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VIA MESSENGER

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Re: Joint Petition for Waiver

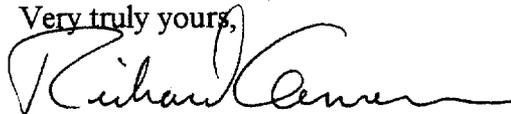
Ladies and Gentlemen:

Enclosed on behalf of GTE North Incorporated and CenturyTel of Central Wisconsin, LLC, is an original and four copies of a Petition for Waiver of the Definition of "Study Area" Contained in Appendix to Part 36 and Sections 69.3(g)(2) and 61.41(c) of the Commission's rules.

Also enclosed is a Remittance Advice (FCC Form 159) and a check made payable to the Federal Communications Commission in the amount of \$5,960.00 to cover the required filing fee.

In the event there are any questions concerning this matter, please contact me at (202) 637-2225.

Very truly yours,



Richard R. Cameron
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CC: 96-45

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matters of)

CenturyTel of Central Wisconsin, LLC)

and)

GTE North Incorporated,)

Joint Petition for Waiver of the Definition of)
"Study Area" Contained in the Appendix to Part)
36 of the Commission's Rules (Glossary); and)

Petition of CenturyTel of Central Wisconsin,)
LLC for Waiver of Sections 61.41(c))
and 69.3(g)(2) of the Commission's Rules)

CC Docket No. 96-45

JOINT PETITION FOR WAIVER

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April 11, 2000

SUMMARY

In connection with the sale and purchase of local exchange properties described below, CenturyTel of Central Wisconsin, LLC ("CenturyTel") and GTE North Incorporated ("GTE") submit this Joint Petition for Waiver of the Commission's study area freeze. In addition, CenturyTel requests a waiver of the Commission's price cap rules so that it may operate these exchange properties under rate-of-return regulation once it acquires them from GTE, a price cap carrier. Because GTE withdrew these exchanges from the National Exchange Carrier Association ("NECA") common line pool, CenturyTel also seeks a waiver of Part 69 of the Commission's rules, to return approximately 64,798 access lines to the NECA common line pool after their purchase from GTE. This waiver will have no significant impact on the NECA pool, and NECA does not object to the waiver.

In this transaction, CenturyTel is purchasing from GTE 42 local exchanges in Wisconsin containing approximately 64,798 access lines (the "Exchanges"). The Exchanges range in size from 152 to 5,364 lines. All of the Exchanges currently belong to the same GTE study area, and CenturyTel will operate all of these Exchanges as a single, new study area.

After the transfer, customers in the Exchanges will have all the services GTE currently provides, plus additional access to voice mail, additional choice in long distance service providers, local Internet dial-up access, access to advanced services including broadband data, and improved customer and community services. This transaction will speed the introduction of these new services and bring consumers the benefit of an experienced service provider devoted to serving rural communities. The proposed purchase and sale is an arms' length transaction between unaffiliated companies. The requested waivers will have no impact on the High-Cost Fund; they raise no new issues of law; and they will serve the public interest, convenience, and necessity.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matters of

CenturyTel Inc. of Central Wisconsin, LLC,

and

GTE North Incorporated,

Joint Petition for Waiver of the Definition of
“Study Area” Contained in the Appendix to Part
36 of the Commission’s Rules (Glossary); and

Petition of CenturyTel of Central Wisconsin,
LLC, for Waiver of Sections 61.41(c) and
69.3(g)(2) of the Commission’s Rules

CC Docket No. 96-45

JOINT PETITION FOR WAIVER

CenturyTel of Central Wisconsin, LLC (“CenturyTel”) is purchasing from GTE North Incorporated (“GTE”) 42 local exchanges located in Wisconsin (the “Exchanges”), all currently within GTE’s Wisconsin study area (COSA code GTWI). GTE seeks permission to delete these Exchanges from its existing study area in Wisconsin and, to the extent necessary under the Commission’s rules, CenturyTel seeks permission to create a new study area out of the Exchanges. In addition, CenturyTel seeks (i) a waiver of the price cap rule set forth at 47 C.F.R. § 61.41(c) so that CenturyTel may operate the Exchanges under rate-of-return regulation after it acquires them from GTE, and (ii) a waiver of Section 69.3(g)(2) of the Commission’s rules to permit more than 50,000 lines to reenter the NECA common line pool. CenturyTel also intends to return the access lines in the Exchanges to the NECA traffic sensitive pool.

Related to this Petition, GTE separately has filed an application under Section 214 of the Communications Act of 1934, as amended (the "Act"),¹ seeking the Commission's consent to discontinue providing interstate exchange access service in the Exchanges being acquired by CenturyTel,² and GTE and CenturyTel are filing an application for a waiver of the Subscriber Carrier Selection ("slamming") rules contained in Part 64 of the Commission's rules. No Commercial Mobile Radio Services ("CMRS") or other radio spectrum licenses will be transferred in this transaction, so the spectrum cap is not implicated.

Granting this petition will raise no new issues of law, is supported by Commission precedent, and will serve the public interest. Therefore, GTE and CenturyTel respectfully request that the Commission expeditiously review and approve this Petition and grant the waivers requested herein.

