

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

In the Matter of)	
)	
Petition by the Colorado Public Utilities Commission, Pursuant to 47 C.F.R. § 54.207(c), for Commission Agreement in Redefining the Service Area of CenturyTel of Eagle, Inc., A Rural Telephone Company)	CC Docket No. 96-45

EX PARTE COMMENTS OF WESTERN WIRELESS CORPORATION

Western Wireless Corporation (“Western Wireless”), by and through their undersigned counsel, respectfully submits these Ex Parte Comments in support of the Petition filed by the Colorado Public Utilities Commission (“COPUC”) in the above-referenced docket. The Petition removes a significant barrier to entry into the universal service market by establishing a competitively-neutral mechanism for disaggregating the service area and universal service support for CenturyTel of Eagle, Inc. (“CenturyTel”). Accordingly, the Commission should approve the Petition or simply take no further action and allow COPUC’s proposed disaggregation plan to become effective.

I. FACTUAL BACKGROUND

Western Wireless is a provider of Commercial Mobile Radio Service (“CMRS”) within a portion of CenturyTel’s currently-defined service area. Approval of COPUC’s Petition is a necessary precursor to Western Wireless’ entry into the universal service market in a portion of CenturyTel’s service area. Section 214(e)(2) of the Communications Act of 1934, as amended, requires state commissions to approve ETC applications only if the applicant can serve customers “throughout the service area” for which the application is sought. Because Western

Wireless does not provide service throughout CenturyTel's service area, it is foreclosed from seeking designation as an ETC in CenturyTel's service area, unless the service area is disaggregated as proposed by the COPUC. The Petition has been filed by the COPUC after careful deliberations in a disaggregation proceeding,¹ and is consistent with the requirements of the Act and the Commission's rules.

CenturyTel, along with and through industry associations that represent the interests of rural telephone companies, oppose the Petition, consistent with their more general attempts to maintain control over the local telephone market and prevent competition within their service areas. The Commission and the COPUC have established rules that enable competitive entry into the universal service market, and thereby allow rural consumers to enjoy the benefits of competition. With respect to CenturyTel exchanges in Colorado, only two steps remain: 1) approval of this Petition; and 2) certification of ETCs to serve the disaggregated service areas.

The COPUC has taken the first step by proposing disaggregation of CenturyTel's service area in this Petition, and the COPUC Staff has made a preliminary recommendation that the COPUC certify Western Wireless as an ETC in certain CenturyTel disaggregated service areas.² It is now up to this Commission to take the final step required to enable rural consumers of Colorado to realize the benefits of a competitive telecommunications market.

¹ See COPUC Docket No. 01R-434T, *In the Matter of the Proposed Amendments to the Rules Concerning the Colorado High Cost Support Mechanism, 4 CCR 723-41, and the Rules Concerning Eligible Telecommunications Carriers, 4 CCR 723-42*, Decision No. C02-319, Ruling on Exceptions and Order Vacating Stay (Mailed: March 18, 2002) ("COPUC Disaggregation Decision") at 3: ("...the primary purpose of this proceeding is to modify our rules to make them consistent with new regulations adopted by the [FCC]."

² See COPUC Docket No. 00K-255T, *In the Matter of Western Wireless Holding Co., Inc.'s Application for Designation as an Eligible Telecommunications Provider Pursuant to 4 CCR 723-41-8; In the Matter of Western Wireless Holding Co., Inc.'s Application for Designation as an Eligible Telecommunications Carrier Pursuant to 4 CCR 723-42-7*, Decision No. R01-19, Recommended Decision of Administrative Law Judge Ken F. Kirkpatrick Accepting Stipulation and Granting Applications (Mailed: January 8, 2001) ("WWC ETC Decision"). The WWC ETC Decision approved a stipulation between Western Wireless, the Office of Consumer Counsel, and the COPUC Staff which detailed the parties' recommended approval of Western Wireless' ETC application for certain CenturyTel wire centers upon approval of the COPUC's Disaggregation Petition.

