

³³ WAC 480-07-700, *et seq.*

any such benefit(s) must also be made available to other CLECs. This issue now has been addressed by the Applicants' commitment to make the terms of this side-agreement generally available in the industry. We will make this a condition of this Order.

73 Turning to the Applicant's side-agreement with Comcast, we have the same process concerns as with the other two that need not be reiterated. We have stronger concerns of a substantive nature with respect to this side-agreement.

74 The side-agreement with Comcast is in the form of a formal Settlement Agreement entered into on February 13, 2009.³⁴ It provides that:

1) Joint applicants will enter into or continue negotiations to reach an interconnection agreement with Comcast affiliates and will not object to the Comcast affiliates utilizing the interconnection to support VOIP services.

2) Joint applicants and Comcast will apply the change of law provisions to any VOIP changes.

3) Joint applicants will not oppose any Comcast affiliate interconnection, application for certificate, or expansion of certificate on the grounds that such will be used to provide VOIP services.

4) Embarq will not limit the number of requests (including local service requests, directory services requests, and requests to port numbers) it will accept from Comcast during a given time period.

In exchange for these commitments by the Applicants, Comcast agrees not to advocate against the merger.

75 Comcast currently is a party in a pending docket before this Commission in which an ILEC is objecting to interconnecting with Comcast because the requested interconnection will be used to support VOIP services.³⁵ While Applicants and their

³⁴ The Comcast side-agreement is attached to this Order as Appendix 3 and is incorporated into the body of this order by this reference.

³⁵ *In the Matter of the Petition for Arbitration of an Interconnection Agreement Between Comcast Phone of Washington, LLC and Lewis River Telephone Company, d/b/a TDS Telecom, Pursuant to 47 U.S.C. Section 252(b)*, Answer of Lewis River Telephone Company d/b/a TDS Telecom to Comcast Phone of Washington, LLC Petition for Arbitration, Docket UT-083055 (December 1, 2008).

affiliates may not have raised such arguments in interconnection negotiations, the fact that they here waive any such objection as part of the consideration in their side-agreement with Comcast means that Comcast could gain an advantage relative to other telecommunications providers who may enter into such negotiations with Applicants. In addition, the Applicants' agreement to not limit requests to port numbers and other types of requests confers an advantage on Comcast relative to other CLECs that do not have any such assurance.

76 As in the case of the Level 3 side-agreement with Applicants, this issue now has been addressed by the Applicants' commitment to make the terms of the Comcast side-agreement generally available in the industry. Again, we will make this a condition of our Order.

B. Commission Determinations

77 Considering that its subject matter is entirely inappropriate in the context of this proceeding and considering the circumstances of its negotiation, we expressly reject the side-agreement between Applicants and IBEW. We deny IBEW's request for leave to withdraw voluntarily from this proceeding. However, we dismiss IBEW as a party on our own motion, finding on review that it misrepresented its interest in this proceeding in its petition to intervene, that it in fact had no substantial interest in this proceeding, and that its participation is not in the public interest.

78 Because it was entered without the Commission having knowledge of the written side-agreement between Level 3 and the Applicants, we rescind our Order 03, which granted Level 3's request for leave to withdraw. Order 03 is, in any event, superseded by this Order.

79 We now have had the opportunity to review the side-agreements between Level 3 and the Applicants and between Comcast and the Applicants. They arguably confer benefits upon these CLECs with respect to their interconnection agreements, or interconnection agreement negotiations. The Applicants now state that the terms of these agreements will be made generally available in the industry, specifically to other CLECs. We find under these circumstances that it is in the public interest to approve these agreements as resolving the issues about which Level 3 and Comcast were concerned in connection with this merger. Our approval is subject to the condition that the terms of the agreements will be made available to other CLECs on a nondiscriminatory basis, if requested.

FINDINGS OF FACT

80 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:

- 81 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including telecommunications companies.
- 82 (2) CenturyTel of Washington, Inc., CenturyTel of Inter Island, Inc., and CenturyTel of Cowiche, Inc., are ILECs, “public service companies” and telecommunications companies as those terms are defined in RCW 80.04.010, and as those terms are otherwise used in Title 80 RCW. These companies conduct business in Washington that is subject to the Commission’s jurisdiction. These companies are wholly owned subsidiaries of CenturyTel, Inc.
- 83 (3) United Telephone of the Northwest (UTNW), an ILEC, and Embarq Communications Inc. (ECI), a provider of intrastate interexchange (*i.e.*, long distance) services, are “public service companies” and telecommunications companies as those terms are defined in RCW 80.04.010, and as those terms are otherwise used in Title 80 RCW. These companies conduct business in Washington that is subject to the Commission’s jurisdiction. These companies are wholly owned subsidiaries of Embarq Corporation.
- 84 (4) On November 24, 2008, Embarq Corporation and CenturyTel, Inc. filed a joint application with the Commission seeking approval of an indirect transfer of control of Embarq’s regulated Washington State operating subsidiaries to CenturyTel. The proposed transfer of control will result from a merger between CenturyTel, Inc. and Embarq Corporation.
- 85 (5) On April 22, 2009, the active parties in this proceeding—Applicants, Staff and Public Counsel—filed a Settlement Agreement including conditions as discussed in the body of this Order and as set forth in Appendix 1 to this Order. Conditions 1, 3 and 5-11 in the Settlement Agreement adequately

address potential harms arising from the proposed merger, as identified in the response cases filed by Public Counsel and Staff. Conditions 2, 4 and 12 lack reporting requirements that are necessary to address potential harms recognized by the Commission on the basis of the record, as discussed in the body of this Order.

86 (6) We are unable to find that the proposed merger between CenturyTel, Inc. and Embarq Corporation, and their wholly owned subsidiaries that do business in Washington state subject to the Commission's jurisdiction, is consistent with the public interest based on the on the terms provided by their joint application as modified by the Settlement Agreement. However, with the addition of the conditions set forth in this Order, the proposed transaction is consistent with the public interest.

87 (7) The side-agreement between Applicants and IBEW concerns only matters that are outside the Commission's jurisdiction and inappropriate to this proceeding. It would be contrary to the public interest for the Commission to approve this agreement. The Commission finds on review that IBEW does not have a substantial interest in this proceeding and its participation is not in the public interest.

