

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

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JOINT PETITION OF

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EMBARQ CORPORATION,
CENTRAL TELEPHONE COMPANY OF VIRGINIA,
UNITED TELEPHONE SOUTHEAST LLC,

and

CASE NO. PUC-2008-00104

CENTURYTEL, INC.

For Approval of the Indirect Transfer of Control
of Central Telephone Company of Virginia and
United Telephone Southeast LLC from Embarq
Corporation to CenturyTel, Inc.

ORDER GRANTING APPROVAL

On November 21, 2008, CenturyTel, Inc. ("CenturyTel"), Embarq Corporation ("Embarq"), Central Telephone Company of Virginia ("Centel Virginia"), and United Telephone Southeast LLC ("United Virginia") (collectively "Petitioners"), pursuant to Chapter 5 of Title 56 of the Code of Virginia (§§ 56-88, et seq., the "Transfers Act"), filed with the State Corporation Commission ("Commission") a Petition seeking approval of the transfer of control of Embarq and, indirectly, its Virginia operating subsidiaries, including Centel Virginia and United Virginia¹ (hereinafter "Transaction" or "Merger"). In Virginia, Embarq provides local exchange telecommunications services through two operating subsidiaries, Centel Virginia and United Virginia. CenturyTel currently does not provide telecommunications services in Virginia.

¹ There are two additional Embarq Corporation subsidiaries providing telecommunications services in Virginia that will also experience an indirect change of control as a result of the Transaction. Embarq Communications of Virginia, Inc., is a switchless reseller of long-distance telecommunications services. Embarq Payphone Services, Inc., is an Embarq Corporation subsidiary providing telecommunications services in Virginia. The Commission has previously held that transfers of control of long-distance resellers and non-certificated payphone service providers are not subject to the Transfers Act. Joint Petition of Bell Atlantic Corporation and GTE Corporation for approval of agreement and plan of merger, Case No. PUA-1998-00031; Petition of Sprint Nextel Corporation and LTD Holding Company for Approval of Transfer of Control, Case No. PUC-2005-00118.

According to the Petition, Embarq, CenturyTel, and Cajun Acquisition Company ("CAC") entered into an Agreement and Plan of Merger ("Merger Agreement") as of October 26, 2008. Embarq is a publicly traded holding company with incumbent local exchange operations in 18 states, including Centel Virginia and United Virginia. CenturyTel is a publicly traded holding company with its own incumbent local exchange operating company subsidiaries in 25 states, currently providing no telecommunications services in Virginia. CAC is a direct wholly owned subsidiary of CenturyTel created in order to effectuate this Transaction.

The Petitioners propose that Embarq and CAC will merge with Embarq being the surviving corporation and CAC ceasing to exist. The Transaction will be accomplished through a stock-for-stock transaction. Embarq will become a direct wholly owned subsidiary of CenturyTel. The terms of the Merger Agreement provide that Embarq's Virginia operating subsidiaries will remain subsidiaries of Embarq; however, a transfer of control of Embarq will occur. CenturyTel's various operating subsidiaries will remain subsidiaries of CenturyTel; however, a transfer of majority equity ownership will occur. Following the completion of the Transaction, the shareholders of pre-transaction Embarq are expected to own approximately 66% of the post-transaction CenturyTel, and the shareholders of pre-transaction CenturyTel are expected to own approximately 34% of post-transaction CenturyTel.

The Petitioners state that Centel Virginia and United Virginia will continue as the certificated carriers in Virginia and that end-user customers will continue to receive service from the same local operating company and at the same rates, terms, and conditions as immediately prior to the Transaction. The Petitioners state that the Transaction will be transparent to customers and that the Transaction will not impair or jeopardize the provision of adequate

service to the public at just and reasonable rates and is in full compliance with applicable Virginia law.

On December 16, 2008, the Commission issued an Order for Notice and Hearing that, among other things, authorized interested persons and entities to become Respondents in this proceeding by filing Notices of Participation on or before January 26, 2009. Notices of Participation were filed by Level 3 Communications, LLC ("Level 3"); Comcast Phone of Virginia, LLC d/b/a Comcast Digital Phone ("Comcast"); the Communications Workers of America ("CWA"); and the Office of the Attorney General, Division of Consumer Counsel ("Consumer Counsel"). By Order dated March 12, 2009, the Commission granted the requests of Level 3, Comcast, and the CWA to withdraw from this proceeding.

On January 20, 2008, the Petitioners filed the direct testimony of Richard A. Schollmann, Mark D. Harper, and G. Clay Bailey. On February 17, 2008, Consumer Counsel informed the Commission that it would not be filing testimony in this proceeding but that it intended to participate in the evidentiary hearing.

Also on February 17, 2008, the Commission's Staff ("Staff") filed the direct testimony of Robert C. Dalton, Steven C. Bradley, Amy J. Gilmour, and Lawrence T. Oliver. Staff generally agreed with the Petitioners that the proposed transaction will not result in any change in the rates paid by customers in Virginia and, therefore, the transaction will be virtually transparent to customers. Subject to certain enumerated conditions, Staff stated that the proposed transaction complied with the requirements of the Utility Transfers Act and should, therefore, be approved by the Commission. Staff witness Dalton proposed that within thirty (30) days of completing the Merger, subject to administrative extension by the Commission's Director of Public Utility Accounting, the Petitioners should file a Report of Action with the Commission, including the

date the transaction took place. Staff witness Gilmour proposed that the Petitioners be required to track the incremental state-specific merger costs and savings for Centel Virginia and United Virginia for a minimum of three (3) years after the merger is consummated to ensure that such information is available to the Commission if needed. Staff witness Gilmour further proposed that the Petitioners be required to continue to file the annual rate of return statement, rate base statement, and capital structure statements mandated by the Commission in Case No. PUC-2005-00118 when it approved the spin-off of Centel Virginia and United Virginia.