Realizing that their policy arguments have been rejected, and that their monopoly stranglehold on rural areas of this country is slipping away, CenturyTel and the associations representing rural telephone companies in general have opposed the COPUC Petition with unfounded legal reasoning and desperate “death spiral” claims that cannot be substantiated.³ Western Wireless agrees with the Reply Comments filed by N.E. Colorado Cellular and the COPUC, which refute the claims of CenturyTel and other local exchange carriers (“LECs”) and their associations (collectively, the “Rural Commenters”). In these Ex Parte Comments, Western Wireless establishes that the COPUC’s method and manner of classifying each individual wire center in CenturyTel’s study area as a separate service area will promote the federal and state goals of encouraging competition in the telecommunications marketplace and extending basic telecommunications service to all Americans.

II. DISAGGREGATION OF CENTURYTEL’S SERVICE AREA WILL ENSURE SUPPORT IS TARGETED TO HIGH-COST AREAS

In their opposition to the Petition, the Rural Commenters rely heavily on the unsupported allegation that competitive ETCs will “cream skim” lower cost areas within CenturyTel’s disaggregated service area – an allegation that overlooks the fact that ETCs are required to serve the entire service area for which they are designated, *i.e.*, entire wire centers in the disaggregation plan designed by the COPUC. CenturyTel further ignores the fact that it elected to disaggregate its universal service support into two cost zones that cut across multiple wire centers, and not on a wire center basis, purportedly based upon its costs. Now, in opposition to the COPUC Petition, CenturyTel apparently believes that its disaggregation of universal service support was not cost-based, but presumably based upon some arbitrary division of its service

³ See, *Decision on Exceptions*, (Mailed Date May 4, 2001), where the COPUC stated that “CTA presented no evidence of any adverse impact on the rural ILECs as a result of granting Western Wireless’ Applications here.” Page.16. CenturyTel is a member of the Colorado Telecommunications Association (“CTA”).

area. CenturyTel's contradictory positions put into question its *modus operandi* in how it has disaggregated universal service support and why it is now strongly opposing the COPUC Petition. Nonetheless, the COPUC has put forth a competitively neutral mechanism for disaggregating the service area of CenturyTel. CenturyTel had the opportunity to more narrowly target support to the most high-cost areas if it felt that averaging support over two cost zones, as opposed to individual wire centers, would provide competitive ETCs an opportunity for arbitrage.

Cream skimming and arbitrage arguments have been the arguments of telephone monopolists for years, but yet these same monopolists are vociferous proponents of maintaining implicit support built into their rates and support levels. Under the Commission's rules, CenturyTel can choose from three different disaggregation paths for the purpose of targeting high-cost universal service support.⁴ CenturyTel disaggregated into only two cost zones for the purpose of receiving high-cost support,⁵ areas that appear to be calculated primarily to resist competition. Due to the sprawling nature of the two zones,⁶ it would be impossible for the COPUC or the Commission to use them as Service Areas for the designation of ETCs. To do so would be to foreclose any possibility of competition from any carrier in the current marketplace. In short, CenturyTel has gambled that this Commission will accept its arguments about cream skimming (based on disaggregation zones that it unilaterally created) and prevent the redefinition of its service area in a manner that would make competition possible. CenturyTel

⁴ 47 C.F.R. § 54.315.

⁵ Western Wireless believes that a CenturyTel's self-certified disaggregation plan violates a reasonable reading of 47 C.F.R. § 54.315. Path 3, detailed in subsection (d)(1) requires a self-certified plan that disaggregates support "[i] to the wire center level; or ... [(ii)] into no more than two cost zones per wire center." CenturyTel's disaggregation plan calls for only two zones in the entire state of Colorado. The clear intent of the rule was to allow ILECs to self-certify so long as their plan disaggregated to *at least* the wire center level. To read subsections (i) and (ii) otherwise would be to strip the entire rule of any meaning. If CenturyTel's reading and application of subsection (ii) is accepted, the rule effectively allows ILECs to self-certify any disaggregation plan they wish.