I. BACKGROUND.

By this transaction and another transaction with a joint venture involving Telephone USA of Wisconsin, L.L.C., GTE will sell approximately 126,000 access lines in its Wisconsin study area, leaving GTE Corporation with approximately 350,000 access lines in the state. This petition concerns only the sale of approximately 64,798 access lines from GTE to CenturyTel. The sale will include all property and equipment necessary to provide local exchange service within the Exchanges, including access lines, associated wire centers, switching equipment, and buildings.

¹ 47 U.S.C. §§ 214(a).

² See Public Notice, Comments Invited on GTE North Incorporated's Application to Discontinue Local Exchange and Exchange Access Service for Certain Exchanges in Wisconsin, NSD File No. W-P-D-462 (rel. Mar. 24, 2000). CenturyTel has blanket authority to acquire the interstate facilities included in the Exchanges, therefore only GTE is a party to the § 214 application. See Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996 and Petition for Forbearance of the Independent Telephone & Telecommunications Alliance, CC Docket No. 97-11, Report and Order and Second Memorandum Opinion and

After completing this transaction, CenturyTel will offer customers in the Exchanges a full range of telecommunications and information services including local exchange and exchange access, long distance, custom calling features, caller ID, advanced services, including broadband and local dial-up Internet access services, and will also have out-of-band Signaling System 7 ("SS7") capability.

CenturyTel is a wholly-owned subsidiary of CenturyTel, Inc., which is headquartered in Monroe, Louisiana. CenturyTel, Inc., through its operating companies, utilizes state-of-the-art technology to provide integrated communications services including local exchange and exchange access service, wireless, long-distance, voice mail, and advanced services, local dial-up Internet access, and security monitoring services to more than two million customers in 20 states. It currently owns over 600 local exchanges nationwide, very few of which service more than 10,000 access lines. Approximately half of CenturyTel, Inc.'s exchanges serve fewer than 1,000 lines. The majority of CenturyTel, Inc.'s 1.3 million local telephone lines are located in Wisconsin, Washington, Michigan, Louisiana, Colorado, Ohio, Oregon, and Montana.³

CenturyTel, Inc. currently employs more than one thousand employees in Wisconsin and more than 5,600 employees nationwide. All GTE employees currently working in the Exchanges will be offered jobs with CenturyTel prior to closing. In addition, CenturyTel plans to add new positions in the technical and customer service areas after the acquisition.

There are approximately 3.2 million local loops in Wisconsin. Wisconsin Bell currently serves approximately 2.1 million of those lines, approximately 67 percent of the total.

Order, FCC 99-104 (rel. June 30, 1999) (eliminating entry procedures and instituting streamlined exit certification procedures under Section 214).

³ Information as of March 31, 1999.

After this transaction, GTE Corp. will have approximately 350,000 lines in the state, approximately 11 percent of the total. Through its Wisconsin operating companies, CenturyTel, Inc. will become Wisconsin's second largest provider of local exchange service, with approximately 400,000 access lines. As a result, CenturyTel will be well-positioned to serve Wisconsin's rural and small urban centers as well as provide Wisconsin customers with additional choice in service providers.

II. THE COMMISSION SHOULD WAIVE ITS STUDY AREA FREEZE.

The Commission should waive its study area freeze to allow GTE to delete the Exchanges from its current Wisconsin study area and, to the extent required by the Commission's rules, to allow CenturyTel to create a new study area encompassing the Exchanges. The transfer of the Exchanges is an arms' length transaction that fully satisfies the Commission's long-established test regarding such study area waivers. Indeed, granting this Petition raises no new issues of law, is consistent with recently granted waiver requests,⁴ and will serve the public interest.

A. The Transfer of Exchanges Is an Arms' Length Transaction.

In 1984, the Commission froze study area boundaries in response to concerns related to the level of interstate cost recovery by local exchange carriers ("LECs") from the Universal Service Fund ("USF"). Specifically, the Commission wanted to prevent LECs from setting up high-cost exchanges within their existing service territories as separate companies in

⁴ E.g., Petition for Waivers filed by Kendall Telephone, Inc. and Wisconsin Bell, Inc. Concerning Definition of "Study Area" Contained in Part 36 Appendix-Glossary of the Commission's Rules and Section 61.41(c)(2), 69.3(e)(6), and 69.3(g)(2) of the Commission's Rules, Memorandum Opinion and Order, CC Docket No. 96-45 (rel. Sept. 15, 1998) ("Kendall/Wisconsin Study Area Order"); Petition for Waivers Filed by GTE North Inc. and PTI Communications of Michigan, Inc., Memorandum Opinion and Order, 12 FCC Rcd 13,882 (Com. Car. Bur. 1997); Petition for Waivers Filed by Northland Tel. Co. d/b/a/ PTI Communications Inc. and U S West Communications, Inc., Memorandum Opinion and Order, 12 FCC Rcd 13,329 (Com. Car. Bur. 1997) ("Northland/Minnesota Study Area Order").

order to maximize high-cost support.⁵ The Commission did not intend, however, to “discourage the acquisition of high-cost exchanges or the expansion of services to cover high-cost areas.”⁶

The Common Carrier Bureau (the “Bureau”) repeatedly has recognized that “changes in study areas that result in the purchase or sale of exchanges in arms’ length transactions” do not conflict with the Commission’s “fundamental concerns” behind the freeze order.⁷ Indeed, the Commission has acknowledged that “[t]he frozen study area definition does not work well in situations involving . . . arms-length sales of exchanges” and is “burdensome” on both parties and the Commission alike and proposed eliminating the rule.⁸ The Commission has recognized that failure to waive the rule in the case of the sale of exchanges would produce an absurd result, forcing the seller to continue to include exchanges in its study area for which it has no costs, and preventing the buyer from including in its study area exchanges it actually serves.⁹ Such a result would not serve the Commission’s policy objective of ensuring that carriers’ actual costs are reflected in their accounting so that they can accurately set just, reasonable, and non-discriminatory rates.

