THE ALL-OR-NOTHING RULES SHOULD BE ELIMINATED

I. The All-or-Nothing Rules Inhibit Transactions that Serve the Public Interest

A. Summary of The Commission's All-or-Nothing Rules

1. When a rate-of-return company acquires or merges with a price cap company (or vice versa), the rate of return affiliates must be converted to price cap regulation within one year (Section 61.41(c)(2)).

2. When a LEC files a federal price cap tariff, *all* its affiliates (except "average schedule" companies with fewer than 50,000 lines) must file price cap tariffs for their interstate rates (Section 61.41(b)).

3. Under the so-called "One-Way Door" rule, exchanges that become subject to price cap regulation are not eligible to withdraw from price caps, even upon sale to a new owner (Section 61.41 (d)).

4. The pooling "All-or-Nothing" rule provides that if a LEC chooses to withdraw one of its study areas from the NECA common line pool in order to file its own carrier common line tariff, the LEC must then withdraw all of its study areas from the pool (Section 69.3(e)(9)) .

B. Sale of Access Lines by Price Cap Carriers Can Improve Service and Rational Rates in Rural Areas

1. Price cap regulation of the BOCs' large, heterogeneous study areas has not encouraged investment in rural exchanges.

2. CenturyTel is buying rural exchanges to achieve efficiencies and scale economies through growth, but keeping the focus on relatively homogenous, rural areas.

C. Under the present system, complexities and delays of FCC waiver process increase the cost of acquisitions and delay bringing benefits to consumers in the affected exchanges.

II. <u>The All-or-Nothing Rules are Overly Restrictive and Should be Eliminated</u>

A. <u>The present rules were adopted more than a decade ago to avoid any incentives for LECs to engage in improper cost-shifting, concerns the Commission has since acknowledged were more speculative than real.</u>

   1. Numerous waivers have been granted – and none have been denied.

   2. There have been no complaints about cost-shifting or other abuses by companies operating under both systems of interstate rate regulation.

B. <u>The present all-or-nothing (and one-way door) rules are no longer appropriate in today's environment nor do they serve the public interest.</u>

   1. Rate-of-Return ILECs incur significant risk and make substantial investment in acquired properties; they need flexibility to operate their companies to keep pace with changes in technology, competition, and customer demand.

   2. The all-or-nothing rules have the greatest adverse impact on small and mid size companies. These companies represent the best opportunity for consumers in under-served Bell operating markets to receive improved and advanced services.

   3. The present rules serve no purpose that cannot be achieved through existing Commission safeguards such as affiliate transaction rules, accounting rules, and the tariffing process.