Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
CenturyTel of Northwest Arkansas, LLC	)	
CenturyTel of Central Arkansas, LLC	)	CC Docket No. 96-45
	)	
and	)	
	)	
GTE Arkansas Incorporated	)	
GTE Midwest Incorporated	)	
GTE Southwest Incorporated	)	
	)	
Joint Petition for Waiver of Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules	)	
	)	
CenturyTel of Northwest Arkansas, LLC and Century Tel of Central Arkansas, LLC	)	
	)	
Petition for Waiver of Sections 61.41(c) and 69.3(g)(2) of the Commission's Rules	)	

MEMORANDUM OPINION AND ORDER

Adopted: June 27, 2000 **Released:** June 27, 2000

By the Deputy Chief, Accounting Policy Division:

I. INTRODUCTION

1. In this Order, we grant requests from CenturyTel of Northwest Arkansas, LLC and CenturyTel of Central Arkansas, LLC (collectively, CenturyTel) and GTE Arkansas Incorporated, GTE Midwest Incorporated, and GTE Southwest Incorporated (collectively, GTE) for a waiver of the definition of "study area" contained in the Part 36 Appendix-Glossary of the Commission's rules.[1] This waiver will permit GTE to remove the Mammoth Springs exchange, which is physically located in Arkansas, from its Contel Missouri study area controlled by GTE Midwest Incorporated. This waiver will also permit CenturyTel of Central Arkansas to consolidate the Mammoth Springs exchange with the GTE of Arkansas study area it is acquiring from GTE.

2. We also grant CenturyTel's request for waiver of section 61.41(c)(2) of the

[1] CenturyTel of Northwest Arkansas, LLC, et al., Joint Petition for Waiver of the Definition of "Study Area" in the Appendix to Part 36 of the Commission's Rules (Glossary) and Petition for Waiver of Sections 69.3(g)(2) and 61.41(c) of the Commission's Rules, CC Docket No. 96-45 (filed Jan. 23, 2000) (Petition).

Commission's rules to permit CenturyTel to continue operation under rate-of-return regulation after acquiring the 105 GTE exchanges that are currently under price cap regulation. Finally, we grant CenturyTel's request for waiver of section 69.3(g)(2) to permit the acquired access lines to reenter the National Exchange Carrier Association, Inc. (NECA) common line pool.

II. STUDY AREA WAIVER

A. Background

3. *Study Area Boundaries*. A study area is a geographic segment of an incumbent local exchange carrier's (LEC's) telephone operations. Generally, a study area corresponds to an incumbent LEC's entire service territory within a state. Thus, incumbent LECs operating in more than one state typically have one study area for each state. When a carrier acquires additional entire study areas in a given state, however, the carrier may operate more than one study area in that state. The Commission froze all study area boundaries effective November 15, 1984,[2] and an incumbent LEC must apply to the Commission for a waiver of the study area boundary freeze if it wishes to sell or purchase additional exchanges.

4. *Transfer of Universal Service Support*. Section 54.305 of the Commission's rules provides that a carrier acquiring exchanges from an unaffiliated carrier shall receive the same per-line levels of high-cost universal service support for which the acquired exchanges were eligible prior to their transfer.[3] For example, if a rural carrier purchases an exchange from a non-rural carrier that receives support based on the Commission's new universal service support mechanism for non-rural carriers,[4] the loops of the acquired exchange shall receive the same per-line support as calculated under the new non-rural mechanism, regardless of the support the rural carrier purchasing the exchange may receive for any

[2] 47 C.F.R. § 36 app. (defining "study area"). *See MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, Recommended Decision and Order, 49 Fed. Reg. 48325 (1984); Decision and Order, 50 Fed. Reg. 939 (1985); *see also Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, Notice of Proposed Rulemaking, 5 FCC Rcd 5974 (1990).

[3] 47 C.F.R. § 54.305.

[4] On November 2, 1999, the Commission released two orders finalizing implementation plans for high-cost reform for non-rural carriers. *Federal-State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, CC Docket No. 96-45, FCC 99-306 (rel. Nov. 2, 1999); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket No. 97-160, Tenth Report and Order (rel. Nov. 2, 1999). The new mechanism, which went into effect on January 1, 2000, does not apply to rural carriers. The new mechanism for non-rural carriers directs support to carriers based on the forward-looking economic cost (FLEC) of operating a given exchange. *See* 47 C.F.R. § 54.309. The Commission's forward-looking methodology for calculating high-cost support for non-rural carriers targets support to states where the statewide average FLEC per line exceeds 135 percent of the national average FLEC. *See id.* The total amount of support directed to non-rural carriers in a high-cost state equals 76 percent of the amount the statewide average FLEC per line exceeds the national cost benchmark, multiplied by the number of lines served by non-rural carriers in the State. Carriers serving wire centers with an average FLEC per line above the national cost benchmark shall be eligible to receive support. The amount of support provided to a non-rural carrier serving a particular wire center depends on the extent to which per-line forward-looking economic costs in that wire center exceed the national cost benchmark.