GTE’s sale of the Exchanges to CenturyTel is an arms’ length transaction. There is no relationship whatsoever (whether through stock ownership or common directors or management) between GTE Corp. (or any of its subsidiaries, affiliates or operating companies), and CenturyTel, Inc. (or any of its subsidiaries, affiliates or operating companies). Because the

⁵ MTS and WATS Market Structure and Amendment of Part 67 of the Rules and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, 49 Fed. Reg. 48, 325, 48,337 (1984) (“1984 Joint Board Recommendation”). See also U S West Communications, Inc. and Eagle Telecommunications, Inc. Joint Petition for Waiver of the Definition of “Study Area” Contained in Part 36, Appendix – Glossary of the Commission’s Rules, Memorandum Opinion and Order, 10 FCC Rcd 1771, 1773 (1995) (“U S West – Eagle Study Area Order”), recon. denied, 12 FCC Rcd 4644 (1997).

⁶ 1984 Joint Board Recommendation, 49 Fed. Reg. at 48, 337.

⁷ See, e.g., Contel of the West Petition for Waiver of Section 36.125(f), Sections 36.154(e)(1) and (2), and the Definition of “Study Area” Contained in Part 36, Appendix – Glossary, of the Commission’s Rules, Memorandum Opinion and Order, 5 FCC Rcd 4570, 4571 (Com. Car. Bur. 1990).

applicants are unaffiliated, the sale of the Exchanges falls squarely within the rule amendment proposed by the Commission.¹⁰ Allowing GTE to modify its affected study area and CenturyTel to create a new study area will relieve unaffiliated parties and the Commission of the effects of a potentially burdensome rule without undercutting the Commission's purpose in freezing study area boundaries. Granting the requested waiver is warranted on this basis alone.

B. The Three-Prong Test for Evaluating Study Area Waiver Petitions Is Satisfied.

The Commission has established a three-prong test to evaluate petitions for study area waivers. Under that test, "the change [should] not adversely affect the USF support program; . . . the state commission having regulatory authority [should] not object to the change; and . . . the public interest [should support] grant of the waiver."¹¹ The transfer of the Exchanges from GTE to CenturyTel, and in particular GTE's study area boundary change that will reflect the sale, meets each of the requirements of this three-prong test.

1. The Requested Study Area Waiver Will Not Adversely Affect the USF.

The Commission has expressed concern over the potential impact of study area waivers related to the sale of exchanges on the size of the Universal Service Fund ("USF").¹² To prevent an "undue adverse effect upon the USF," the Commission adopted an indexed cap on the growth rate of the USF and adopted the "one percent rule," under which:

the transfer at issue and any other transfers involving either carrier . . . may not cause a shift in USF assistance in an amount equal to or greater than one percent of the total USF for the year in which the waiver request is submitted, unless the parties can demonstrate

⁸ Amendment to Part 36 to the Commission's Rules and Establishment of a Joint Board, Notice of Proposed Rule Making, 5 FCC Rcd 5974, 5975-76 (1990) ("Part 36 NPRM").

⁹ Id. at 5976.

¹⁰ Id.

¹¹ U S West – Eagle Study Area Order, 10 FCC Rcd at 1772 (footnotes omitted).

¹² Id. at 1773.

extraordinary public interest considerations that would warrant removal of this condition.¹³

The contemplated transfer will have no undue adverse effect on the USF – in fact, it will have no effect on the USF at all. Under the Commission’s May, 1997 Universal Service Order, CenturyTel is entitled to receive only the same amount of USF assistance for the Exchanges that GTE received before the transfer.¹⁴ GTE receives no annual support from the high cost universal service support mechanism for the Exchanges. Under the Commission’s Part 54 rules, therefore, CenturyTel similarly will receive no support after it acquires the Exchanges.¹⁵ CenturyTel therefore certifies that its acquisition of the Exchanges will not cause a shift in USF assistance in an amount equal to or greater than one percent of the total USF assistance for 2000. Indeed, this transaction will have no impact on the USF at all.¹⁶

2. The Wisconsin Commission Does Not Oppose the Study Area Waiver Request.

The second prong of the test is that the state regulatory agency having authority over the exchanges to be transferred does not object to the requested study area change.¹⁷ The Wisconsin Public Service Commission (“Wisconsin Commission”) does not have authority to approve or disapprove the purchase or sale of exchanges, but CenturyTel and GTE have kept it

¹³ Id. at 1774; see also Amendment of Part 36 of the Commission’s Rules and Establishment of a Joint Board, Recommended Decision, 9 FCC Rcd 334 (1993) (recommending indexed cap on USF growth); id., Report and Order, 9 FCC Rcd 303 (1993) (adopting indexed cap); Federal-State Joint Board on Universal Service, Recommended Decision, 11 FCC Rcd 7928 (1996) (recommending indexed cap be extended until completion of universal service rulemaking); id., Report and Order, 11 FCC Rcd 7920 (1996) (adopting extension of indexed cap).