⁶ See Reply Comments of COPUC, Reply Attachments 1-3.

and other Rural LECs should not be permitted to unilaterally gerrymander the universal service system to prevent competition in their service area.

Finally, CenturyTel, as a member of CTA, was on notice that the COPUC intended to disaggregate the Company's service area in a manner that facilitates competitive entry.⁷

PUBLIC INTEREST

The FCC, with the concurrence of the Joint Board, established procedures for the disaggregation of service areas that advance and protect the public interest by both facilitating the introduction of competitive alternatives in rural areas, to the benefit of rural consumers, while also ensuring that all ETCs serve the entirety of a reasonably defined geographic area.⁸ The FCC has also approved, as consistent with the public interest, state disaggregation plans very similar to the CO PUC plan at issue here.⁹ In this case, the COPUC has carefully considered the public interest in developing the re-definition contained in its Petition. In 2000, Western Wireless initiated a proceeding to be certified as an "Eligible Provider" (EP) under COPUC rules and an ETC. This was a contested proceeding in which all interested parties, including CenturyTel, had a right to be heard. After designating Western Wireless as an EP, the COPUC, in its Decision on Exceptions, deferred designating Western Wireless as an ETC pending approval of service area changes by the FCC.¹⁰ The COPUC later initiated a general rulemaking

⁷ In fact, *The Stipulation and Settlement Agreement In the Matter of the Applications of Western Wireless Holding Co., Inc's Application for Designation as an Eligible Telecommunications Carrier Pursuant to 4 CCR 723-42-7 and as an Eligible Telecommunications Provider Pursuant to 4 CCR 723-42-8 ("Stipulation")*, (Docket Nos. 00A-174T and 00A-171-T, respectively) (Dated November 14, 2000), proposed that the COPUC conduct proceedings to disaggregate all ETC study areas in the state, especially those study areas not addressed in the Stipulation itself. CTA filed exceptions to those proposals, as cited on Page 23 of the *Decision on Exceptions*.

⁸ *Federal-State Joint Board on Universal Service*, First Report and Order, 12 FCC Rcd 8776, ¶¶ 186-91 (1997) (subsequent history omitted); 47 C.F.R. § 54.207(c).

⁹ E.g., *Petition for Agreement with Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of Study Areas for the Purpose of Distributing Portable Federal Universal Service Support*, 15 FCC Rcd 9921 (Com. Car. Bur. 1999).

¹⁰ In the *Decision on Exceptions*, COPUC understood that Western Wireless could not serve CenturyTel's entire service area, and that both COPUC and the FCC must approve the revised service areas that Western Wireless proposed. (Page. 25).

proceeding on disaggregation,, in which all interested parties had the right to present their views, and the public interest was considered.¹¹ As a result of the Western Wireless ETC proceeding, changes in COPUC rules were adopted.¹² The present Petition by the COPUC is consistent with prior FCC decisions¹³, the COPUC's own decisions¹⁴ and resulting rules¹⁵ and the general policy of competition in rural areas embodied by federal statutes.¹⁶ To argue otherwise is essentially a collateral attack on these statutes and rules, and this proceeding is an improper forum to make such arguments.

For the above-stated reasons, Western Wireless respectfully requests that the Commission approve the Petition or take no action and allow the Petition to become effective.

DATED this 4th day of October, 2002.

Respectfully Submitted,

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¹¹ See generally, COPUC Docket No. 01R-434T, *In the Matter of the Proposed Amendments to the Rules Concerning the Colorado High Cost Support Mechanism*, 4 CCR 723-41, and the Rules Concerning Eligible Telecommunications Carriers, 4 CCR 723-42.

¹² 4 CCR 723-41 and 42. For a discussion of the changes, see COPUC Disaggregation Decision.

¹³ *Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244 (2001).

¹⁴ COPUC Disaggregation Decision, WWC ETC Decision.

¹⁵ 4 CCR 723-41 and 42.

¹⁶ 47 U.S.C. § 214(e).