other exchanges.[5] Section 54.305 is meant to discourage carriers from transferring exchanges merely to increase their share of high-cost universal service support, especially during the Commission's transition to universal service support mechanisms that provide support to carriers based on the forward-looking economic cost (FLEC) of operating a given exchange.[6] High-cost support mechanisms currently include non-rural carrier forward-looking high-cost support,[7] interim hold-harmless support for non-rural carriers,[8] rural carrier high-cost loop support,[9] local switching support,[10] and Long Term Support (LTS).[11] To the extent that a carrier acquires exchanges receiving any of these forms of support, the acquiring carrier will receive the same per-line levels of support for which the acquired exchanges were eligible prior to their transfer.

5. As described in the Commission's recent order adopting an integrated interstate access reform and universal service proposal put forth by the members of the Coalition for Affordable Local and Long Distance Service (CALLS), beginning July 1, 2000, if a price cap LEC acquires exchanges from another price cap LEC the acquiring carrier will become eligible to receive interstate access universal service support for the acquired exchanges.[12] Because the interstate access universal service support mechanism is capped at $650 million, transactions involving the transfer of support will not increase the mechanism's overall size.[13] To the extent that a non-price cap LEC acquires exchanges from

[5] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8942-43 (1997) (*First Report and Order*); as corrected by *Federal-State Joint Board on Universal Service*, Errata, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), *affirmed in part, reversed in part and remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999).

[6] *Id.*

[7] *See* 47 C.F.R. § 54.309.

[8] In the event that support provided to a non-rural carrier in a given state is less under the forward-looking methodology, the carrier is eligible for interim hold-harmless support, which is equal to the amount of support for which the non-rural carrier would have been eligible under the Commission's existing high-cost support mechanism. *See* 47 C.F.R. § 54.311

[9] Rural carriers receive high-cost loop support for a portion of their reported average loop costs that exceed 115 percent of an inflation-adjusted nationwide average loop cost. *See* 47 C.F.R. §§ 36.601-36.622.

[10] Incumbent LECs that are designated eligible telecommunications carriers and serve study areas with 50,000 or fewer access lines receive support for local switching costs. 47 C.F.R. § 54.301. Local switching support enables participants to assign a greater proportion of local switching costs to the interstate jurisdiction.

[11] Carriers that participate in the NECA common line pool are eligible to receive LTS. *See* 47 C.F.R. § 54.303. LTS supports interstate access rates for carriers that are members of the NECA pool, by reducing the amount of interstate-allocated loop costs that such carriers must recover through carrier common line charges. *See First Report and Order*, 12 FCC Rcd at 9163-9165.

[12] *See Access Charge Reform*, Sixth Report and Order in CC Docket No. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, FCC 00-103, at para. 225 (rel. May 31, 2000) (*Interstate Access Universal Service Order*).

[13] *See* 47 C.F.R. § 54.801(a); *see also Interstate Access Universal Service Order* at para. 201.

a price-cap LEC, per-line interstate access universal service support will not transfer.[14]

6. *The Petition for Waiver*. CenturyTel has entered into an agreement with GTE to purchase 105 local exchanges in Arkansas.[15] Of the 105 local exchanges CenturyTel is purchasing from GTE, 104 comprise three complete Arkansas study areas, each under the control of a GTE operating company. The first two study areas, currently designated Contel of Arkansas and Contel Systems of Arkansas, contain 44 exchanges (with 104,112 access lines), and 11 exchanges (with 21,931 access lines), respectively. These two study areas are operated by GTE Arkansas Incorporated and will be acquired with no change in their boundaries by CenturyTel of Northwest Arkansas, LLC. The third complete study area, which is currently operated by GTE Southwest Incorporated, contains 49 exchanges (with 87,080 access lines) and is currently designated GTE of Arkansas. CenturyTel of Central Arkansas, LLC will acquire the GTE of Arkansas study area. In addition to these three complete study areas, CenturyTel of Central Arkansas, currently serving 18,295 access lines in Arkansas, is purchasing from GTE the Mammoth Springs exchange, which is a single Arkansas exchange with 1,147 access lines.[16] The Mammoth Springs exchange is physically located in Arkansas, but is currently a part of the Contel Missouri study area controlled by GTE Midwest, Inc.[17]