¹⁴ Universal Service Order, 12 FCC Rcd at 8943; see also Petition for Waivers filed by TelAlaska, Inc. and TelHawaii, Inc. Concerning Sections 36.611, 36.612, 61.41(c)(2) and the Definition of “Study Area” Contained in the Part 36 Appendix-Glossary of the Commission’s Rules, Memorandum Opinion and Order, 12 FCC Rcd 10309, 10312 (Com. Car. Bur. 1997) (“TelAlaska/TelHawaii Order”).

¹⁵ 47 C.F.R. § 54.305.

¹⁶ Eventually, universal service support for all carriers will be based on a forward-looking economic cost methodology, which will allow carriers to receive support for all high-cost exchanges, including exchanges acquired from other carriers, based on the forward-looking cost methodology. Universal Service Order, 12 FCC Rcd at 8943. Because the level of support CenturyTel will receive in the future will be based on forward-looking economic costs rather than embedded costs or the size of its study area, the possibility that CenturyTel may obtain support in the future cannot be, and is not, a driving factor behind the decision to purchase the Exchanges. See id.; see also TelAlaska/TelHawaii Order, 12 FCC Rcd at 10316-17.

apprised of the proposed sale, and have committed to work with the Wisconsin Commission to achieve a smooth transfer of the Exchanges. CenturyTel also is obtaining a Certificate of Public Convenience and Necessity from the Wisconsin Commission to provide local exchange and related services to the Exchanges. The Wisconsin Commission has written a letter to the FCC Common Carrier Bureau indicating that it does not oppose the grant of the requested study area waiver. A copy of that letter is attached.¹⁸ Therefore, the second prong of the test is satisfied.

3. Granting the Requested Study Area Waiver Will Serve the Public Interest.

The transfer of the Exchanges from GTE to CenturyTel will promote the public interest because it will provide customers within the Exchanges additional and improved services from a locally-based carrier that specializes in meeting the communications needs of rural and small urban communities.

As a national entity that provides high-quality service to small rural exchanges in 20 states, CenturyTel, Inc. has developed expertise in network operations, management and customer service that makes it uniquely well-suited to serving such exchanges. CenturyTel will be able to provide state-of-the-art service that is affordable and responsive to the unique needs of these predominantly rural and low-density communities, and to improve customer service and convenience in the Exchanges by using its proven management, marketing and bundling expertise.

Moreover, CenturyTel, Inc. has long maintained a strong local presence in the markets it services. CenturyTel, Inc., through its operating companies, has provided quality telephone service in Wisconsin communities for more than 25 years. CenturyTel is an active and supportive community partner and CenturyTel employees largely live and work in the

¹⁷ U S West – Eagle Study Area Order, 10 FCC Rcd at 1772.

communities they serve. CenturyTel will draw on this existing presence, and will expand its Wisconsin facilities and personnel base to benefit customers in the Exchanges.

LaCrosse, Wisconsin is the regional headquarters for CenturyTel, Inc.'s Midwest affiliates. CenturyTel, Inc. is currently investing in LaCrosse and other areas of the state, to meet the needs of its growing subscriber base, rapidly expanding regional operations and division headquarters employees.

CenturyTel Inc.'s commitment to Wisconsin is reflected in its recent investments in its exchanges there. Already, CenturyTel Inc. has rolled out a competitive package of high speed Digital Subscriber Line (DSL) services to residential and business customers in its Wisconsin exchanges adjacent to those being purchased. CenturyTel, Inc. has a strong UUNet backbone connection to the Internet, and currently offers local, non-toll dial-up access to the Internet in virtually all of its markets, including those in Wisconsin.

The Exchanges acquired in this transaction reflect GTE's capital improvements, including digital switching equipment and buried fiber optic plant. However, penetration of custom calling features and advanced services is relatively low. For example, GTE Internet Access is available in only six of the 42 Exchanges, and voice mail service is available in none. Drawing on the excellent quality of the facilities to be acquired, CenturyTel intends to provide customers in all of the Exchanges with additional services such as local dial-up Internet access, advanced services, broadband Internet access, and voice mail. Moreover, CenturyTel is offering positions to all GTE employees currently working in the Exchanges, and plans to expand this existing local sales and customer service work force substantially after the transaction closes.

¹⁸ Attached as Exhibit C.

Customers in the Exchanges will rapidly begin to enjoy the benefits of many new services and, indeed, but for this transaction, would not gain access to these services as quickly.

For the foregoing reasons, the Commission should find that the grant of the requested study area waiver will serve the public interest. The waiver will permit the petitioners to consummate a transaction that will produce benefits for consumers and certain operating efficiencies for the companies, without effect on the high cost fund.