88 (8) The side-agreements between Applicants and Level 3, and between Comcast and Level 3 resolve the specific interests of the two CLECs. Subject to the condition that the terms of these agreements will be generally available in the industry, specifically to other CLECs, it is consistent with the public interest to approve these agreements and grant these intervenors leave to withdraw.

CONCLUSIONS OF LAW

89 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:

90 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings.

91 (2) Chapter 80.12 RCW requires public service companies to secure Commission approval before they can lawfully sell or otherwise dispose of the whole or

any part of their franchises, properties or facilities that are necessary or useful in the performance of their duties to the public. Any sale or disposition made without Commission authority is void.

- 92 (3) WAC 480-143-170 governs the Commission's standard of review for a change of control transaction and requires finding that the transaction is consistent with the public interest. To be consistent with the public interest, the transaction must not harm the public interest.
- 93 (4) The Settlement Agreement commitments, as further conditioned by this Order, are sufficient to protect customers and the public interest from risks of harm associated with this change of control transaction.
- 94 (5) The Commission should authorize this change of control transaction, as consistent with the public interest.
- 95 (6) The Commission should reject the side-agreement between IBEW and Applicants and deny IBEW's request for leave to withdraw voluntarily. However, the Commission should dismiss IBEW from this proceeding because it has no substantial interest in the subject matter of this proceeding and its participation is not in the public interest.
- 96 (7) The Commission Secretary should be authorized to accept by letter, with copies to all parties to this proceeding, any filing necessary to comply with the requirements of this Order.
- 97 (8) The Commission should retain jurisdiction over the subject matters and the parties to this proceeding to effectuate the terms of this Order.

ORDER

THE COMMISSION ORDERS THAT:

- 98 (1) The merger between CenturyTel, Inc. and Embarq Corporation, and the change in control of their wholly owned subsidiaries—CenturyTel of Washington, Inc., CenturyTel of Inter Island, Inc., and CenturyTel of Cowiche, Inc., United Telephone of the Northwest and Embarq Communications Inc.—on the terms provided by their joint application, as conditioned by the terms of the Settlement Agreement attached to and made a

part of this Order by prior reference, and as further conditioned below in ordering paragraphs (2), (3) and (4) is approved.

- 99 (2) Three years after the date on which the merger closes the combined companies are required to file with the Commission a report that includes a normalized, *pro forma* results of operations for regulated services in Washington reflecting merger synergy savings realized through the relevant periods (test year and *pro forma* year).
- 100 (3) The combined companies are required to track and report annually to the Commission on the anniversary date of the merger closing the costs and synergy savings of the merger on a company-wide basis and a Washington basis.
- 101 (4) The combined companies are required to submit a report to Commission Staff at least five days prior to the payment of each dividend by any New CenturyTel ILEC that calculates the average market value of New CenturyTel's common equity as a percent of the book value of the company's net debt in the manner contemplated in Section 2.a.i of the Settlement Agreement regardless of whether the dividend restriction set forth in Section 2.a is triggered. The report must include supporting data sufficient to permit Staff to confirm the calculation. In addition, the combined companies are required to inform Staff within three business days if the conditions triggering restrictions materialize.
- 102 (5) Order 03 Granting Leave to Withdraw to Level 3 is rescinded.
- 103 (6) Side-agreements between Applicants and Level 3, and Applicants and Comcast are approved. Level 3 and Comcast are granted leave to withdraw from this proceeding.
- 104 (7) The side-agreement between Applicants and IBEW is rejected. IBEW is dismissed as a party to this proceeding.
- 105 (8) CenturyTel, Inc. and Embarq Corporation, and New CenturyTel are authorized and required to make any filings necessary and sufficient to effectuate the terms of this Order.

- 106 (9) The Commission Secretary is authorized to accept by letter, with copies to all parties to this proceeding, a filing that complies with the requirements of this Order.
- 107 (10) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective May 28, 2009.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.

**APPENDIX 1
SETTLEMENT AGREEMENT**

**APPENDIX 2
AGREEMENT BETWEEN APPLICANTS AND LEVEL 3**

**APPENDIX 3
AGREEMENT BETWEEN APPLICANTS AND COMCAST**

**APPENDIX 4
STAFF AND PUBLIC COUNSEL JOINT RESPONSE
TO BENCH REQUEST NO. 3
(REDACTED VERSION)**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO DATA REQUEST

DATE PREPARED: May 21, 2009
DOCKET: UT-082119
REQUESTER: Bench

WITNESS: William Weinman and
Stefanie Johnson
RESPONDER: Jonathan Thompson and
Sarah Shifley
TELEPHONE: 360-664-1225 and
206-464-6595

REQUEST NO. 3: Considering the Commission's authority under RCW 80.04.090, what information, in what format, would Commission Staff and Public Counsel need to initiate a complaint to set rates or establish appropriate earnings levels pursuant to RCW 80.04.110 or paragraph 12 of the Settlement Agreement?

RESPONSE: Public Counsel and Staff agree that they would need a report in the following form to determine when it might be appropriate to initiate a complaint to set rates or establish appropriate earnings levels pursuant to RCW 80.04.110:

- 1) Beginning August 15, 2009, and continuing until August 15, 2014, or until the end of the integration period, whichever is later, provide a semi-annual report of the merger-related synergies and savings the Merged Company has achieved during the preceding half of the calendar year ("reporting period") in each division and category listed in Joint Applicants' Highly Confidential response to Public Counsel Data Request No. 48 (attached). The filing date for the reporting period of January 1 through June 30 shall be August 15, and the filing date for July 1 through December 31 shall be February 15.
Specifically, provide:
 - a) the synergies and savings achieved in each division and category during the reporting period on a company-wide basis as actual (i.e., during the reporting period) and annualized (i.e., projected over 12 months) amounts, and
 - b) the allocation of those synergies and savings on a Washington intrastate, regulated jurisdictional level for each of the Washington public service companies as actual and annualized amounts.
- 2) As part of each semi-annual report required by part (1), also report all merger, branding or transaction costs (as further defined by condition number five of the Settlement Agreement) incurred during the reporting period on a company-wide basis and provide the allocation of those costs to the Washington operating companies on an intrastate, regulated jurisdictional basis.