7. On January 28, 2000, CenturyTel and GTE filed a joint petition for waiver of the definition of "study area" contained in the Part 36 Appendix-Glossary of the Commission's rules. GTE Midwest, Inc. seeks a waiver of the rule freezing study area boundaries to allow it to remove the Mammoth Springs exchange from its Missouri study area. CenturyTel of Central Arkansas seeks a waiver of the rule freezing study area boundaries to combine the Mammoth Springs exchange with the GTE of Arkansas study area that CenturyTel is also purchasing from GTE as part of this transaction.[18]

8. On February 25, 2000, the Common Carrier Bureau (Bureau) released a public notice soliciting comments on the petition.[19] NECA filed comments supporting the grant of the study area waiver.[20] AT&T filed comments generally opposing grant of the petition, but did not specifically

---

[14] Section 54.801 of the Commission's rules states that if "all or a portion of a study area served by a price cap LEC is sold to an entity other than a price cap LEC, . . . then the support that would otherwise be provided under this subpart, had such study area or portion thereof not been sold, will not be distributed or collected." 47 C.F.R. § 54.801(b).

[15] Petition at 1.

[16] Petition at 3.

[17] The Contel Missouri study area serves approximately 254,000 access lines. *See* NECA Universal Service Fund 1999 Submission of 1998 Study Results filed October 1, 1999.

[18] Petition at 3.

[19] CenturyTel of Northwest Arkansas, LLC and CenturyTel of Central Arkansas, LLC, GTE Arkansas Incorporated, GTE Midwest Incorporated, and GTE Southwest Incorporated, Filed Petition for Waiver of Sections 61.41(c) and 69.3(g)(2) and the Definition of "Study Area" in Part 36 of the Commission's Rules, *Public Notice*, DA 00-404, (rel. Feb. 25, 2000).

[20] National Exchange Carrier Association, Inc., comments, filed March 17, 2000 (NECA comments).

comment on the study area waiver.[21] SBC supports grant of the study area waiver, but has objections to other portions of the petition, discussed in section IV., below.[22]

B. Discussion

9. We find that good cause exists to waive the definition of study area contained in the Part 36 Appendix-Glossary of the Commission's rules to permit GTE to remove the Mammoth Springs exchange from its Missouri study area, and to permit CenturyTel to combine the Mammoth Springs exchange with the GTE of Arkansas study area it is acquiring as a part of this transaction.[23]

10. Generally, the Commission's rules may be waived for good cause shown.[24] As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.[25] The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.[26] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[27] Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest. In evaluating petitions seeking a waiver of the rule freezing study area boundaries, the Commission traditionally has applied a three-prong standard: first, the change in study area boundaries must not adversely affect the universal service funds; second, no state commission having regulatory authority over the transferred exchanges may oppose the transfer; and third, the transfer must be in the public interest.[28] For the reasons discussed below, we conclude that CenturyTel and GTE have satisfied these criteria and demonstrated that good cause exists for a waiver of the Commission's study area freeze rule.

11. First, we find that CenturyTel and GTE have demonstrated that the proposed changes in the study area boundaries will not adversely affect the universal service fund. Because, under our rules,

---

[21] AT&T Opposition to CenturyTel/GTE Joint Petition for Waiver, filed March 17, 2000, at 1 (AT&T opposition). AT&T's specific objections to the petition are detailed in sections III. and IV., below.

[22] *See* Letter from Sandra L. Wagner, SBC Telecommunications, Inc., to Magalie Roman Salas, dated June 14, 2000, at 5 (SBC ex parte).

[23] Because 104 of the 105 local telephone exchanges being sold make up three complete study areas, neither CenturyTel nor GTE needs a study area waiver for the 104 local telephone exchanges, except for the purchase of the Mammoth Springs exchange by CenturyTel of Central Arkansas. Therefore, this Part 36 waiver considers only the transfer of the Mammoth Springs exchange. CenturyTel intends to continue to operate the exchanges as three separate study areas, without any other changes to the existing boundaries.

[24] 47 C.F.R. § 1.3.

[25] *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

[26] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[27] *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

[28] *See, e.g., US WEST Communications, Inc., and Eagle Telecommunications, Inc., 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, para. 5 (1995).

carriers purchasing high-cost exchanges currently can only receive the same level of per-line support as the selling company was receiving for those exchanges prior to the sale, there can, by definition, be no adverse impact on the universal service fund resulting from this transaction.[29] Moreover, because CenturyTel is not a price cap LEC, it will not be eligible to receive interstate access universal service support for the Mammoth Springs exchange or any of the other acquired exchanges.[30]

12. Second, no state commission having regulatory authority over the transferred exchanges opposes the transfer. In a letter to the Common Carrier Bureau, the Arkansas Public Service Commission has indicated that it does not oppose grant of the requested study area waiver for GTE and CenturyTel.[31]