III. THE COMMISSION SHOULD WAIVE ITS PRICE CAP ALL-OR-NOTHING RULE.

Section 61.41(c)(2) of the Commission's rules, commonly known as the price cap "all-or-nothing" rule, provides that when a non-price cap company acquires a price cap company, or any part thereof, the acquiring company shall become subject to price cap regulation.¹⁹ Applying this all-or-nothing rule in this case would subject CenturyTel to price cap regulation because GTE is a price cap company. CenturyTel seeks a waiver of this all-or-nothing rule to permit CenturyTel to operate the Exchanges under rate-of-return regulation. Applying the all-or-nothing rule in this case would not serve any of the purposes for which the rule was adopted and would contradict the public interest.

The Commission adopted the all-or-nothing rule to remove any incentive for a telephone holding company to engage in improper cost-shifting between affiliates, or to "game the system" by switching between rate-of-return and price cap regulation.²⁰ Without the all-or-

¹⁹ 47 C.F.R. § 61.41(c)(2).

²⁰ Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Rcd 6786, 6819 (1990) ("LEC Price Cap Order"), Erratum, 5 FCC Rcd 7664 (Com. Car. Bur. 1990); modified on recon., Order on Reconsideration, 6 FCC Rcd 2637 (1991) ("LEC Price Cap Reconsideration Order"), aff'd sub nom. National Rural Telecom Ass'n v. FCC, 988 F.2d 174 (D.C. Cir. 1993), petitions for further recon. dismissed, 6 FCC Rcd 7482 (1991), further modification on recon., Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture. Policy and Rules Concern Rates for Dominant Carriers, Report and Order and Order on Further Reconsideration and Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 4524 (1991), further recon., Memorandum Opinion and Order on Second Further Reconsideration, 7 FCC Rcd 5235 (1992).

nothing rule, a LEC could shift costs from its price cap affiliate to its rate-of-return affiliate. Because the rate-of-return affiliate's costs would be higher, the Commission reasoned, it would earn more revenue, and charge higher rates, while the revenue of the price cap affiliate would remain unaffected. In addition, the Commission was concerned that, if allowed to convert between price caps and rate-of-return regulation, a LEC might build up a large, inefficient base under rate-of-return regulation and then revert to price caps, cutting its costs to an efficient level without appropriate price reductions. However, in adopting the all-or-nothing rule, the Commission noted that it would entertain waivers of the rule because, "in some cases, the efficiencies created by the purchase and sale of one or two exchanges may outweigh the threat of 'gaming the system.'"²¹

There is good cause to grant CenturyTel a waiver of the all-or-nothing rule. Neither of the two concerns cited by the Commission applies here. First, cost-shifting is not an issue because, as discussed above, GTE and CenturyTel are not affiliates, nor does CenturyTel seek to maintain separate affiliates under different systems of rate regulation.²² As the Commission held in conjunction with its grant of a price cap waiver in the recent ALLTEL/Aliant merger, "if all [of a company's] affiliates are subject to rate-of-return regulation, there is neither the incentive nor the opportunity to shift costs between price cap and rate-of-return companies."²³ Second, Commission approval would be necessary for the Exchanges to be returned to price cap regulation, and the Commission would have ample

²¹ LEC Price Cap Reconsideration Order, 6 FCC Rcd at 2706 n.207.

²² None of the CenturyTel, Inc. family of companies operates under price cap regulation.

²³ ALLTEL Corp. Petition for Waiver of Section 61.41 of the Commission's Rules and Applications for Transfer of Control, CCB/CPD No. 99-1, Memorandum Opinion and Order, FCC 99-156, ¶ 27 (rel. Sept. 3, 1999) ("ALLTEL/Aliant Merger Order").

opportunity to review such a change at that time.²⁴ In short, this transaction does not raise any of the concerns that led the Commission to adopt the all-or-nothing rule.

Furthermore, the Commission always has been sensitive to the administrative burdens imposed on small telephone companies, such as CenturyTel, by the application of its rules.²⁵ The Commission implemented price cap regulation as an incentive to encourage efficiencies and promote competitiveness, but it is mandatory only for the Bell Operating Companies and GTE Operating Companies, because those companies share similarities that support the use of price cap regulation – geographic diversity, large subscriber bases, high activity levels in both regulated and unregulated markets, and access to national markets. In its LEC Price Cap Order, the Commission recognized that small telephone companies should not be forced into a regulatory regime that was based on the historical performance of the largest telephone companies, and it therefore made price cap regulation optional for all other companies.²⁶

Following its acquisition of the Exchanges, CenturyTel will serve about two percent of the access lines in Wisconsin and CenturyTel, Inc., affiliates collectively will serve only about 12 percent of Wisconsin's access lines. Most of these are in low-density rural areas. The Commission has determined that it would be inappropriate to subject this kind of small

²⁴ See The Island Telephone Co. et al. Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix – Glossary, of the Commission's Rules, 7 FCC Rcd 6382, 6383 (Com. Car. Bur. 1992) ("Island Study Area Order") ("Except for the exchanges it has sold to Island/TDS, Contel remains regulated under price caps; it retains no ability to bring these exchanges back under price caps.").

²⁵ See ALLTEL/Aliant Merger Order, ¶ 34 ("[T]he Commission has always been sensitive to the special needs of the small LECs.").