Docket No. UT-082119
Response to Public Counsel Data Request No. 48
Date 1/23/2009
Preparer: Clay Bailey

PC-48 Paragraph 17 of the Application states that “[t]he Transaction will result in a combined enterprise that can achieve greater economies of scale and scope than the two companies operating independently.” Please explain the source(s) of these greater economies of scale and scope, what this conclusion was based on, and how it was reached.

RESPONSE: Economies of scale and scope are associated with the annual synergy savings the combined company expects to realize. These synergy savings have been estimated at \$400 million annually after conversions are completed and synergies are completely realized. The financial changes associated with the proposed transaction are primarily limited to operating cost savings, increased purchasing power, increased penetration of existing products and introduction of new products. Of the \$400 million annual synergy savings, \$300 million are annual expense synergies and \$30 million are capital expense synergies. The estimated synergy savings were calculated on a total company level and not for Washington specifically. Also, please see **HIGHLY CONFIDENTIAL** Attachment PC-48.

REDACTED

**Attachment PC-48 is Redacted
in its Entirety**

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Joint Application of	)	DOCKET UT-082119
)	
EMBARQ CORPORATION AND	)	SETTLEMENT AGREEMENT
CENTURYTEL, INC.)	
)	
For Approval of Transfer of Control of)	
United Telephone Company of the)	
Northwest d/b/a Embarq and Embarq)	
Communications, Inc.)	
)	
.....)	

1 This Settlement Agreement (“Agreement”) is entered into between CenturyTel, Inc. (“CenturyTel”), Embarq Corporation (“Embarq”), Staff of the Washington Utilities and Transportation Commission (“Staff”), and the Public Counsel Section of the Washington Attorney General (“Public Counsel”) (collectively the “Parties” or individually a “Party”).

A. BACKGROUND

2 On November 24, 2008, Embarq and CenturyTel filed a joint application with the Washington Utilities and Transportation Commission (“Commission”), pursuant to Chapter 80.12 RCW and Chapter 480-143 WAC, for approval of an indirect transfer of control of Embarq’s and CenturyTel’s regulated Washington State operating subsidiaries.

3 In Washington, CenturyTel provides local service through its subsidiaries
CenturyTel of Washington, Inc., CenturyTel of Inter Island, Inc., and CenturyTel of
Cowiche, Inc. (collectively "CenturyTel ILECs"). CenturyTel provides long distance
service in Washington through its subsidiary CenturyTel Long Distance, LLC.
CenturyTel has two other non-ILEC operating entities certificated in Washington:
CenturyTel Solutions, Inc. and CenturyTel Fiber Company II, d/b/a LightCore, a
CenturyTel Company LLC. Embarq provides local and long distance service through
its operating subsidiaries, United Telephone Company of the Northwest d/b/a Embarq
("United") and Embarq Communications, Inc. This Agreement refers to the proposed
post-merger combined CenturyTel/Embarq entity as the "Merged Company" and the
CenturyTel ILECs and United collectively as the "Merged Company ILECs."

4 Staff and Public Counsel appeared and have participated in the case, raising
several issues in connection with the proposed transaction. The Parties now enter
voluntarily into this Agreement to resolve the matters in dispute among them and to
expedite the orderly disposition of this proceeding.

B. NATURE OF AGREEMENT

5 This Agreement is a "Full Settlement" within the meaning of WAC 480-07-730(1),
and the Parties will present this Agreement to the Commission for its approval to
resolve all issues in this docket raised by the parties to this Agreement.

C. POSITIONS ARE NOT CONCEDED

6 In reaching this Agreement, each of the Parties maintains the positions espoused throughout the proceeding. No Party necessarily accedes to any argument made by any other Party.

D. AGREEMENT SUBJECT TO COMMISSION APPROVAL

7 The Parties understand and agree that this Agreement in no manner binds the Commission in ruling on the pending proceeding until such a time as the Commission approves the Agreement. This Agreement is expressly subject to Commission approval except for ¶ 12 (Support of the Agreement) below. The Parties agree that if the Commission approves the Agreement without material change, this docket will be concluded.

E. AGREED CONDITIONS ON MERGER

8 The conditions agreed upon by the Parties are as follows:

1. Continuation of WUTC Docket No. UT-051291 Separation Conditions

The conditions approved by the Commission in WUTC Docket No. UT-051291 will continue to apply to United subject to their expiration under the terms of the Commission-approved settlement agreement in that case ("Separation Order").¹

A brief description of the impact of this Agreement on Separation Order conditions is provided below:

¹ *In the Matter of the Request of Sprint Nextel Corporation for an Order Declining to Assert Jurisdiction Over or, in the Alternative, Application for Approval of the Transfer of Control of United and Sprint Long Distance, Inc. from Sprint Nextel Corporation to LTD Holding Company, WUTC Docket No. UT-051291, Order 06, Approving and Adopting Settlement Agreement (March 14, 2006).*

- a. With regard to the amortization of the directory sale, this Agreement has no impact on the terms associated with the Separation Order.
- b. With regard to the Separation Order's Recovery of Separation, Branding & Transition Costs condition, this Agreement has no impact.
- c. With regard to the Separation Order's service guarantee, this Agreement has the following impact: Until CenturyTel and Embarq combine their billing and customer care systems, the Separation Order's service guarantee condition is unchanged for United. Once the billing and customer care system is integrated, then the provisions of this Agreement take effect and supersede the Separation Order's service guarantee, and the new service guarantee will apply to the Merged Company ILECs. This Agreement's service guarantee section should be understood as a "different plan" under Section E.3 of the Separation Order's service guarantee.
- d. With regard to the Separation Order's Service Quality condition, this Agreement has no impact. The Milestone Reporting discussed below does not replace the Separation Order's Service Quality condition, nor does it alter in any way the Merged Company's obligation to comply with applicable Commission-approved service quality requirements.
- e. With regard to the Separation Order's Customer Notice condition, it is the Settling Parties understanding that these conditions are no longer in effect.
- f. With regard to the Separation Order's finance conditions, those conditions will continue to apply to United, with the caveat that post-merger, the financial evaluations and restrictions included in the Separation Order's provisions 6ai, 6aai, 6c and 6f that previously were based on Embarq Corporation will be based on the post-merger combined CenturyTel. All of the finance conditions from the Separation Order will apply to United until their expiration on May 17, 2010. At that time, United will become subject to the finance conditions contained in this Agreement. CenturyTel ILECs will be subject to the finance conditions contained in this Agreement for a period beginning at the close of the merger, and continuing for three

(3) years. The finance conditions for all Merged Company ILECs expire three (3) years from the close of the merger.