13. Finally, we conclude that the public interest is served by a waiver of the study area freeze rule to permit GTE to remove the Mammoth Springs exchange from its Missouri study area, and to permit CenturyTel to combine the Mammoth Springs exchange with the GTE of Arkansas study area it is acquiring as a part of this transaction. In addition to the services that GTE currently provides to customers in the Mammoth Springs exchange, CenturyTel proposes to offer customers additional access to voice mail, caller ID, additional choice in long distance providers, local Internet dial-up access, greater access to advanced services, such as broadband Internet access using Digital Subscriber Line (DSL) technology, and improved customer and community services.[32] According to CenturyTel, "this transaction will speed the introduction of these new services, improve customer service, and bring customers the benefit of an experienced service provider devoted to serving rural communities."[33] Thus, the petitioners have demonstrated that the customers in this exchange will likely be well served by CenturyTel, and that the requested study area waiver will serve the public interest.

III. WAIVER OF THE COMMISSION'S PRICE CAP RULES

A. Background

14. Section 61.41(c) of the Commission's rules provides that any price cap telephone company subject to a merger, acquisition, or similar transaction shall continue to be subject to price cap regulation notwithstanding such transaction.[34] In addition, when a non-price cap company acquires, merges with, or otherwise becomes affiliated with a price cap company or any part thereof, the acquiring company becomes subject to price cap regulation and must file price cap tariffs within a year.[35]

---

[29] *See* 47 C.F.R. § 54.305.

[30] *See* 47 C.F.R. § 54.801(b).

[31] Petition at 10. Petitioners included a copy of the letter from the Arkansas Public Service Commission to the FCC marked as Exhibit E.

[32] *Id.* at 10-12.

[33] Petition at ii.

[34] 47 C.F.R. § 61.41(c)(1).

[35] 47 C.F.R. § 61.41(c)(2). *See Policy and Rules Concerning Rates for Dominant Carriers,* Second Report and Order, 5 FCC Rcd 6786, 6821 (1990), Erratum, 5 FCC Rcd 7664 (Com. Car. Bur. 1990) (*LEC Price Cap Order*), *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.* (continued....)

Moreover, LECs that become subject to price cap regulation are not permitted to withdraw from such regulation.[36] Under these rules, CenturyTel's acquisition of GTE's 105 Arkansas exchanges would obligate CenturyTel to become subject to price cap regulation for both its existing and acquired exchanges.

15. In the *LEC Price Cap Reconsideration Order*, the Commission explained that section 61.41(c) is intended to address two concerns regarding mergers and acquisitions involving price cap companies.[37] The first concern was that, in the absence of the rule, a LEC might attempt to shift costs from its price cap affiliate to its non-price cap affiliate, allowing the non-price cap affiliate to charge higher rates to recover its increased revenue requirement, while increasing the earnings of the price cap affiliate. The second concern was that, absent the rule, a LEC might attempt to game the system by switching back and forth between rate-of-return regulation and price cap regulation. For example, without such a rule, a price cap company may attempt to "game" the system by opting out of price cap regulation, building a large rate base under rate-of-return regulation so as to raise rates and then, after returning to price caps, cutting costs back to an efficient level, thereby enabling it to realize greater profits. It would not serve the public interest, the Commission stated, to allow a carrier alternately to "fatten up" under rate-of-return regulation and "slim down" under price cap regulation, because the rates would not decrease in the manner intended under price cap regulation.[38]

16. The Commission nonetheless recognized that narrow waivers of the all-or-nothing rule might be justified if efficiencies created by the purchase and sale of exchanges outweigh the threat that the system might be subject to gaming.[39] Such waivers will not be granted unconditionally, however. Waivers of the all-or-nothing rule will be granted conditioned on the selling price cap company's downward adjustment to its price cap indices to reflect the sale of exchanges.[40] That adjustment is needed to remove the effects of transferred exchanges from rates that have been based, in whole or in part, upon the inclusion of those exchanges in a carrier's price cap indices.[41] In addition, waivers of the all-or-nothing rule have been granted subject to the condition that the acquiring carrier obtain prior

(Continued from previous page)

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 Concerning 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).

[36] 47 C.F.R. § 61.41(d).

[37] *See LEC Price Cap Reconsideration Order* at 2706.

[38] *Id.*

[39] *Id.* at 2706 n. 207.

[40] *See Price Cap Performance Review for Local Exchange Carriers*, First Report and Order, CC Docket No. 94-1, 10 FCC Rcd 8961, 9104-06 (1995) (*LEC Price Cap Review Order*). The Price Cap Indices, which are the upper bounds for rates that comply with price cap regulation, are calculated pursuant to a formula specified in the Commission's rules for price cap carriers. *See* 47 C.F.R. § 61.45.

[41] *See LEC Price Cap Review Order* at 9105-9106.