²⁶ See LEC Price Cap Order, 5 FCC Rcd at 6818. The Applicants recognize that granting the requested waiver would be conditioned upon GTE's making an exogenous cost adjustment to its price cap indices to reflect the change in its study areas. See LEC Price Cap Performance Review, First Report and Order, 10 FCC Rcd 8961, 9104-06 (1995).

carrier to price cap regulation.²⁷ Moreover, in balancing the benefits to be gained under price cap regulation against the costs that would be incurred by CenturyTel, the public interest is better served by granting the requested waiver. As a result, the Commission has consistently granted waivers of the all-or-nothing rule in similar circumstances,²⁸ recognizing that it “must take into account the companies’ preference, particularly for small carriers.”²⁹ Here, CenturyTel’s preference is to operate under rate-of-return regulation.

In sum, waiver of the all-or-nothing rule in this instance poses no threat to the Commission’s rate regulation and public interest goals, and will allow the sale of these exchanges to be consummated without forcing CenturyTel into an inappropriate system of price regulation.

IV. THE COMMISSION SHOULD GRANT A PART 69 WAIVER TO PERMIT THE INCLUSION OF THESE ACCESS LINES IN THE NECA COMMON LINE POOL.

CenturyTel also seeks a partial waiver of Section 69.3(g)(2) of the Commission’s rules so that the 64,798 access lines it is acquiring may be included in the NECA common line pool. Under Section 69.3(g)(2), a NECA common line tariff participant that is a party to an acquisition may include telephone properties it acquires in the NECA common line tariff,

²⁷ See, e.g., ALLTEL/Aliant Merger Order, ¶ 35 (granting price cap waiver in spite of the fact that ALLTEL was a “mid-sized” LEC because “ALLTEL’s properties are scattered largely in small to mid-sized towns and cities in 22 states and ALLTEL is therefore, unlike any of the large BOCs, and more similar to smaller carriers”); Northland/Minnesota Study Area Order, 12 FCC Rcd at 13,335 (“Northland is the type of mid-size ILEC which the Commission has found to be an inappropriate candidate for price cap regulation.”).

²⁸ See, e.g., Kendall/Wisconsin Study Area Order, CC Docket No. 96-45; Waivers Filed by Columbine Telephone Company, Inc., Silver Star Telephone Company, Inc., and U S West Communications, Inc. Concerning Section 61.41(c)(2) and 69.3(e)(11) and the Definition of “Study Area” Contained in the Part 36 Appendix-Glossary of the Commission’s Rules, Memorandum Opinion and Order, 12 FCC Rcd 3622 (Com. Car. Bur. 1997); Petitions for Waivers Filed by Alpine Communications, L.C., Bulter-Breme Mutual Telephone Co., Clarksville Telephone Co., Dumont Telephone Co., Grand River Mutual Telephone Corp., Heartland Telecommunications Company of Iowa, Hickory Tech Corp., South Central Communications, Inc., Universal Communications, Inc. and U S West Communications, Inc., Memorandum Opinion and Order, 12 FCC Rcd 2367 (Com. Car. Bur. 1997); U S West – Eagle Study Area Order, 10 FCC Rcd at 1775.

provided that the net addition of common lines to the NECA tariff resulting from the transaction does not exceed 50,000, and provided further that if any of the common lines involved in the acquisition are returned to the NECA common line tariff then all of them must be returned.

CenturyTel intends to comply with the second requirement of the rule, but needs a waiver of the 50,000-line cap in order to do so. CenturyTel desires to include all of its newly-acquired access lines in the NECA common line tariff.

Section 69.3(g)(2) was adopted in 1989 as an outgrowth of the changes made by the Commission that year to the (formerly mandatory) common line pooling arrangements that governed the LECs' recovery of non-traffic-sensitive costs.³⁰ When the Commission decided to permit any LEC to withdraw from the NECA common line tariff and pool, and file common line tariffs based on its own costs, the Commission also required that a LEC choosing to leave the NECA common line pool remove *all* of its study areas, and a holding company remove *all* of its affiliates, from the pool. In addition, the Commission made this a "one way" election – once a LEC or group of affiliated LECs leaves the pool, it may not return at a later date.³¹ The Commission recognized, however, that when a LEC acquires another LEC or LEC facilities, the acquired entity may have a different pooling status from that of the acquiring LEC. The Commission acknowledged that uniformity in regulatory treatment and pooling status is desirable.³² Accordingly, the Commission found some flexibility should be afforded, with

²⁹ Island Study Area Order, 7 FCC Rcd at 6383; see also ALLTEL/Aliant Merger Order, ¶ 35 ("In previous waiver requests, the Common Carrier Bureau has taken into account the company's preference and in particular the preference of small carriers for waivers of sections 61.41(c)(1), (2), and (d) of our rules.")

³⁰ Amendment of Part 69 of the Commission's Rules Relating to the Common Line Pool Status of Local Exchange Carriers Involved in Mergers or Acquisitions, Report and Order, 5 FCC Rcd 231 (1989) ("Common Line Pool Order").

³¹ 47 C.F.R. § 69.3(i)(3), (4). See MTS and WATS Market Structure. Amendment of the Commission's Rules and Establishment of a Joint Board, Order on Reconsideration, 3 FCC Rcd 4543, 4557 n.17 (1988), aff'd sub nom. Public Service Comm'n of the District of Columbia v. FCC, 897 F.2d 1168 (D.C. Cir. 1990).

