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**EMBARQ®**

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April 13, 2009

Dennis J. Moss  
Administrative law judge  
Washington Utilities & Transportation  
Commission  
1300 S. Evergreen Park Drive, SW  
PO Box 47250  
Olympia, WA 98503-7150

RECEIVED  
2009 APR 16 AM 8:09  
OFFICE OF THE  
COMMISSIONER

Re: Second Amended Response of Embarq and CenturyTel to Bench Request No. 1 in UTC Docket UT-082119.

Dear Judge Moss:

In the Notice Concerning Agenda for Hearing, issued April 8, 2009 in Docket UT-082119 ("Notice"), the notice indicated that Embarq Corporation and CenturyTel, Inc. ("Applicants") had not submitted any updated response to Bench Request No. 1. In order to address the concerns expressed in the Notice, this letter is accompanied by a Second Amended Response to Bench Request No. 1 and the Applicants also offer the following statements for your consideration in advance of the Commission taking up the matter.

As the Notice correctly states, the Applicants previously stated that they had not yet determined whether the agreements with Comcast and Level 3 "provide guarantees or assurances, confer rights, or impose obligations that will not be generally available or applicable to competitive local exchange companies or customers." Although Applicants were prepared to make the terms and conditions embodied in the Comcast and Level agreements generally available to similarly situated CLECs, it was not entirely clear to Applicants whether the agreements themselves represented the means through which such availability should be accomplished. In any event, the Applicants are willing to state that these agreements do not provide guarantees or assurances, confer rights, or impose obligations that will not be generally available or applicable to similarly situated CLECs. A statement to this effect is incorporated into the enclosed Second Amended Response to Bench Request No. 1. To be clear, Applicants stand ready to make the terms and conditions embodied in the Comcast and Level 3

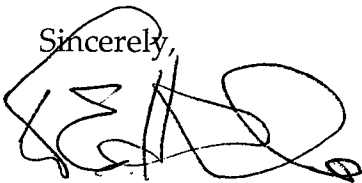
agreements generally available to similarly situated CLECs, through such means as the Commission determines is appropriate.

The Applicants made a good faith assessment that the provisions of the Comcast and Level 3 agreements do not constitute amendments to existing Section 251 interconnection agreements that would give rise to a legal requirement that they be filed for Commission approval under Section 252 of the Federal Telecom Act. In essence, the agreements reflect a commitment by the Applicants to maintain the status quo with the intervenors under *existing* agreements. None-the-less, Applicants are prepared to make their terms generally available to similarly situated CLECs.

Applicants are sensitive to the Commission's concerns stated in the Notice regarding "... 'unfiled' or 'private' side-agreements entered into by applicants in exchange for the agreement of the intervenors to withdraw from a proceeding." In this instance, the agreements with Comcast and Level 3 are public documents on file in this docket, and such agreements are not private, in the sense that Applicants have not provided more favorable rates, terms or conditions to intervenors than Applicants are willing to make available to similarly situated CLECs.

Applicants appreciate the opportunity to have further dialogue with the Commission on these concerns at the rescheduled hearing in this matter.

Sincerely,



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WSBA No. 29786

OR State Bar application pending

enclosure

cc: service list

CERTIFICATE OF SERVICE

I hereby certify that I have this day, served the foregoing document(s) upon parties of record via the method(s) noted below:

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Dated: 4-13-09



Ronda K. Snyder

Docket No. UT-082119

Second Amended Response to Bench Request No. 1

Date 4/13/2009

**Bench Request No. 1:** Please provide 6 copies of all agreements entered into between you and Level 3 Communications, LLC; Comcast Phone of Washington, LLC, d/b/a Comcast Digital Phone; or, the International Brotherhood of Electrical Workers Local 89 that have resulted in each of these parties requesting leave to withdraw from this proceeding. Provide a narrative description of each agreement's terms and state whether the provisions provide guarantees or assurances, confer rights, or impose obligations that will not be generally available or applicable to competitive local exchange companies or customers.

- Embarq – Level 3 Communications, LLC Agreement (see Bench Request Attachment 1):

Under the agreement, Level 3 agrees to withdraw from this proceeding in exchange for Embarq's commitment that it will not seek to replace the existing interconnection agreement between the parties for the next 12 months while they negotiate a new agreement. Embarq states that the agreement does not provide guarantees or assurances, confer rights, or impose obligations that will not be generally available or applicable to similarly situated competitive local exchange companies. This agreement was filed with the Commission by Staff, on February 24, 2009, in its Response to Comcast's request to withdraw.

- Embarq/CenturyTel – Comcast Digital Phone Agreement (see Bench Request Attachment 2):

Under the agreement, which has a two year term, Comcast agrees to withdraw from this proceeding and in exchange Embarq and CenturyTel agree:

- (1) To enter into or continue interconnection negotiations with Comcast and not to object to interconnecting and entering into negotiations on the grounds that services will be used to support a Comcast affiliate in the provision of VoIP services.
- (2) To implement change in law provisions under the existing agreement with respect to changes in laws concerning a Comcast CLEC or a similarly situated wholesale entity's eligibility to obtain interconnection for provision of interconnected VoIP.

- (3) Consistent with change in law provisions, not object to interconnection under 251 and 252 of the Act, application for certification, or expansion of certification, on the grounds that the certification will be used to support a Comcast affiliate in the provision of VoIP services.
- (4) Exceptions to certain agreement obligations in Sections 3 and 5 to ensure compliance with governmental inquiries and agreement not to use trade associations to circumvent obligations.
- (5) Embarq will not limit the number of local service requests, directory services requests, or requests to port numbers.
- (6) Applicability of certain state or FCC conditions when such conditions are to be available to CLECs generally.

Embarq and CenturyTel state that the agreement does not provide guarantees or assurances, confer rights, or impose obligations that will not be generally available or applicable to similarly situated competitive local exchange companies. This agreement was filed with the Commission by Comcast, on February 25, 2009.

- Embarq/CenturyTel – IBEW Agreement (see Bench Request Attachment 3):

Embarq and CenturyTel make the following commitments:

**Begin Confidential**

[REDACTED]

**End Confidential**

This agreement does not contain provisions related to CLEC service.