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

SUPPLEMENTAL COMMENTS BY THE COLORADO PUBLIC UTILITIES COMMISSION

The Colorado Public Utilities Commission (COPUC), by and through its attorneys, submits these supplemental comments in accordance with the Commission's Public Notice (DA 03-26, Release Date of January 7, 2003) (Public Notice). For the reasons stated here, in COPUC's Petition, and in its Reply Comments (filed September 27, 2003), COPUC affirms its request for Commission agreement to redefine CenturyTel's service area to the wire center level, pursuant to the provisions of 47 C.F.R. § 54.207(c).

Introduction

COPUC's Petition sought Commission agreement to redefine CenturyTel's service area to the wire center level. As explained in the Petition and in COPUC's Reply Comments, CenturyTel's current service area comprises 53 separate wire centers. Those wire centers are non-contiguous and located across the entirety of the State. Under the Telecommunication Act of 1996 and Commission rule,[1] a competitor seeking designation as an Eligible Telecommunications Carrier (ETC) in CenturyTel's present service area and the federal universal service support resulting from that designation must provide supported services in all 53 wire centers at once. This requirement is excessively burdensome. Redefining CenturyTel's service area into separate wire centers would promote competitive entry. The Petition also explains that concerns that competitors may engage in cream-skimming--choosing to serve only the lowest cost customers in CenturyTel's service area--have already been addressed by CenturyTel's decision to disaggregate and target its universal service support to the wire center level (*i.e.* Path 3 under 47 C.F.R. § 54.315(d)).

[1] 47 U.S.C. § 214(e)(1)) and Commission Rule 47 C.F.R. § 54.201(d).

As stated in the Commission's Public Notice, COPUC's Petition to redefine CenturyTel's service area was deemed approved effective November 26, 2002, pursuant to 47 C.F.R. § 54.207(c)(3)(ii). On December 17, 2002, CenturyTel filed its Application for Review or, Alternatively, Petition for Reconsideration (Application for Review). The requests made by CenturyTel in its Application for Review were reiterated in an *ex parte* letter filed on December 30, 2002. The Public Notice established a pleading cycle, and specifically requested comment on the matters raised in the Application for Review and the *ex parte* letter. COPUC now submits these supplemental comments.

A. Section 214(e)(5) Does Not Require the Commission to Issue a Written Decision on COPUC's Petition

Most of the Application for Review objects to the Commission's decision not to act on COPUC's Petition by written order. Under 47 C.F.R. § 54.207((c)(3) (ii), a state commission's proposal to redefine a rural telephone company's service area is deemed approved if the Commission does not act on such a petition within 90 days. The Application for Review essentially suggests that the Commission's rule is unlawful because it violates § 214(e)(5) of the Communications Act.[2] According to CenturyTel, § 214(e)(5) requires the Commission to take into consideration the Joint Board's recommendations before changing a rural telephone company's service area. And without a written order explaining its approval of the Petition in this case, there is no evidence that the Commission considered the Joint Board's recommendations. COPUC disagrees with these suggestions.

COPUC notes that § 214(e)(5) simply provides that the Commission must take into account the Joint Board's recommendations before changing a rural company's

service area. The statute does not direct the Commission to take account of the Joint Board's recommendations in any particular manner, such as by issuing a written order. Fundamentally, CenturyTel asserts that unless the Commission issues a written order on the Petition no evidence exists to demonstrate that it considered the Joint Board's recommendations. This, however, is an improper challenge to the presumption of regularity attaching to agency action. *Sierra Club v. U.S. Army Corps of Engineers*, 295 F.3d 1209, 1223 (11th Cir. 2002); *Bernklau v. Principi*, 291 F.3d 795, 301 (C.A. Fed. 2002).

COPUC emphasizes that the Petition, the Reply Comments, and comments by other parties to this proceeding discussed comprehensively the Joint Board's recommendations regarding redefinition of rural service areas, and how those recommendations related to the Petition. For example, the comments explain COPUC's conclusion that disaggregation of CenturyTel's service area to the wire center level would promote competition and was in the public interest. The Petition and comments were before the Commission when the decision was made to employ the procedures set forth in Rule 54.207(c)(3)(ii). It must be presumed that the Commission fully and appropriately considered the Petition and comments.

B. The Commission Should Not Delay a Decision on the Petition Pending New Proceedings Before the Joint Board

In any event, the Commission should approve COPUC's Petition for the reasons stated in the Petition and in the Reply Comments. In addition to arguments made in prior comments in this case,[3] CenturyTel in the Application for Review now suggests that the

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[2] 47 U.S.C. § 214(e)(5).

[3] COPUC has responded to these arguments in its Reply Comments.

Commission defer action on COPUC's Petition until the Joint Board issues its recommendations regarding "parallel funding disaggregation and entry disaggregation." Application for Review, page 5. CenturyTel now suggests that approval of the Petition "will have a precedential affect (sic) on the ETC designation process throughout the country." That is, CenturyTel asserts that, by approving the Petition, the Commission will establish a new principle for redefining all rural companies' service areas. Approval of the Petition will mean that all rural companies' service areas must be defined in the same manner as universal service support is disaggregated. CenturyTel notes that the Commission recently requested that the Joint Board issue recommendations regarding this issue.[4]

COPUC opposes the suggestion to defer action on the Petition until new proceedings before the Joint Board are concluded. In the first place, CenturyTel is incorrect in suggesting that approval of COPUC's Petition will establish a new principle universally applicable to all ETCs in the future. The Petition is based upon COPUC's recently adopted rules.[5] However, the Petition does not request that the Commission approve those rules. COPUC's rules, in part, explain why COPUC filed the Petition to redefine CenturyTel's service area. But in requesting Commission agreement to new service areas for CenturyTel, the Petition discussed the specific facts and considerations supporting a redefinition of CenturyTel's service area. For example, COPUC explained that given CenturyTel's present service area (comprising 53 exchanges) competitive ETCs will likely not be able to enter this area. The Petition should be approved based

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[4] *Federal-State Joint Board on Universal Service*, FCC 02-307 (rel. November 8, 2002).
[5] Petition, pages 5-7.

upon the facts and arguments relating to CenturyTel specifically. COPUC is not asking the Commission to adopt a new principle applicable to all ETCs.[6]

COPUC also points out that the Commission's decision on the Petition must be based upon existing rules and policies. It is improper to suggest delay on a pending matter in the hope that those existing rules and policies will change in the future. As for the specific suggestion that the Commission defer a decision on the Petition based upon its recent request for Joint Board recommendations (footnote 4), COPUC notes: The Commission requested that the Joint Board consider a host of issues relating to universal service support. Redefinition of rural service areas (paragraph 10 of Commission Order) appears to be a relatively minor issue to be considered in the new proceedings before the Joint Board. And pending those proceedings any competitive benefits resulting from new entry into CenturyTel's service area will be lost. In short, no reason exists to defer action on the Petition pending the new proceedings before the Joint Board.

[6] Indeed, a new principle universally applicable to ETCs would be a rule. And, presumably, the Commission must utilize rulemaking procedures before adopting any such rule.

CONCLUSION

For the reasons stated here, in the Petition, and in the Reply Comments, COPUC requests that the Commission concur with COPUC in redefining the service area for CenturyTel of Eagle, Inc.

Dated, this 6th day of February 2003.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within SUPPLEMENTAL COMMENTS OF THE COLORADO PUBLIC UTILITIES COMMISSION this 6th day of February 2003, by U.S. Mail to the persons listed below.

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