Commission approval of any attempt to return to price cap regulation.[42]

17. CenturyTel is currently subject to rate-of-return regulation, while GTE is subject to price cap regulation. CenturyTel seeks a waiver of section 61.41(c)(2) of the Commission's rules to permit it to continue to be regulated under rate-of-return regulation after acquiring from GTE the 105 Arkansas exchanges that are currently under price cap regulation. Absent a waiver of the all-or-nothing price cap rules, all of CenturyTel's operations would become subject to price cap regulation no later than one year after acquiring the price cap exchanges from GTE. CenturyTel argues that neither of the concerns discussed above applies to its proposed acquisition of GTE exchanges in Arkansas.[43] CenturyTel explains that it would lack incentives to shift costs among its various affiliates, because it does not seek to maintain separate affiliates under different systems of rate regulation.[44] In response to the Commission's concern regarding carriers gaming the system, CenturyTel notes that Commission approval would be necessary for CenturyTel to return the acquired exchanges to price cap regulation.[45]

18. CenturyTel also argues that it would be inappropriate for it to be subject to price cap rate regulation.[46] CenturyTel argues that price cap rate regulation was designed for large carriers, such as the Regional Bell Operating Companies (RBOCs) and the GTE Operating Companies, which possess "geographic diversity, large subscriber bases, high activity levels in both the regulated and unregulated markets, and access to national markets."[47] CenturyTel notes that the Commission previously has recognized that it would be inappropriate to subject other small carriers to price cap rate regulation and that the Commission takes into account the preferences of small companies in evaluating requests for waiver of section 61.41(c)(2).[48] In short, CenturyTel argues that grant of the requested waiver "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."[49]

19. AT&T filed comments opposing CenturyTel's request for a waiver of section 61.41(c)(2), stating that CenturyTel, Inc., the parent company of CenturyTel, has not demonstrated any public interest benefits from the proposed waiver.[50] According to AT&T, the Commission's narrow

---

42 *See, e.g., ALLTEL Corp. Petition for Waiver of Section 61.41 of the Commission's Rules and Application for Transfer of Control*, CCB/CPD No. 99-1, Memorandum Opinion and Order, 14 FCC Rcd. 14191, 14202 (1999) (*ALLTEL/Aliant Merger Order*); *In the Matter of Minburn Telecommunications, Inc., Petition for Waiver of Sections 61.41(c) and (d) of the Commission's Rules*, CCB/CPD No. 99-16, Memorandum Opinion and Order, 14 FCC Rcd 14184, 14187 (Com. Car. Bur. 1999) (*Minburn Waiver Order*).

43 Petition at 13.

44 *Id.*

45 *Id.* at 13-14.

46 *Id.* at 14-15.

47 *Id.* at 14.

48 *Id.* at 14-15 (citing *ALLTEL/Aliant Merger Order* at 14204).

49 Petition at 15.

50 AT&T opposition at 2.

exception to the all-or-nothing rule only applies to the acquisition of "one or two" exchanges, not the acquisition of all of GTE's operations for the state of Arkansas.[51] Moreover, AT&T argues that CenturyTel has not demonstrated that the "size and scope of its operations after the merger will not ultimately induce it to opt for price cap regulation after building up a large rate base."[52] AT&T contends that the proposed waiver would enable CenturyTel to significantly increase access rates.[53] AT&T also argues that CenturyTel is not a small company and, therefore, would operate more efficiently under price cap regulation.[54]

B. Discussion

20. For the reasons discussed below, we find that good cause exists for us to waive section 61.41(c)(2) of our rules, and that it would be in the public interest to grant CenturyTel's waiver request. As discussed previously, the courts have interpreted section 1.3 of the Commission's rules to require a petitioner seeking a waiver of a Commission rules to demonstrate that special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.[55]

21. We conclude that, in this case, waiver of section 61.41(c)(2) of the Commission's rules will serve the public interest. We agree with CenturyTel that the circumstances surrounding CenturyTel's acquisition of GTE's exchanges fail to give rise to the dangers of cost-shifting and gaming of the system. CenturyTel is not seeking to maintain separate affiliates under different systems of regulation, and, therefore, CenturyTel will have no opportunity to shift costs between price cap and rate-of-return affiliates. Moreover, to safeguard against possible gaming resulting from attempts to elect price cap regulation, we will require CenturyTel to seek prior Commission approval if it seeks to elect price cap regulation. At that time, the Commission can make a determination if the transaction raises concerns that the Commission sought to address in section 61.41 of its rules. We, therefore, reject AT&T's argument that CenturyTel will be able to opt for price cap regulation after building up a large rate base. We believe that requiring CenturyTel to seek Commission approval before electing price cap regulation is sufficient to deter gaming in the future.

