

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matters of)	
)	
Federal-State Joint Board)	CC Docket No. 96-45
on Universal Service)	
)	
Forward-Looking Mechanism for High Cost)	CC Docket No. 97-160
Support for Non-Rural LECs)	
and 69.3(g)(2) of the Commission's Rules)	

COMMENTS OF CENTURYTEL, INC.

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COMMENTS OF CENTURYTEL, INC.

CENTURYTEL, INC. (CenturyTel), through its attorneys, hereby submits the following comments in response to the Commission's recent Further Notice of Proposed Rulemaking (*Further Notice*) in these proceedings.¹

INTRODUCTION

CenturyTel, headquartered in Monroe, Louisiana, is a leader in providing integrated communications services to rural markets. CenturyTel provides a variety of communications services to rural communities in 21 states, including local exchange, wireless cellular telephone service, personal communications services (PCS), long distance, security, data, and Internet access services. CenturyTel is a leader in providing a full range of communications and information services to rural America. CenturyTel's rural exchanges provide local exchange service to 1.2 million access lines. Approximately half of these exchanges have fewer than 1,000 access lines each. Very few of its exchanges have greater than 10,000 access lines. CenturyTel

¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, and *Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket No. 97-160, Further Notice of Proposed Rulemaking, FCC 99-120 (rel. May 28, 1999) ("*Further Notice*").

has certified to the Commission that all of its operating companies meet the statutory definition of a "rural telephone company." CenturyTel serves fewer than 2 percent of the Nation's aggregate nationwide subscriber lines. As a holding company that owns and operates rural telephone companies, CenturyTel's comments in this matter are limited to the rural carrier issues discussed in paragraphs 244-255 of the Commission's *Further Notice*.

Section 3(37) of the Communications Act of 1934, as amended, defines a "rural telephone company" to be a local exchange carrier (LEC) operating entity "to the extent that such entity—

- (A) provides common carrier service to any local exchange carrier study area that does not include either--
 - (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or
 - (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;
- (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;
- (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or
- (D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996."²

In the *First Report and Order*, and in accordance with the Joint Board's recommendation, the Commission determined that it would delay implementation of a forward-looking universal service support mechanism for carriers meeting the definition of a rural telephone company until at least January 1, 2001.³ Accordingly, the Commission required carriers meeting the statutory

² 47 U.S.C. § 153(37).

³ *Federal-State Joint Board on Universal Service*, First Report and Order, 12 FCC Rcd 8776, 8935, 8943-44 (1997) (*First Report and Order*), as corrected by Errata, CC Docket No. 96-45 (rel. June 4, 1997), *appeal pending sub nom. Texas Office of Pub. Util. Counsel v. FCC*, No 97-60421 (5th Cir. argued Dec. 1, 1998).

definition of rural telephone company to self-certify their rural status to the Commission each year.⁴ On June 22, 1998, the Commission acknowledged receipt of the first such certifications.⁵ In the *Further Notice*, the Commission proposes changes to the certification process that would eliminate the annual certification requirement for the majority of rural carriers. CenturyTel supports the Commission's efforts, suggests additional relief that may be granted, and submits the following comments on the issues the Commission raises.

DISCUSSION

CenturyTel believes that, in clarifying and implementing the statutory definition of a rural telephone company, the Commission should give effect to the plain language of the definition, remain faithful to the will of the Federal-State Joint Board on Universal Service (the "Joint Board"), and avoid unnecessary disruption of carrier businesses. These principles guide CenturyTel's comments below.

I. Clarification of Terms in the Definition of a "Rural Telephone Company"

CenturyTel supports the Commission's determination to ensure uniform application and understanding of the definition of a rural carrier by clarifying certain terms that carriers may have interpreted in a non-uniform manner. In doing so, CenturyTel supports the Commission's proposal to clarify that the term "local exchange carrier operating entity" refers to an entity operating at the study area or operating company level. Although CenturyTel likely would meet the definition of a rural telephone company if the Commission permitted carriers to apply the definition at the holding company level, CenturyTel does not believe that this is the correct

⁴ Public Notice, *Self-Certification as a Rural Telephone Company*, DA 97-1748 (Com. Car. Bur. rel. Sept. 23, 1997).