- g. With regard to the Separation Order's Affiliated Interest Agreement conditions, this Agreement has no impact, and these conditions continue to apply to United following the closing of this merger. The Affiliated Interest provisions of this Agreement apply for all of the Merged Company ILECs.
- h. With regard to the Separation Order's Broadband Deployment condition, this Agreement has no impact. The Broadband Improvement condition contained in this Agreement does not override or replace the Separation Order's Broadband Deployment condition.

2. Finance Conditions

- a. For three (3) years from the close of the merger, at any time when the condition in subsection 2.a.i exists, the Merged Company ILECs will limit payments of dividends on common equity distributed to CenturyTel, or any other subsidiary or affiliate of CenturyTel, in any year to an amount not more than 50 percent of net income in the prior fiscal year. The Merged Company ILECs 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 by multiplying the average stock price by the average number of fully-diluted common stock shares outstanding during the preceding 120 calendar day period. 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 dividends by the Merged Company ILECs, whether quarterly, special, or other.
- b. The Merged Company will not pledge the assets of the Merged Company ILECs to secure borrowing undertaken by it, or any other subsidiary, without approval of the Commission.

- c. For three (3) years after the close of the merger, the Merged Company ILECs will not advocate in any general rate case for a higher cost of capital as compared to what its cost of capital would have been absent the merger.

3. Service Guarantee

CenturyTel and Embarq agree that for a period of twelve (12) months following the projected date for conversion to the CenturyTel billing and customer care system, the Merged Company ILECs will provide bill credits in their service territories based on the same structure as those currently provided by United under the terms of the settlement agreement approved in the Separation Order. Automatic credits will be provided to customers for each repair and/or installation commitment missed due to reasons within the Merged Company ILECs' control. The credit will be a fixed \$15 for residential and \$25 for basic business (i.e., B1) customers. The Merged Company ILECs must have in effect, by the beginning of the conversion to the CenturyTel billing and customer care system, tariffs providing for these credits.

4. Merger Synergies

- a. CenturyTel and Embarq agree that the Merged Company ILECs will petition for an AFOR(s) pursuant to RCW 80.36.135, or the then current AFOR law or rule, no later than five (5) years from the close date of the merger.
- b. CenturyTel and Embarq agree that none of the Merged Company ILECs will file tariff revisions that would seek to increase stand alone residential local exchange service access line rates for one (1) year from the merger close date ("Stay Out Period"), except in the case of the occurrence of "Exogenous Events."
- c. "Exogenous Events" are defined as any orders, rules, or other actions, individually or in combination, by a governmental body that have an annual impact of \$1 million or more on either (a) CenturyTel of Washington, Inc. and CenturyTel of Inter Island, Inc. on a combined basis, (b) CenturyTel of Cowiche, Inc., or (c) United. An operating company (or in the case of CenturyTel of Washington, Inc. and CenturyTel of Inter Island, Inc., which utilize a combined revenue requirement) would be entitled to seek recovery of the financial impact of such Exogenous Events during the Stay Out Period in a general rate proceeding as defined by WAC 480-07-505 or in an AFOR. All other rates may be adjusted at any time pursuant to existing statutes and rules or in conjunction with an earnings review.

5. Recovery of Merger Branding & Transaction Costs

CenturyTel and Embarq agree that the Merged Company ILECs will not seek recovery from ratepayers, through intrastate regulated rates, of any merger, branding or transaction costs including, but not limited to, transaction costs (accounting, banker, legal advisor and other fees), severance costs associated with the merger and costs of developing, establishing, or changing branding. These amounts will be recorded separately and identified on the accounting records of the Merged Company ILECs.

6. Customer Notice

CenturyTel and Embarq commit to send notice to affected customers if either (or both) CenturyTel or United undergo a name change. Prior to any name change becoming effective in Washington, the Merged Company ILECs will work with Staff and Public Counsel on the content of a notice informing their customers of a name change, if applicable.

7. Transfer of Long Distance Customers

CenturyTel and Embarq agree that the Merged Company will send notice to customers, if any, that experience a change in their long distance carrier as result of the merger. The notice will be sent to customers a minimum of thirty (30) days before transfer and will commit to waiving any PIC change charges for a period of ninety (90) days should customers decide to change to a different long distance carrier.

8. Broadband Improvement

CenturyTel and Embarq agree that United will provision broadband to 2,200 residential lines which currently are not broadband capable over three (3) years, commencing upon the close of the merger. Annual progress on this condition will be apparent, as measured by the number of residential access lines that become DSL enabled. An annual report will be provided to the Staff and Public Counsel specifying:

- a. The number of lines enabled;
- b. The wire centers where those lines are located;
- c. The data speeds for each upgraded wire center, as measured by the maximum speed the upgraded equipment is capable of providing; and,

- d. The number of lines in the upgraded wire center capable of reaching the following downstream data speeds: Up to 1.5 megabits per second ("Mbps"); above 1.5 Mbps up to 3 Mbps; and, above 3 Mbps to maximum data speed.

9. Affiliated Interest

CenturyTel and Embarq agree that the Merged Company ILECs will comply with all applicable Commission statutes and rules regarding affiliated interest transactions, including timely filings of applications and reports.

10. One-Time Lifeline Pamphlet

The Merged Company ILECs will notify Lifeline and tribal agencies of a name change when and if it occurs. The procedure includes the following:

- a. Update all Lifeline materials to reflect the new name when it becomes final and approved for distribution;
- b. Update agency contact letters to reflect the name change message;
- c. Prepare a mailing list of all social service agencies on the Merged Company ILECs' Lifeline/Link-Up contact list and send notifications along with Lifeline applications and flyers;
- d. Update FYI Bulletin to reflect the message about the name change;
- e. Send a Lifeline Bill Message to existing Lifeline customers several months prior to and after the change; and,
- f. Edit Lifeline newspaper ad to reflect the name change.