22. Because CenturyTel is significantly smaller than the eight carriers subject to mandatory price caps, we also find that special circumstances support a waiver of section 61.41(c)(2) of our rules. In evaluating requests for waiver of section 61.41(c)(2) of our rules, the Bureau has taken into account the company's preferences and, in particular, the preferences of small carriers.[56] After the proposed

[51] *Id.* at 3-4.

[52] *Id.* at 4.

[53] *Id.* at 7-8.

[54] *Id.* at 5-6.

[55] *See supra* discussion at para. 10.

[56] *See, e.g., ALLTEL/Aliant Merger Order* at 14204-05. In fact, the Commission traditionally has been sensitive to the unique administrative burdens imposed on small telephone companies by the application of its rules. *See, e.g., id.* at 14204; *Minburn Waiver Order* at 14187. For example, in the *LEC Price Cap Order*, the Commission decided that small telephone companies would not be required to operate under a regulatory regime that was designed largely on the basis of the historical performance of the largest LECs. The Commission, therefore, limited the mandatory application of price cap regulation to the eight largest LECs -- the seven RBOCs and GTE. *See Price Cap Order* at 6818-19.

transaction, CenturyTel will still be far smaller than the eight LECs subject to mandatory price caps.[57] In addition, unlike any of the RBOCs and GTE and most of the other price cap companies, CenturyTel's 1.3 million access lines are scattered largely in rural areas in 20 states.[58] In fact, according to CenturyTel, it specializes in serving rural markets and small towns.[59] Therefore, even though CenturyTel has a significant number of access lines, it is more like a smaller carrier than large carriers, such as the RBOCs and GTE. We also note that the acquisition under consideration in this proceeding is comparable to the previously approved ALLTEL-GTE acquisition[60] and ALLTEL-Aliant merger[61] in terms of number of lines being acquired. Therefore, we believe that CenturyTel presents special circumstances to support its waiver request.

23. We are not persuaded by AT&T's argument that, because the proposed waiver is for an entire state rather than only certain exchanges, this distinguishes CenturyTel's waiver request from previously granted waiver requests. Although waiver of the all-or-nothing rule is often sought when partial study areas are purchased, we have recognized that there may be instances, such as the instant case, where a carrier acquiring a larger number of exchanges presents good cause for waiver of section 61.41(c)(2) of the Commission's rules. As discussed above, the Commission waived section 61.41(c)(2) of its rules in the ALLTEL-GTE and ALLTEL-Aliant transactions, which are comparable to CenturyTel's proposed transaction with GTE. Finally, we reject AT&T's argument that CenturyTel should be subject to price cap regulation because similarly sized carriers have opted for price cap regulation. While there may be instances where small or mid-size LECs elect price cap regulation, we believe that CenturyTel has demonstrated special circumstances to support its waiver request, and, therefore, we will not compel it to adhere to price cap regulation.[62]

24. Consistent with past precedent,[63] we also require GTE to make a downward adjustment to its price cap indices to reflect the sale of its Arkansas exchanges.

---

[57] CenturyTel notes that "[a]ccording to the Commission's most recent data, CenturyTel, Inc., is *less than one-tenth* the size of even the smallest mandatory price cap carrier, in terms of loops served." CenturyTel reply comments at 4 (emphasis in original).

[58] Petition at 4-5; CenturyTel reply comments at 3. We note that CenturyTel's size and the breadth of its service territory is similar to ALLTEL, which served 1.8 million access lines in 14 states at the time it was permitted to merge its operations with Aliant, which had 285,000 access lines in Nebraska. *See ALLTEL/Aliant Merger Order* at 14192.

[59] CenturyTel reply comments at 4. CenturyTel's service territory has 10.28 lines per square mile. *Id.* at 2.

[60] *See In the Matter of ALLTEL Service Corporation, Petition for Waiver of Section 61.41 of the Commission's Rules*, Order, 8 FCC Rcd 7054 (1993) (involving the conversion of approximately 285,000 access lines from price cap to rate-of-return regulation).

[61] The ALLTEL/Aliant merger involved the conversion of approximately 300,000 access lines from price cap to rate-of-return regulation.

[62] *See supra* discussion at para. 22.

[63] *See Price Cap Review Order* at 9104-9106.