⁵ Public Notice, *Commission Acknowledges Receipt of Letters Self-Certifying LECs as Rural Telephone Companies*, DA 98-1205 (Com. Car. Bur. rel. June 22, 1998).

interpretation of the definition as enacted by Congress. CenturyTel also believes that Census Bureau data should be used to determine the portion of such an entity's lines that are within "communities of more than 50,000."

A. "Local Exchange Carrier Operating Entity"

Congress enacted the definition of a "rural telephone company" as part of the Telecommunications Act of 1996. At that time, LECs, including rural telephone companies, had for many years been computing costs, calculating rates, filing tariffs, maintaining accounting records, and carrying out many other day-to-day operations based on study area boundaries. Congress was aware of this industry practice when it enacted the Telecommunications Act of 1996 and, in the absence of clear language to the contrary, it may be presumed to have incorporated this structure into the definition of "rural telephone company."⁶ Indeed, the Commission's alternative interpretation, that the definition applies to companies at the holding company level, fails to give any effect to the phrase "local exchange carrier operating entity" at all. If Congress had intended the definition to apply at the holding company level, it could simply have introduced the definition by stating that "A 'rural telephone company' is one that" meets some given set of criteria. By including the additional introductory language that a rural telephone company "is a *local exchange carrier operating entity* to the extent that such entity" does certain things, the statute suggests that carriers should be examined below the holding company level, and instead at the "operating company" or study area level. In addition, by providing that a carrier meets the definition "to the extent that" it engages in the listed activities,

⁶ Indeed, parts (A) and (C) of the definition of rural telephone company incorporate the term "LEC study area." 47 U.S.C. § 153 (37) (A), (C).

the statute suggests a continuum, whereby a LEC might be rural in some study areas, but non-rural in others.

In considering the operation of Section 214(e), which sets forth procedures for state commissions to designate Eligible Telecommunications Carriers for universal service purposes, the Joint Board recommended that the Commission preserve the study area as the “service area” of a rural telephone company.⁷ The Joint Board stated, “[r]ural telephone companies currently determine [their embedded] costs at the study-area level. We conclude, therefore, that it is reasonable to adopt the current study areas as the service areas for rural telephone companies rather than impose the administrative burdens of requiring rural telephone companies to determine embedded costs on a basis other than study areas.”⁸

Indeed, a definition that permits carriers to certify their rural status at the holding company level has the potential to create anomalous results, whereby a large carrier could qualify for rural treatment, even in largely urban study areas, if it had a sufficient number of rural lines in other study areas to meet the 15 percent threshold of part (D) of the definition. Such treatment could then entitle the carrier to seek universal service support at the holding company level for all of its lines, even those contained in largely urban study areas. Such filings could unnecessarily increase the overall need for universal service support and the size of the rural carrier universal service support mechanism. In addition to the carrier’s eligibility for universal service support, such rural

⁷ Specifically, section 214(e)(5) provides that, at the state level, the “service area” of a rural telephone company, “means such company’s ‘study area’ unless and until the Commission and the states, after taking into account recommendations of a Federal-State Joint Board . . . establish a different definition.” 47 U.S.C. § 214(e)(5). The Commission adopted this recommendation. *First Report and Order*, 12 FCC Rcd at 8881.

⁸ *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87, 180 (Jt. Bd. 1996).

status could affect the carrier's interconnection obligations.⁹ An interpretation based on study areas, in contrast, permits a carrier to seek rural status only in those study areas where it provides service to a largely rural population.

An interpretation based on study areas would least impact carrier business plans and operations developed under the understanding that the carrier qualified as rural. In the *Further Notice*, the Commission identified only one carrier, among all 1,400 carriers that filed rural certifications, that interpreted the rural telephone company definition to apply at the holding company level. Given such widespread acceptance of the study area interpretation, it would not be in the public interest for the Commission to adopt a contrary interpretation. After over three years since the enactment of the Telecommunications Act of 1996, and over two years since the Commission adopted the Joint Board's recommendation that universal service proceed on different timelines for rural and non-rural carriers, the Commission should act to preserve, to the greatest extent possible, carrier expectations as to the rules that would be applied. For this same reason, CenturyTel opposes reconsideration of the decision to use the rural telephone company definition to separate rural and non-rural carriers for universal service purposes.¹⁰

B. "Communities of More Than 50,000"

Part (D) of the definition of a rural telephone company provides rural status to any LEC operating entity that "has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996." In the *Further Notice*, the Commission seeks comment on the proper interpretation of the term "communities of more

⁹ 47 U.S.C. § 251(f).