11. Milestone Reporting

CenturyTel and Embarq agree to provide the Staff and Public Counsel with advance written notice of major system conversions impacting Washington customers and will work with Staff to identify these major conversions. Those major systems will include, but not necessarily be limited to, business office and trouble reporting call centers, maintenance systems that monitor central office and transport equipment, engineering systems, outside plant record systems, and billing systems.

12. Synergy Benefits

CenturyTel and Embarq agree that by entering into this Agreement, no party is prohibited from addressing synergy benefits in determining the appropriate revenue requirement in future earnings review and general rate cases.

CenturyTel and Embarq acknowledge that Staff and Public Counsel may seek, and the Merged Company will not oppose, an earnings review to the extent consistent with the then prevailing legal requirements applicable to AFORs.

F. EFFECTIVE DATE

9 This Agreement is effective upon Commission approval, without material change, of the Agreement and the closing of the merger. Notwithstanding the effective date of the Agreement as a whole, paragraph 12 below, which requires the Parties to support the Agreement, is effective on the execution date of the Agreement. The execution date of the Agreement is the date of the latest signature of a Party executing the Agreement.

G. FILING OF THE AGREEMENT

10 The Parties agree to use the following procedures to seek Commission approval of the Agreement. Within one (1) business day of the date of execution of the required narrative of this proceeding that accompanies this Agreement ("Narrative"), Embarq and CenturyTel will file this Agreement and the Narrative with the Commission on behalf of the Parties. The transmittal letter will recommend that the Commission accept the settlement as the resolution of all issues in the case.

H. AGREEMENT APPROVAL PROCEDURES

11

The Parties understand the Commission has discretion, consistent with applicable law, to determine the appropriate procedures for deciding whether it will approve this Agreement. Pursuant to WAC 480-07-740(1), the Parties urge the Commission to approve the Agreement.

I. SUPPORT OF THE AGREEMENT

12

All Parties agree to use their best efforts to support the Agreement as a settlement of all contested issues in the pending proceeding. If the Commission so desires, the Parties will provide supporting witnesses to sponsor the Agreement at a Commission hearing and recommend that the Commission issue an order adopting this Agreement as the resolution of this proceeding and to provide such other evidence or briefing that the Commission may require pursuant to WAC 480-07-740(2). No Party to this Agreement or their agents, employees, consultants or attorneys will engage in any advocacy contrary to the Commission's prompt consideration of this Agreement. Nothing in this Agreement, however, requires any Party to support a material modification to this Agreement, if one is made by the Commission.

J. PROCEDURE IF THE COMMISSION PROVIDES LESS THAN FULL APPROVAL

13

In the event the Commission rejects this Agreement, the provisions of WAC 480-07-750(2)(a) shall apply. In the event the Commission accepts the Agreement upon conditions not proposed herein, each Party reserves the right, upon written notice to the Commission and the Parties within five (5) days of the Commission's Order, to state its

rejection of the conditions and withdrawal from the Agreement. In such event, the Parties immediately will request the prompt convening of a prehearing conference for purposes of establishing a procedural schedule for the completion of the case pursuant to WAC 480-07-750(2)(a). The Parties agree to cooperate in the development of a schedule that concludes the proceeding at the earliest possible date taking into account the needs of the Parties.

K. THE AGREEMENT AS PRECEDENT

14 The Parties have entered into this Agreement to avoid further expense, inconvenience, uncertainty and delay. Nothing in this Agreement (or any testimony, presentation or briefing supporting the Agreement) shall be, 1) cited or construed as precedent or as indicative of a Party's position on a resolved issue, or 2) asserted or deemed to mean that a Party agreed with or adopted another Party's legal or factual assertions in this proceeding. The limitations in this paragraph shall also not apply to any proceeding to enforce the terms of this Agreement or any Commission order adopting this Agreement in full.

15 Because this Agreement represents a compromise position of the Parties, no conduct, statements or documents disclosed in the negotiation of the Agreement shall be admissible as evidence in this or any other proceeding. This paragraph does not apply to non-privileged, publicly available documents.

L. ENTIRE AGREEMENT

16 The Parties acknowledge that this Agreement is the product of negotiations and compromise and shall not be construed against any Party on the basis that it was the drafter of any or all portions of this Agreement. This Agreement constitutes the Parties' entire agreement on all matters set forth herein, and it supersedes any and all prior oral and written understandings or agreements, on such matters that previously existed or occurred in this proceeding, and no such prior understanding or agreement or related representations shall be relied upon by the Parties.

M. INTEGRATED AGREEMENT

17 The Parties recommend that the Commission approve this Agreement with no material changes. The Parties have agreed to this Agreement as an integrated document.

N. MANNER OF EXECUTION

18 This Agreement is considered executed when all Parties sign the Agreement. A designated and authorized representative may sign the Agreement on a Party's behalf.

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The Parties may execute this Agreement in counterparts. If the Agreement is executed in counterparts, all counterparts shall constitute one agreement. A faxed signature page containing the signature of a Party is acceptable as an original signature page signed by that Party.

DATED this 22nd day of April, 2009

ROB MCKENNA
Attorney General

WUTC Staff

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Embarq Corporation


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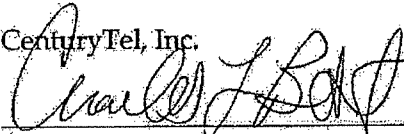
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Embarq Corporation

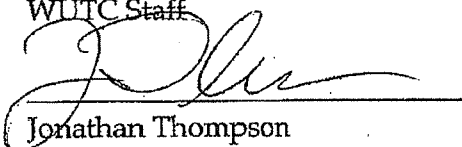
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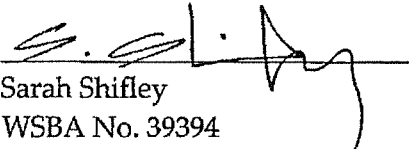
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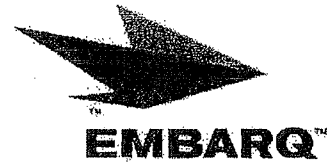
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Voice | Data | Internet | Wireless | Entertainment

January 13, 2009

VIA Email: karl.strohmeyer@Level3.com

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Sr. Vice President, Sales
Global Carrier Channel
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021



Embarq Corporation
Mailstop: KSOPKBD401
9300 Metcalf
Overland Park, KS 66212
EMBARQ.com

Re: Level 3 Intervention in EQ/CTL merger proceedings

Dear Karl:

This will confirm the understanding we reached earlier today on the following point, namely, (i) the Embarq local exchange companies will not invoke rights to replace any existing interconnection agreements between Level 3 Telecommunications LLC and any of the Embarq local exchange companies during the next 12 months, on the condition that Level 3 and its affiliates abstain from initiating or intervening in any regulatory or judicial proceedings that seek to deny, delay, condition, impede, comment upon or otherwise influence the outcome of the pending merger between Embarq Corporation and CenturyTel, and will immediately dismiss any such filings that have previously been made by Level 3 or its affiliates, and (ii) both parties will devote necessary resources and use their best efforts to negotiate new interconnection agreements within the next 12 months.