On March 10, 2009, the Petitioners filed the rebuttal testimony of Richard A. Schollmann. Mr. Schollmann testified that the Petitioners would agree to the three conditions proposed in Staff's direct testimony.

On March 10, 2009, Sprint Communications Company of Virginia, Inc.; Sprint Spectrum, L.P.; Sprintcom, Inc.; Nextel Communications of the Mid-Atlantic, Inc.; and NPCR, Inc. d/b/a Nextel Partners (collectively, "Sprint Nextel") filed public comments. Sprint Nextel stated that it did not take a position either in support of or opposition to the Merger Petition but requested that the Commission address the level of Centel Virginia's and United Virginia's intrastate switched access rates before approving the proposed merger.²

The Commission held an evidentiary hearing on March 17, 2009. The Petitioners, Consumer Counsel, and Staff appeared at the hearing by counsel. The pre-filed direct testimony of the Petitioners and Staff, as well as the rebuttal testimony of the Petitioners, was admitted into

² The Commission also received one written comment from an Embarq customer stating that the Commission should consider more stringent regulation if the merger is approved to ensure that the cost of local phone service will not increase.

the record.³ The Commission heard additional oral testimony from Mark D. Harper and G. Clay Bailey for the Petitioners and Lawrence T. Oliver for Staff.

NOW THE COMMISSION, having considered the record, the pleadings, and the applicable law, is of the opinion and finds as follows. The Joint Petition is approved subject to the requirements ordered herein.

Transfers Act

Petitioners request approval of the proposed merger under the Transfers Act, § 56-88 et seq., of the Code. The General Assembly has set forth the criteria that the Commission must apply in evaluating the Joint Petition under the Transfers Act. Specifically, § 56-90 of the Code states as follows:

[i]f and when the Commission, with or without hearing, shall be satisfied that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the prayer of the petition, the Commission shall make such order in the premises as it may deem proper and the circumstances require, and thereupon it shall be lawful to do the things provided for in such order....

We must evaluate the Joint Petition, the support therefor, the objections thereto, and the requirements proposed by others according to this statutory criteria. Based on the evidence presented in this case, we find that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the Joint Petition subject to the requirements ordered herein, which we deem proper and the circumstances require.

Staff proposes that the Commission condition approval of the merger upon the Petitioners being required to: (1) within thirty (30) days of completing the Merger, file a Report of Action with the Commission, including the date the transaction took place; (2) track the incremental

³ The confidential version of Staff witness Bradley's testimony was not separately identified and admitted into the record in this proceeding during the hearing; however, it is admitted pursuant to this Order.

state-specific merger costs and savings for Centel Virginia and United Virginia for a minimum of three years after the merger is consummated to ensure that such information is available to the Commission if needed; and (3) continue to file the statements mandated by the Commission in Case No. PUC-2005-00118. We agree with Staff that these conditions are reasonable and necessary to ensure that adequate service to the public at just and reasonable rates will not be impaired or jeopardized, as required under the Transfers Act.⁴

Accordingly, IT IS THEREFORE ORDERED THAT:

(1) Pursuant to §§ 56-88.1 and 56-90 of the Code of Virginia, the Joint Petition is granted subject to the requirements established in this Order Granting Approval.

(2) Within thirty (30) days of completing the Merger, subject to administrative extension by the Commission's Director of Public Utility Accounting, the Petitioners shall file a Report of Action with the Commission. The Report shall include the date the transaction took place.

(3) Petitioners shall be required to track the incremental state-specific merger costs and savings for Centel Virginia and United Virginia for a minimum of three (3) years after the merger is consummated. This information need not be filed with the Commission but shall be made available upon request by the Commission or its Staff.

(4) Petitioners shall be required to continue to comply with the requirements of the Commission's Order in Case No. PUC-2005-00118, including filing the annual rate of return statement, rate base statement, and capital structure statements, as well as a continuing obligation to notify the Commission of any dividend payment by Centel Virginia or United Virginia to their corporate parent.

⁴ With respect to the public comments submitted by Sprint Nextel in this case, we note that our decision in this proceeding is separate and independent from our consideration of intrastate access rates in Case No. PUE-2007-00108.

(5) The remedies for violation of any of the Commission's Orders herein include the penalties set forth in § 12.1-13 of the Code.

(6) The confidential version of the pre-filed Direct Testimony of Steven C. Bradley is admitted to the record as Exhibit 11-C.

(7) This matter is dismissed.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:

Kevin K. Zarling, Senior Counsel, Embarq Corporation, 400 West 15th Street, Suite 1400, Austin, Texas 78701; Cliona M. Robb, Esquire, and Peter E. Broadbent, Esquire, Christian & Barton, L.L.P., 1200 Mutual Building, Suite 1200, 909 East Main Street, Richmond, Virginia 23219-3095; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219; Andrew Fisher, Esquire, Comcast Cable Communications, LLC, One Comcast Center, Fl. 50, Philadelphia, Pennsylvania 19103; Martin P. Hogan, Esquire, Evening Star Building, Suite 600, 1101 Pennsylvania Avenue, N.W., Washington, D.C. 20004; JoAnne L. Nolte, Esquire, The Nolte Law Firm, 1427 West Main Street, Richmond, Virginia 23220; Eric M. Page, Esquire, LeClair Ryan, P.C., 951 East Byrd Street, 8th Floor, Richmond, Virginia 23219; and the Commission's Office of General Counsel and Division of Communications.

A True Copy
Teste:


Clerk of the
State Corporation Commission