¹⁰ *Further Notice* at para. 254.

than 50,000” because this term has been interpreted in various ways by carriers certifying their rural status.¹¹

CenturyTel supports the Commission’s proposal to define this term by using Census Bureau statistics for legally incorporated localities, consolidated cities, and census-designated places within each study area. The use of such data lends uniformity and predictability to the rural certification process, and will facilitate industry monitoring and Commission enforcement of its rules, should such action become necessary.

II. Certification Issues

In the *Further Notice*, the Commission proposes to eliminate the annual filing requirement for carriers serving fewer than 100,000 access lines whose status since the last certification has not changed.¹² CenturyTel agrees with the Commission that this proposal will substantially reduce the burden on both the Commission and carriers by eliminating the annual re-certification process for the vast majority of rural carriers. Accordingly, CenturyTel supports this proposal.

Further, CenturyTel recommends the Commission eliminate the filing requirements for *any* LEC operating entity, as this term is ultimately clarified by the Commission, once the entity has established its rural status, and to require the LEC to recertify its status only if the entity no longer meets the definition of a “rural telephone company” under any part of the statutory test under which it previously certified. Thus, once the Commission clarifies the statutory definition, LECs qualifying as rural based solely on part (A) or part (D) of the statutory definition, also should recertify their status *only to the extent that their status has changed*. A change in status may occur (1) because the Commission’s interpretation of the statute differs from the one the

¹¹ *Further Notice* at paras. 252-53.

¹² *Further Notice* at para. 246.

carrier used in making its original certification, (2) because the communities served, according to Census Bureau data, have grown, or (3) because the carrier has acquired or divested access lines or study areas. Such a rule would be most consistent with the Commission's objectives to reduce, where possible, the regulatory burden both on the Commission's staff and on rural carriers.

Accordingly, CenturyTel opposes the Commission's proposal to require all LECs with more than 100,000 access lines to recertify their status in the wake of this rulemaking. The Commission correctly states that it can easily determine through the use of publicly-available line count data whether a carrier satisfies parts (B) or (C) of the statutory definition of a rural carrier.¹³ The Commission also correctly states, however, that part (A) of the definition, "by referencing Census Bureau sources, can be applied consistently without further interpretation by the Commission."¹⁴ While not based solely on line counts, the data required to establish rural status under part (A) – both the carrier service areas and the census bureau data referenced in the definition – are matters of public record. Therefore, unlike situations where Commission examination of non-public information may be required to protect the public interest, a LEC operating entity's rural status under part (A) may easily be examined by an interested party without the assistance or knowledge of the carrier involved.

Similarly, a LEC operating entity's rural status under part (D) of the definition, under the Commission's proposal to use census data, will be apparent based on this data and the carrier's service area boundaries. Accordingly, in the absence of a change in a LEC's operations, recertification under part (D) would be a wasteful exercise, limited merely to reiteration of previously-provided public data and mathematical calculations.

¹³ *Further Notice* at para. 247.

¹⁴ *Further Notice* at para. 249.

Instead of periodic recertification, CenturyTel proposes that, to ensure compliance with the definition of a rural telephone company, the Commission rely on its existing enforcement processes, including Section 208 complaints and its ability to request data from carriers under section 218 of the Communications Act.¹⁵ These existing processes are well-established and, in this case, in which all four parts of the rural carrier definition turn on publicly-available data that may be applied objectively, will provide an effective and less-burdensome check on any potential for carrier abuse. In addition, in adopting the certification process, the Commission expressly found that the availability of the section 208 complaint process, and the potential for random verification by the Commission, obviated the need for more stringent processes.¹⁶ In light of the fact that the Commission has found no evidence of abuse of the certification requirement by carriers, CenturyTel submits that the Commission should continue to rely on these mechanisms, and eliminate unnecessary periodic recertifications.

¹⁵ 47 U.S.C. § 218 (“The Commission may obtain from such carriers [subject to the Communications Act] and from persons directly or indirectly controlling or controlled by, or under direct or indirect common control with, such carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.”).

¹⁶ *First Report and Order*, 12 FCC Rcd at 8944.

CONCLUSION

For the foregoing reasons, CenturyTel urges the Commission to clarify the definition of a "rural telephone company," and require recertification only when a local exchange carrier operating entity's rural status changes, as set forth above.

Respectfully submitted,
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