³² Common Line Pool Order, 5 FCC Rcd at 245.

appropriate safeguards, so that LECs would not be unduly deterred from negotiating an otherwise desirable transaction.³³

The Commission stated that any rules in this area should be as neutral as possible in their effect on the underlying business decisions, should not adversely affect the marketability of small LECs, and should not impede transactions that offer legitimate advantages to the LECs and consumers involved.³⁴ The Commission noted, “this is an area in which some flexibility would enable the acquiring or surviving LEC to consolidate its operations and to take advantage of the benefits of participation in the NECA common line pool and tariff if that is deemed best for the LEC and its customers.”³⁵ Accordingly, the Commission set the threshold for a waiver at 50,000 access lines.³⁶

GTE withdrew the Exchanges from the NECA common line pool on April 1, 1989. The Commission has acknowledged that carriers that left the pool did so based on factors that made sense for them, such as the fact that their costs have declined sufficiently that they could forego long-term support (“LTS”), recover their costs, and still charge a lower interstate carrier common line charge than NECA.³⁷ That choice was appropriate for GTE. It is not appropriate, however, for CenturyTel, and GTE's choice should not bar CenturyTel from returning these lines to the NECA common line pool. As the Commission has acknowledged, the rule should not operate to impede a transaction that offers legitimate advantages, described above, to the carriers and consumers involved.

³³ Common Line Pool Order, 5 FCC Rcd at 235 (citing Amendment of Part 69 of the Commission's Rules Relating to the Common Line Pool Status of Local Exchange Carriers Involved in Mergers or Acquisitions, Notice of Proposed Rule Making, 4 FCC Rcd 740 (1989) (“Common Line Pool Notice”).

³⁴ Common Line Pool Order, 5 FCC Rcd at 233; Common Line Pool Notice, 4 FCC Rcd at 741.

³⁵ Common Line Pool Order, 5 FCC Rcd at 243.

³⁶ Id. at 244.

³⁷ Federal-State Joint Board on Universal Service, Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5362 (1997).

The reentry of the Exchanges into the common line pool will have no substantial adverse effect on the NECA common line pool, or on non-pooling LECs. Since the Commission established the waiver standard in the Common Line Pool Order,³⁸ the burden of LTS and transitional support for common line pool LECs has shifted from the non-pooling LECs to a far broader spectrum of telecommunications providers. Beginning January 1, 1998, support for rural carriers is funded, and rural carriers receive payments comparable to LTS, through the newly-explicit universal service support mechanism, adopted by the Commission as part of its implementation of Section 254 of the Act.³⁹ Thus, the non-pooling LECs will bear no special burden because of the return of these Exchanges into the common line pool. Moreover, CenturyTel believes that no entity will experience a significant increase in its universal service obligation if this waiver is granted, because the impact on the revenue requirement for the NECA common line pool is expected to be insignificant. Specifically, CenturyTel believes that, based on current NECA pooling data and projected demand and cost data, CenturyTel's acquisition of the Exchanges would produce an impact on the common line pool revenue requirement of less than one percent. CenturyTel has informed NECA of its intent to return these lines to the common line pool, and NECA has indicated that it anticipates that any impact on the pool would be insignificant.⁴⁰ Therefore, a waiver of the 50,000-line cap set forth in Section 69.3(g)(2) of the Commission's rules should be granted.

³⁸ Id.

³⁹ Universal Service Order, 12 FCC Rcd at 9165.

⁴⁰ Letter attached as Exhibit D.

V. CONCLUSION

For all of the foregoing reasons, CenturyTel and GTE respectfully request that the requested waivers be expeditiously granted.

Respectfully submitted,

CENTURYTEL OF
CENTRAL WISCONSIN, LLC

By: 
John F. Jones
Director of Government Relations
CenturyTel, Inc.
100 Century Park Drive
Monroe, Louisiana 71203

Karen Brinkmann
Richard Cameron
William Carnell
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004
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Attorneys for:
CenturyTel of Central Wisconsin, LLC

Respectfully submitted,

GTE NORTH INCORPORATED

By: 
Gail L. Polivy
1850 M Street, N.W., Suite 1200
Washington, D.C. 20036
(202) 463-5214

Attorney for:
GTE North Incorporated

EXHIBIT A: MAP SHOWING LOCATIONS OF THE EXCHANGES

EXHIBIT B: LIST OF EXCHANGES AND NUMBER OF ACCESS LINES IN EACH

CENTURYTEL OF CENTRAL WISCONSIN, LLC

<u>OFFICE NAME</u>	<u>1998 ACCESS LINES</u>
Alma Center	855
Acadia	2,301
Argle	819
Augusta	1,647
Bangor	1,620
Benton	598
Black Creek	1,027
Black River Falls	5,364
Blair	999
Centerville	504
Cleghorn	1,093
Darlington	2,326
Denmark	4,456
Ettrick	900
Fairchild	556
Fall Creek	1,420
Fountain City	1,251
Galesville	1,698
Gratiot	292
Hixton	562
Holmen	4,310
Kingston	985
Luxemburg	2,133
Markesan	2,144
Melrose	741
Merrillan	860
Mindoro	627
Montfort	1,516
Muscoda	1,352
New Franken	2,444
Nichols	488
Osseo	1,960
Pickett	731
Rosendale	1,070
Seymour	3,545
Shiocton	885
Shullsburg	1,021
Taylor	426
Trempealeau	1,109
Wautoma	4,612
Whitehall	1,399
Wiotia	<u>152</u>
Total – CenturyTel of Central Wisconsin LLC	<u>64,798</u>