IV. WAIVER OF SECTION 69.3(g)(2)

A. Background

25. Under section 69.3(g)(2) of the Commission's rules, a NECA common line tariff participant may include in the NECA common line pool any telephone properties it acquires provided that: (1) the net addition of common lines to NECA pool resulting from the acquisition does not exceed 50,000 access lines; and (2) if any common lines involved in the acquisition are returned to the NECA common line pool, then all common lines involved in the acquisition must be returned to the NECA common line pool.[64] In adopting the 50,000 line threshold for waiver requests, the Commission recognized that this requirement should not deter local exchange carriers from executing a transaction that would otherwise be desirable.[65] Therefore, the Commission has recognized that a waiver of this rule may be appropriate for transactions that result in a net addition of more than 50,000 lines to the NECA common line pool.[66] In order to obtain a waiver of section 69.3(g)(2), petitioners must demonstrate that the reentry of nonpooling access lines into the common line pool would not have a substantial adverse effect on the pool's revenue requirement and would not significantly increase the LTS obligations of the remaining nonpooling LECs.[67]

26. CenturyTel proposes to return all of the newly-acquired access lines to the NECA common line pool.[68] CenturyTel, therefore, seeks a waiver of the 50,000 access line cap in section 69.3(g)(2) of the Commission's rules.[69] CenturyTel asserts that the reentry of the acquired lines into the common line pool will have no substantial adverse effect on the NECA common line pool, or on non-pooling LECs.[70] CenturyTel also asserts that no entity will experience a significant increase in its universal service obligation if this waiver is granted, because the impact on the revenue requirements of the NECA common line pool is expected to be insignificant.[71] CenturyTel states that, based on current NECA pooling data and projected demand and cost data, CenturyTel's acquisition of the 105 exchanges

---

[64] 47 C.F.R. § 69.3(g)(2).

[65] *See 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, 235, 244 (1989) (*Common Line Pool Order*). We also note that the Commission specifically delegated to the Chief of the Common Carrier Bureau the authority to act on such waiver requests. *See id.* at 244.

[66] *Id.* at 244.

[67] *Id.* In the *Common Line Pool Order*, the Commission also required that the reentry of nonpooling access lines not significantly increase Transitional Support. We note that, in accordance with section 69.612 of the Commission's rules, Transitional Support expired on June 30, 1994. *See* 47 C.F.R. § 69.612(b). We also note that in the *First Report and Order* the Commission concluded that the burden of LTS for common line pool LECs should be shifted from the non-pooling LECs to all providers of interstate telecommunications services. *See First Report and Order* at paras. 756-759.

[68] Petition at 16.

[69] *Id.*

[70] *Id.* at 18.

[71] *Id.*

would produce only a *de minimis* impact on the common line pool revenue requirement.[72] NECA filed comments in support of CenturyTel's waiver request, noting that the addition of GTE's Arkansas lines to the common line pool will not significantly impact common line pool revenue requirements, and will not impose any undue administrative burdens on NECA.[73]

27. AT&T and SBC oppose CenturyTel's request for waiver of section 69.3(g)(2). AT&T argues that this waiver should be denied because: (1) participation in the NECA common line pool is fundamentally inconsistent with the operation of price cap regulation; and (2) the NECA interstate access rates are higher than those GTE has charged in the past.[74] SBC argues that the proposed waiver will enable CenturyTel to dramatically increase intrastate traffic-sensitive access service rates for the acquired access lines.[75]

B. Discussion

28. Because reentry of GTE's non-pooling access lines into the common line pool will not have a substantial adverse effect on the pool's revenue requirement and will not increase the LTS obligations of nonpooling LECs, we conclude that good cause exists for us to waive section 69.3(g)(2) of the Commission's rules. NECA has advised CenturyTel that including GTE's Arkansas access lines in the common line pool will cause a change of less than one percent (0.76%) in the overall common line pool revenue requirement.[76] We agree with NECA that such an increase in the common line pool's revenue requirement is not significant enough to justify a denial of CenturyTel's waiver request. We also conclude that including GTE's Arkansas access lines in the common line pool will not increase the LTS obligations of contributing carriers. In accordance with section 54.305 of the Commission's rules, because GTE does not currently receive LTS for the acquired exchanges, CenturyTel will also be ineligible to receive LTS for those exchanges.[77] As such, the LTS obligations of contributing carriers will not be impacted. We, therefore, conclude that the good cause exists for the reentry of GTE's Arkansas access lines into the common line pool.

29. We are not persuaded by AT&T's claims that CenturyTel's waiver request should be

---

[72] *Id.*

[73] NECA comments at 4.

[74] AT&T opposition at 7-9.

[75] *See* SBC ex parte at 2. According to SBC, its concern regarding CenturyTel's traffic sensitive intrastate access rates stems from the fact that the Arkansas Public Service Commission (APSC) requires carrier intrastate access charges to mirror interstate access charges. *Id.* at 2-3. According to SBC, this requirement only applies to carriers that do not elect alternative regulation and instead remain under rate-of-return regulation.

[76] *See* Petition at 18-19 (citing Letter from Bill Cook, Manager, Rates and New Services Development, National Exchange Carrier Association, Inc., to Marvin Cunningham, Jr., Vice President – Revenue and External Affairs, CenturyTel, Inc., dated January 17, 2000 (attached as Exhibit F)).

