

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

Joint Application of The United Telephone Company of Pennsylvania LLC d/b/a Embarq Pennsylvania and Embarq Communications, Inc. For Approval of the Indirect Transfer of Control To CenturyTel, Inc.

Public Meeting: May 28, 2009
2076038-OSA
Docket No. A-2008-2076038

STATEMENT OF COMMISSIONER WAYNE E. GARDNER

This proceeding is a merger between Embarq Corporation, its subsidiaries, (Embarq) and CenturyTel. Under the merger, Embarq will become a direct, wholly-owned subsidiary of CenturyTel. The Joint Applicants are Embarq and the matter has been adjudicated under, *inter alia*, Chapter 11 of the Public Utility Code, 66 Pa. C.S. §§1100 -1103. The statutory standards under which this Commission must evaluate whether a merger is in the public interest have been additionally modified by the holdings of City of York v. Pa. PUC, 449 Pa. 136, 295 A.2d 825 (1972) and, more recently, Popowsky v. Pa. PUC, 594 Pa. 583, 937 A.2d 1040 (2007).

The common thread to all of the considerations applicable to our merger analysis is the requirement that the merging parties show that the transaction will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way. In the telecommunications utility industry, the affirmative and substantial public benefits of a merger are sometimes difficult to quantify and/or articulate. This is so, based, in part, on the fact that the companies involved are not rate-base-rate-of-return regulated. Thus, improved efficiencies obtained as a result of merger do not result in a reduction in the cost of service in the “traditional” sense. However, the companies involved are under regulatory and consumer pressure to modernize their networks to meet the challenge of rapidly changing telecommunications services that are available and demanded by the consumer, and the intermodal competition represented by this demand.

I agree with the Office of Special Assistants’ recommendation that the present merger should be approved with those conditions as set forth in the draft Order. However, I am not unsympathetic to the concerns regarding this merger that have been identified by the other participants to the proceeding, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Broadband Cable Association of Pennsylvania. I would encourage the merging companies to use so-called “synergy” savings to accelerate broadband deployment in those underserved and, mostly, rural areas in Pennsylvania in advance of the normal schedule which did not have the benefit of potential synergy savings from the merger. Additionally, I will be mindful of the impact of prices for basic local service on rural consumers and will keep an eye on the relationship of prices for basic local service, overall market penetration, and broadband deployment.

Date

Wayne E. Gardner, Commissioner