Please confirm that this letter accurately describes your understanding by signing in the space provided below, and return the executed copy to my attention this afternoon via email.

I appreciate all your efforts and assistance in getting this worked out, and I look forward to working with Level 3 on a new interconnection agreement.

Best regards,

Michael R. Hunsucker, Director - Contract Management
EMBARQ CORPORATION
michael.hunsucker@embarq.com

Confirmed:

By: Karl Strohmeyer, Sr. V.P.
Level 3 Communications, LLC

SETTLEMENT AGREEMENT

This Settlement Agreement is made as of the 13th day of February 2009 ("Effective Date") by and among Comcast Phone, LLC, on behalf of itself, its subsidiaries and its affiliates, which are identified on Schedule A ("Comcast"), the CenturyTel operating incumbent local exchange companies, which are identified on Schedule B ("CenturyTel"), and the Embarq operating incumbent local exchange companies dba "Embarq" which are identified on Schedule C ("Embarq") (individually a "Party" and collectively, "the Parties"),

WHEREAS, CenturyTel and Embarq have filed applications for authorization to effectuate an indirect transfer of control of Embarq to CenturyTel in several states, including: Florida, Pennsylvania, Tennessee, Virginia, and Washington (collectively, "Applications"),

WHEREAS, Comcast has intervened in Pennsylvania, Tennessee, Virginia, and Washington, has petitioned for authorization to participate in such proceedings and has filed comments in Florida in order to express its concerns regarding the proposed acquisition of Embarq by CenturyTel,^{1/}

^{1/} Comcast has filed petitions to intervene in the following proceedings: Docket No. A-2008-2076038, *Joint Application of The United Telephone Company of Pennsylvania, d/b/a Embarq Pennsylvania and Embarq Communications, Inc. for Approval of the Indirect Transfer of Control to CenturyTel, Inc.* (filed Nov. 21, 2008) (Pennsylvania proceeding); Docket No. 08-00219, *Joint Application of Embarq Corporation and CenturyTel, Inc. Regarding Transfers of Control of United Telephone Southeast LLC d/b/a Embarq, Embarq Communications, Inc. and Embarq Payphone Services, Inc.* (filed Nov. 21, 2008) (Tennessee proceeding; petition to intervene still pending); Case No. PUC-2008-00104, *Joint Petition of Embarq Corporation, Central Telephone Company of Virginia, United Telephone Southeast, LLC, and CenturyTel, Inc. for Approval of the Indirect Transfer of Control of Central Telephone Company of Virginia and United Telephone Company of Virginia and United Telephone Southeast LLC from Embarq Corporation to CenturyTel, Inc.* (filed Nov. 21, 2008) (Virginia proceeding); Docket UT-082119, *Joint Application of CenturyTel, Inc. (CenturyTel) and Embarq Corporation (Embarq) for Expedited Approval of an Indirect Transfer of Control of Embarq's Regulated Washington State Operating Subsidiaries to CenturyTel* (filed Nov. 21, 2008) (Washington proceeding). Comcast also filed comments in the Florida proceeding, see Docket No. 080692, *Embarq Corporation; CenturyTel, Inc.; Embarq Florida, Inc.; Embarq Payphone Services, Inc. - Joint Application for Expedited Approval of Indirect Transfer of Control* (filed Nov. 26, 2008); see also Docket No. 080692, *Comments of Comcast Phone of Florida, LLC* (filed Jan. 16, 2009) (Florida proceeding).

WHEREAS, Comcast's CLEC affiliates have, pursuant to sections 251 and 252 of the Telecommunications Act of 1996 ("Act"), entered into and/or are negotiating interconnection agreements with CenturyTel and Embarq and

WHEREAS, the Parties hereto have reached a mutually agreeable settlement of Comcast's concerns regarding the Applications.

In consideration of the mutual representations and covenants contained herein, the Parties hereby agree as follows:

1. CenturyTel and Embarq agree to enter into or continue interconnection negotiations with any Comcast affiliate that is certificated as a CLEC by a state commission to provide local telecommunications services ("Comcast CLEC"). Such negotiations will be pursuant to sections 251 and 252 of the Act, including, without limitation, the duty to negotiate in good faith and subject to arbitration, as provided therein. CenturyTel and Embarq will not object to interconnecting and entering into interconnection agreement negotiations with a Comcast CLEC on the grounds that the services obtained under such agreement will be used, in whole or in part, to support a Comcast affiliate in the provision of interconnected voice over Internet protocol ("VoIP") services.
2. The Parties agree to amend this Agreement to conform with any applicable change of law regarding the eligibility of a Comcast CLEC or similarly situated wholesale entity to obtain interconnection in order to support a third party in the provision of interconnected VoIP services. The Parties also agree to amend all Interconnection or Traffic Exchange Agreements in accordance with any applicable change of law provisions in such contracts. If there is no change of law provision in any Interconnection or Traffic Exchange Agreement, the Parties agree to work together to amend the contract to conform with any applicable change of law regarding the

eligibility of a Comcast CLEC or similarly situated wholesale entity to obtain interconnection in order to support a third party in the provision of interconnected VoIP services. The change of law provisions of this Section 2 will become effective when the applicable law, rule, regulation or order becomes final and non-appealable.

3. Except as pursuant to, and consistent with changes in law described in Section 2 above, neither Embarq nor CenturyTel, nor each respective Parties' affiliates and subsidiaries, shall individually object to, or cause any association of which Embarq or CenturyTel is a member to object to, a Comcast CLEC's (a) eligibility for interconnection pursuant to sections 251 and 252 of the Act; or (b) application to obtain a local exchange certificate; or (c) application to expand the area of an existing state certification, on the grounds that the services obtained under such agreement, or certificate will be used, in whole or in part, to support a Comcast affiliate in the provision of interconnected VoIP services.