[77] *See* 47 C.F.R. § 54.305. We also concur with CenturyTel that, since adoption of section 69.3 of the Commission's rules, the burden of LTS for common line pool LECs has shifted from the non-pooling LECs to all providers of interstate telecommunications services. As such, even in the absence of section 54.305 of the Commission's rules, we do not believe that including GTE's Arkansas access lines in the common line pool would significantly increase the LTS obligations of contributing carriers.

denied because NECA interstate access rates are higher than those GTE has charged in the past. As we discussed above, the Commission has determined that it will grant waivers of section 69.3(g)(2) if the petitioner demonstrates that reentry of the acquired access lines will not adversely affect the common line pool's revenue requirements and will not significantly increase the LTS obligations of contributing carriers. The Commission did not include in this analysis a review of the impact of proposed transaction on interstate access charges.[78] Nonetheless, we do not believe that AT&T has presented a convincing case that the impact on interstate access rates is so great as to warrant denying CenturyTel's waiver request. AT&T claims that composite interstate access rates will increase anywhere from 21 to 44 percent as a result of the transaction,[79] while CenturyTel claims that the conversion to NECA rates will reduce the affected customers' overall interstate access charges.[80] CenturyTel also claims that AT&T's interstate access charges would increase only approximately $0.00000227 per minute.[81] Based on the evidence presented, it appears that, while the reentry of GTE's Arkansas access lines may result in increased carrier common line rates and selected traffic sensitive rates, the overall impact of this transaction on all interstate access charges appears to be negligible. Therefore, we are not convinced by AT&T's argument that we should deny CenturyTel's waiver request because access charges may increase.

30. Because we are also granting CenturyTel's petition for waiver of section 61.41(c)(2) of the Commission's rules, we do not address AT&T's argument that participation in the NECA common line pool is fundamentally inconsistent with the operation of price cap regulation. In addition, we do not believe that SBC's concerns regarding increased intrastate traffic sensitive access service rates are appropriately before the Commission in this proceeding. Moreover, we believe that the Arkansas Public Service Commission is the appropriate venue for addressing SBC's concerns regarding intrastate access rates.[82] The Commission has not regulated intrastate access rates and does not intend to do so in this instance. Finally, given that section 69.3(g)(2) of the Commission's rules only applies to carrier participation in the common line pool, CenturyTel is not required to obtain a waiver of section 69.3(g)(2) of the Commission's rules in order to include acquired access lines in the traffic sensitive pool.

31. We, therefore, conclude that there is good cause to grant CenturyTel a waiver of section 69.3(g)(2) because NECA's common line pool will not be adversely affected, and there will be no significant increase in LTS obligations.

---

[78] *See Common Line Pool Order* at 244.

[79] AT&T opposition at 7.

[80] CenturyTel reply comments at 7.

[81] *Id.* at 7-8.

[82] We note that, in its letter supporting the proposed transaction, the Arkansas Public Service Commission states that it "reserves the right to review [the issue of whether to object to the Commission granting the study area waiver] further and to taken [sic] any appropriate measures necessary to ensure that the waiver of the study area rules does not adversely affect the public interest in Arkansas or detrimentally affect the APSC's intrastate policies." *See* Letter from Samuel C. Loudenslager, Director, Research and Policy Development, Arkansas Public Service Commission, to Lawrence E. Strickling, dated December 13, 1999, at 1-2 (attached as Exhibit E to Petition). To the extent that increased intrastate traffic sensitive access service rates in the acquired 105 Arkansas exchanges adversely affect the public interest in Arkansas or detrimentally affect intrastate policies, the Arkansas Public Service Commission appears to have the discretion to address SBC's concerns.

V. ORDERING CLAUSES

32. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, and 202, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the petition for waiver of Part 36, Appendix-Glossary, of the Commission's rules, filed by CenturyTel of Northwest Arkansas, LLC, CenturyTel of Central Arkansas, LLC, GTE Arkansas Incorporated, GTE Midwest Incorporated, and GTE Southwest Incorporated, on January 28, 2000, IS GRANTED.

33. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, and 202, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the petition for waiver of sections 61.41(c) and 69.3(g)(2) of the Commission's rules, filed by CenturyTel of Northwest Arkansas, LLC and CenturyTel of Central Arkansas, LLC, IS GRANTED.

34. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, and 202, and sections 0.91, 0.291, 1.3, and 61.43 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 61.43, that GTE Midwest Incorporated SHALL ADJUST its price cap indices in its annual price cap filing to reflect cost changes resulting from this transaction, consistent with this Order.

FEDERAL COMMUNICATIONS COMMISSION

Katherine L. Schroder
Deputy Chief, Accounting Policy Division