EXHIBIT C: WISCONSIN COMMISSION LETTER OF NON-OPPOSITION



Public Service Commission of Wisconsin

Ave M. Bie, Chairperson
Joseph P. Mettner, Commissioner
John H. Farrow, Commissioner

610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

Mr. Lawrence E. Strickling, Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20024-2101

Re: Investigation on the Commission's Own Motion Into the Sale of
Exchanges by GTE North Incorporated to CenturyTel of Central
Wisconsin, LLC and Telephone USA of Wisconsin, LLC

05-TI-262

Petition of GTE North Incorporated and CenturyTel of Central
Wisconsin, LLC, for Waiver of Study Area Boundaries

Dear Mr. Strickling:

The Public Service Commission of Wisconsin (Wisconsin Commission) submits this letter in anticipation of the filing of a joint petition for waiver of study area boundaries by CenturyTel of Central Wisconsin, LLC (CenturyTel-Central) and GTE North Incorporated (GTE), arising from the sale and purchase of 42 local exchanges in Wisconsin.

Pursuant to the Common Carrier Bureau's order issued June 21, 1995, in dockets DA 95-1403 and AAD 95-78, local exchange carriers shall file with the Federal Communications Commission (FCC) as part of any petition for a waiver of a study area boundary, a state certificate or other valid document that demonstrates that the affected state commission does not object to a proposed reconfiguration of study area boundaries. At its open meeting today, the Wisconsin Commission determined that it has no objection to the issuance of a study area waiver associated with CenturyTel-Central's acquisition of the 42 local exchanges from GTE.

While the Wisconsin Commission does not have jurisdiction over the approval of the sale and purchase of local exchanges, it has begun a review of the transaction under its continuing supervisory jurisdiction over the operations of CenturyTel-Central and GTE in the state of Wisconsin. The parties have kept the Wisconsin Commission apprised of the nature of the transaction and have committed to work with the Wisconsin Commission in achieving a smooth transfer of the properties. In addition, CenturyTel-Central has made specific commitments that should preserve competition in the 42 exchanges.

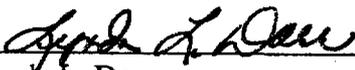
Therefore, the Wisconsin Commission hereby states for the record that it does not oppose issuance of study area waivers associated with the proposed transaction. It is the Wisconsin Commission's specific intent that this statement be accepted as compliance with the requirement set forth in the Common Carrier Bureau's order issued June 21, 1995 (DA 95-1403 and AAD 95-78).

Mr. Lawrence E. Strickling
Docket 05-TI-262
Page 2

Questions or communications on this matter may be addressed to Thomas Ferris, Audit Manager,
Telecommunications Division, at (608) 266-1124.

Dated at Madison, Wisconsin, April 4, 2000

By the Commission:



Lynda L. Dorr
Secretary to the Commission

LLD:TJF:slg:t\ss\letter\05ti262 CenturyTel-Central.doc

cc: Timothy J. Steffes, CenturyTel
Carrie Cox, Whyte Hirschboeck Dudek S.C.
Daniel Matson, GTE
Records Management, MFC

**EXHIBIT D: NATIONAL EXCHANGE CARRIER ASSOCIATION LETTER
CONFIRMING NO SIGNIFICANT IMPACT ON THE COMMON LINE POOL**



80 South Jefferson Road
Whippany, NJ 07981

Romita Biswas
Manager – Rate Development

Voice: 973-884-8187
Fax: 973-884-8469
E-mail: rbiswas@neca.org

March 24, 2000

Nolan Moullé, Jr.
Century Telephone Company
Vice President—Separations/Access
100 Century Park Drive
Monroe, LA 71203

Dear Mr. Moullé :

I completed a NECA Common Line Pool impact analysis of the Century Telephone of Central Wisconsin properties recently acquired by Century Tel. The analysis is based on current pooling data and the acquisition demand and costs data supplied.

The acquisition of approximately 64 thousand access lines will have costs that exceed the projected revenue by about \$2.34 million, which represents 0.17% of the total common line pool revenue requirement (\$1.37 billion). Since this represents less than one percent of the total revenue requirement, it is not considered a significant impact.

Please feel free to contact me if you have any questions or concerns about the analysis.

Sincerely,

Romita Biswas

CC: Bill Cook
Pat Chrigo
Victor Glass

THIS MULTI-TONE AREA OF THE DOCUMENT CHANGES COLOR GRADUALLY AND EVENLY FROM DARK TO LIGHT WITH DARKER AREAS BOTH TOP AND BOTTOM.

Latham & Watkins

Attorneys at Law

Washington, DC Operating Account
1001 Pennsylvania Avenue, N.W., Suite 1300
Washington, D.C. 20004
Telephone (202) 637-2200 EIN 95-2018373

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TO THE
ORDER OF: FEDERAL COMMUNICATIONS
COMMISSION



FORM NO. 4002L

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