4. Embarq's and CenturyTel's obligations in Section 3, and Comcast's obligations in Section 5, do not (a) affect a Party's obligation to respond truthfully as to its position of record on inquiries from governmental entities or judicial and administrative proceedings; (b) prohibit a Party from defending itself or taking positions or advocating before any legislative or regulatory bodies on specific issues as long as such actions are not inconsistent with Embarq's and CenturyTel's obligations in Section 3 and Comcast's obligations in Section 5, except that such positions or advocacy made pursuant to an inquiry from a legislative or regulatory body may comply with section (4)(a); or (c) preclude a Party from membership in any associations that may take positions on specific issues so long as the Party does not use its membership as a device to avoid its obligations in Section 3 or Section 5.

5. Comcast shall request to withdraw its Petition to Intervene in Pennsylvania, Tennessee, Virginia, and Washington within three (3) business days of the date of the last signature to this agreement. Further, Comcast and its affiliates and subsidiaries will abstain from initiating, intervening or participating in any regulatory or judicial proceedings (or supporting or causing any such filings by any other party) reviewing an application by Embarq and/or CenturyTel to approve the pending merger between Embarq and CenturyTel. If Comcast does not request to withdraw its petitions to intervene or if the merger is not approved by any state commission, then the Parties shall not be bound by this Agreement with respect to such state. If the merger is not approved by the FCC, the parties shall not be bound by this Settlement Agreement.

6. Embarq shall not limit or cap the number of local service requests ("LSRs"), directory services requests ("DSRs") or requests to port numbers (collectively "Orders") that Embarq will accept from Comcast during any given time period. Nor will Embarq cap the number of Orders, including but not limited to simple porting requests, that it will process within standard intervals. Comcast agrees that this obligation shall be reciprocal with Embarq. This paragraph 6 shall not apply to legacy service territories of CenturyTel. Notwithstanding the foregoing and subject to paragraph 5 herein, Comcast reserves all rights to arbitrate, petition or otherwise challenge limitations set by Embarq and/or CenturyTel on the number of Orders that may be submitted during any given time period or processed within standard intervals.

7. Nothing in this Agreement shall preclude the application to Comcast of any state or FCC conditions (whether imposed, adopted, approved or voluntarily agreed to) as a result of the merger between Embarq and CenturyTel when such conditions are to be made available to CLECs generally. Any such state conditions will be applicable only within that specific state.

Any such FCC conditions will be applicable in all states, except as otherwise may be provided by the terms of the FCC's merger conditions.

8. The term of this Agreement shall be for two (2) years from the Effective Date and is not subject to any extension without mutual agreement memorialized in writing.

9. The Parties shall prepare and execute such other documents as are reasonably necessary to effectuate the terms of this Settlement Agreement.

10. This Settlement Agreement is made without admission against or prejudice to any factual or legal positions that any of the Parties have asserted or may have asserted in the referenced proceedings absent this Settlement Agreement.

11. This Settlement Agreement is to be construed and enforced in accordance with the laws of the state of Delaware. The parties may only disclose the contents of this Settlement Agreement as is necessary for enforcement of its terms.

12. This Settlement Agreement constitutes the entire and final agreement between the Parties in connection with the Applications and the other matters addressed in this Settlement Agreement and supersedes all prior written and oral agreements, representations and understandings, and may only be changed by an agreement made in writing and signed by all the Parties hereto.

13. This Settlement Agreement is binding upon and inures to the benefit of the Parties hereto and their heirs, successors and assigns.

14. The Parties agree that this Settlement Agreement may be signed in any number of separate counterparts and that, once signed by all Parties, all counterparts shall be considered as if contained in a single document.

15. If any term or other provisions of this Settlement Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect.

WHEREFORE, intending to be bound by the terms of this Settlement Agreement set forth herein, the Parties have set forth their signatures on the date indicated below,

Comcast Phone LLC on behalf
of itself and the entities identified
on Schedule A

By:

Name:

Title:

Date:

Embarq Corporation on behalf
of itself and the entities identified
on Schedule C

By:

Name:

Title:

Date:

CenturyTel ILECs identified in
Schedule B

By: *Jeffrey S. Glover*

Name: Jeffrey S. Glover

Title: Vice President External Relations

Date: *February 13, 2008*

**SCHEDULE A
COMCAST ENTITIES**

Comcast Phone of Alabama, LLC dba Comcast Digital Phone
Comcast Phone of Arizona, LLC dba Comcast Digital Phone
Comcast Phone of Arkansas, LLC dba Comcast Digital Phone
Comcast Phone of California, LLC
Comcast Phone of Colorado, LLC
Comcast Phone of Connecticut, Inc. dba Comcast Digital Phone
Comcast Phone of Delaware, LLC dba Comcast Digital Phone
Comcast Phone of D.C., LLC dba Comcast Digital Phone
Comcast Phone of Florida, LLC
Comcast Phone of Georgia, LLC dba Comcast Digital Phone
Comcast Phone of Illinois, LLC
Comcast Phone of Central Indiana, LLC
Comcast Phone of Kansas, LLC dba Comcast Digital Phone
Comcast Phone of Kentucky, LLC dba Comcast Digital Phone
Comcast Phone of Louisiana, LLC dba Comcast Digital Phone
Comcast Phone of Maine, LLC
Comcast Phone of Northern Maryland, Inc.
Comcast Phone of Massachusetts, Inc. dba Comcast Digital Phone
Comcast Phone of Michigan, LLC dba Comcast Digital Phone
Comcast Phone of Minnesota, Inc. dba Comcast Digital Phone
Comcast Phone of Mississippi, LLC
Comcast Phone of Missouri, LLC dba Comcast Digital Phone
Comcast Phone of New Hampshire, LLC dba Comcast Digital Phone
Comcast Business Communications, LLC
Comcast Phone of New Mexico, LLC dba Comcast Digital Phone
Comcast Phone of New York, LLC
Comcast Phone of Ohio, LLC dba Comcast Digital Phone
Comcast Phone of Oregon, LLC dba Comcast Digital Phone
Comcast Phone of Pennsylvania, LLC dba Comcast Digital Phone
Comcast Phone of South Carolina, Inc.
Comcast Phone of Tennessee, LLC dba Comcast Digital Phone
Comcast Phone of Texas, LLC dba Comcast Digital Phone
Comcast Phone of Utah, LLC dba Comcast Digital Phone
Comcast Phone of Vermont, LLC d/b/a Comcast Digital Phone
Comcast Phone of Virginia, LLC dba Comcast Digital Phone
Comcast Phone of Northern Virginia, LLC dba Comcast Digital Phone of Northern Virginia
Comcast Phone of Washington, LLC
Comcast Phone of West Virginia, LLC dba Comcast Digital Phone
Comcast Phone of Wisconsin, LLC dba Comcast Digital Phone

SCHEDULE B

CenturyTel Operating Incumbent Local Exchange Companies

CenturyTel of Alabama, LLC Alabama
Gulf Telephone Company Alabama
CenturyTel of South Arkansas, Inc. Arkansas
CenturyTel of Redfield, Inc. Arkansas
CenturyTel of Northwest Arkansas, LLC Arkansas
CenturyTel of Central Arkansas, LLC Arkansas
CenturyTel of Mountain Home, Inc. Arkansas
CenturyTel of Arkansas, Inc. Arkansas
CenturyTel of Colorado, Inc. Colorado
CenturyTel of Eagle Inc. Colorado
Coastal Utilities, Inc. Georgia
CenturyTel of Idaho, Inc. Idaho
CenturyTel of the Gem State, Inc. Idaho
Gallatin River Communications, LLC Illinois
CenturyTel of Odon, Inc. Indiana
CenturyTel of Central Indiana, Inc. Indiana
CenturyTel of Chester, Inc. Iowa
CenturyTel of Postville, Inc. Iowa
CenturyTel of Central Louisiana, LLC Louisiana
CenturyTel of North Louisiana, LLC Louisiana
CenturyTel of East Louisiana, LLC Louisiana
CenturyTel of Southeast Louisiana, Inc. Louisiana
CenturyTel of Evangeline, LLC Louisiana
CenturyTel of Southwest Louisiana, LLC Louisiana
CenturyTel of Northwest Louisiana, Inc. Louisiana
CenturyTel of Chatham, LLC Louisiana
CenturyTel of Ringgold, LLC Louisiana
CenturyTel Midwest - Michigan, Inc. Michigan
CenturyTel of Michigan, Inc. Michigan
CenturyTel of Northern Michigan, Inc. Michigan
CenturyTel of Upper Michigan, Inc. Michigan
CenturyTel of Minnesota, Inc. Minnesota
CenturyTel of North Mississippi, Inc. Mississippi
Spectra Communications Group, LLC Missouri
CenturyTel of Missouri, LLC Missouri
CenturyTel of Montana, Inc. Montana
CenturyTel of the Gem State, Inc. Nevada
CenturyTel of Southwest, Inc. - New Mexico New Mexico
MebTel, Inc. North Carolina
CenturyTel of Ohio, Inc. Ohio

CenturyTel of Eastern Oregon, Inc. Oregon
CenturyTel of Oregon, Inc. Oregon
CenturyTel of Claiborne, Inc. Tennessee
CenturyTel of Adamsville, Inc. Tennessee
CenturyTel of Ooltewah-Collegedale, Inc. Tennessee
CenturyTel of Port Aransas, Inc. Texas
CenturyTel of San Marcos, Inc. Texas
CenturyTel of Lake Dallas, Inc. Texas
CenturyTel of Washington, Inc. Washington
CenturyTel of Inter Island, Inc. Washington
CenturyTel of Cowiche, Inc. Washington
CenturyTel of Wisconsin, LLC Wisconsin
CenturyTel of Southern Wisconsin, LLC Wisconsin
CenturyTel of Fairwater-Brandon-Alto, LLC Wisconsin
CenturyTel of Central Wisconsin, LLC Wisconsin
CenturyTel of Forestville, LLC Wisconsin
CenturyTel of Larsen-Readfield, LLC Wisconsin
CenturyTel of Monroe County, LLC Wisconsin
CenturyTel of Northwest Wisconsin, LLC Wisconsin
CenturyTel of Northern Wisconsin, LLC Wisconsin
CenturyTel of the Midwest-Wisconsin, LLC Wisconsin
CenturyTel of Midwest-Kendall, LLC Wisconsin
Telephone USA of Wisconsin, LLC Wisconsin
CenturyTel of Wyoming, Inc. Wyoming

SCHEDULE C

Embarq Operating Incumbent Local Exchange Companies

Carolina Telephone and Telegraph Company LLC, a North Carolina limited liability company
d/b/a **Embarq**

Central Telephone Company, a Delaware corporation d/b/a **Embarq**
Central Telephone Company of Texas, a Texas corporation d/b/a **Embarq**
Central Telephone Company of Virginia, a Virginia corporation d/b/a **Embarq**

Embarq Missouri, Inc., a Missouri corporation d/b/a **Embarq**
Embarq Florida, Inc., a Florida corporation d/b/a **Embarq**
Embarq Minnesota, Inc., a Minnesota corporation d/b/a **Embarq**

The United Telephone Company of Pennsylvania LLC, a PA limited liability company d/b/a
Embarq Pennsylvania

United Telephone Company of Indiana, Inc., an Indiana corporation d/b/a **Embarq**
United Telephone Company of New Jersey, Inc., a New Jersey corporation d/b/a **Embarq**
United Telephone Company of Ohio, an Ohio corporation d/b/a **Embarq**
United Telephone Company of Texas, Inc., a Texas corporation d/b/a **Embarq**

United Telephone Company of Kansas, a Kansas corporation d/b/a **Embarq**
United Telephone Company of Southcentral Kansas, an Arkansas corp. d/b/a **Embarq**
United Telephone Company of Eastern Kansas, a Delaware corporation d/b/a **Embarq**

United Telephone Company of the Carolinas LLC, a S.C. limited liability company d/b/a
Embarq
United Telephone Company of the Northwest, an Oregon corporation d/b/a **Embarq**
United Telephone Company of the West, a Delaware corporation d/b/a **Embarq**

United Telephone Southeast, LLC., a Virginia limited liability company d/b/a **Embarq**