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

In the Matter of	)	
Federal-State Joint Board	)	
on Universal Service	)	CC Docket No. 96-45
	)	
Applications for Review of Orders	)	
Designating Eligible Telecommunications	)	
Carriers Throughout Their Licensed Service	)	DA 02-746/DA 02-3181
Areas In the State of Alabama	)	DA 02-1465/DA 02-3317

Comments of CenturyTel of Alabama, LLC

CenturyTel of Alabama, LLC ("CenturyTel"), through its attorneys, hereby offers the following Comments on the Public Notice issued in the above-captioned proceedings released January 10, 2003.[1]

I. INTRODUCTION AND SUMMARY

In the proceedings below, RCC Holdings, Inc. ("RCC") and Cellular South License, Inc. ("Cellular South") sought approval from the Federal Communications Commission ("FCC") to be designated as eligible telecommunications carriers ("ETCs") in Alabama and to redefine the service area of certain rural telephone companies. On November 27, 2002, and December 4, 2002, respectively, the Wireline Competition Bureau ("Bureau") designated RCC and Cellular South as competitive ETCs ("CETCs") and redefined the service area of certain rural telephone companies.[2] The Alabama Rural Local Exchange Carriers ("Alabama Rural LECs") filed Applications for Review of the *RCC Order* and *Cellular South Order*.[3]

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[1] Pleading Cycle Established for Comments Regarding Applications for Review of Orders Designating Eligible Telecommunications Carriers in the State of Alabama, *Public Notice*, (rel. Jan. 10, 2003) ("Public Notice").

[2] *In the Matter of Federal State Joint Board on Universal Service, RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, DA 02-3181, Memorandum Opinion and Order (rel. Nov. 27, 2003) ("*RCC Order*"); *In the Matter of Federal State Joint Board on Universal Service, Cellular South License, Inc. Petition for*

CenturyTel, which is a new entrant to the Alabama market and is the second largest LEC in the state serving primarily rural markets, participated in the proceedings below through the Alabama Rural LECs. CenturyTel supports the Applications for Review and urges the Commission to ensure that the designation of RCC and Cellular South as CETCs does not undermine the federal universal service fund. The designation was improper because RCC and Cellular South do not provide minimum local usage, and they have gaps in coverage in their service areas. As the FCC and the states have begun to recognize, the issues raised by the underlying designation petitions and by the Alabama Rural LECs in the Applications for Review have national implications, which the FCC must first address before designating RCC, Cellular South or any other carrier as an ETC in rural markets.

II. DISCUSSION

A. DESIGNATION WAS INAPPROPRIATE AND WILL HARM UNIVERSAL SERVICE.

1. The FCC and the States have begun to recognize that these petitions raise questions of national importance which need to be answered in order to prevent degradation in universal service.

In the proceedings below, the Alabama Rural LECs raised numerous legitimate concerns regarding the impact on high-cost support of designating additional competitive ETCs. Although the Bureau itself acknowledged "these are important issues regarding universal service high-cost support,"[4] it nevertheless declined to address them in the proceedings below, stating that the issues extended beyond the scope of the proceedings before it. The Bureau further noted

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Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama, DA 02-3317, Memorandum Opinion and Order (rel. Dec. 4, 2003) ("*Cellular South Order*").

[3] Application for Review of the Alabama Rural Local Exchange Carriers in CC Docket No. 96-45, DA 02-746, DA 02-3181 (filed Dec. 23, 2002) ("RCC Application for Review"); Application for Review of the Alabama Rural Local Exchange Carriers in CC Docket No. 96-45, DA 02-1465, DA 02-33 (filed Dec. 30, 2002) ("Cellular South Application for Review").

that the issues would be addressed in a proceeding in which the FCC requested that the Federal-State Joint Board on Universal Service ("Joint Board") review and provide recommendations on the FCC's rules relating to high-cost support in study areas being served by competitive ETCs.[5]

CenturyTel fully supports the FCC's CETC high-cost support rulemaking, and urges the FCC to take into consideration the Joint Board's recommendations in that proceeding before designating any new CETCs. As the Alabama Rural LECs noted in the Applications for Review, the entire designation process is under review by the FCC in light of the numerous changes that have occurred in the telecommunications marketplace.[6] As a consequence, designation of RCC, Cellular South, and others[7] as ETCs should be deferred until the FCC concludes the CETC high-cost support proceeding.

As a party to numerous designation proceedings in which carriers attempt to become designated as ETCs throughout the United States, CenturyTel has observed, for example, that distributing high-cost support to CETCs based on ILEC costs as a proxy gives CETCs, particularly wireless ETCs, a significant advantage. As Western Wireless has pointed out in FCC proceedings and as the FCC itself has recognized, wireless systems can often be constructed at lower costs than wireline networks, particularly in high-cost areas.[8] For this

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4 *RCC Order* at ¶ 3; *Cellular South* at ¶ 3.

5 *Federal-State Joint Board on Universal Service*, FCC 02-307, 2002 FCC LEXIS 6052, Order (rel. Nov. 8, 2002) ("*CETC High-Cost Support Proceeding*").

6 RCC Application for Review at 3; Cellular South Application for Review at 3.

7 The impact of these designation proceedings grows in magnitude as CenturyTel faces new CETC designations in multiple states, often accompanied by changes to the service area.

8 *Promotion of Competitive Networks in Local Telecommunications Markets*, Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99-217, and Third Further Notice of Proposed Rulemaking in CC Docket No. 96-98, 14 FCC Rcd 12673 (1999) (". . . some facilities-based entry strategies show promise of surmounting the competitive advantages inherent in the incumbent LECs' control of in-place facilities by avoiding the need to construct new, costly wireline networks. In particular, fixed wireless systems can often be constructed in less time, at lower costs, and in smaller increments than wireline networks, especially in areas where the costs of wireline links may be especially high.").

reason, many carriers have urged the FCC to examine whether a CETC's costs justify high-cost support.[9] These are important issues that the FCC must address.

FCC Commissioner Jonathan Adelstein recently expressed concern that some state commissions need to exercise greater care than they have in the past in determining whether a competitive carrier is eligible for universal service support.[10] He noted the critical nature of the designation process to small carriers serving high-cost areas, adding that "it's a key factor in allocating limited -- and shrinking -- universal service fund."[11] Significantly, he urged regulators to "seriously consider whether a market can support more than one carrier with universal service."[12]

Some states also have begun to acknowledge problems associated with the ETC designation process. For example, last year the Utah Supreme Court upheld an order by the state's Public Service Commission denying Western Wireless rural ETC status because the carrier's designation as an ETC in rural areas served by ILECs would increase demands on the state universal service fund without any offsetting benefits.[13] The Utah Public Service Commission specifically had found that, in the absence of corresponding public benefits, increasing the burdens on the state universal service fund was not in the public interest. In addition, the Public Utilities Commission of the State of South Dakota recently declined to provide certification to the FCC that Western Wireless would use federal support in a manner

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9 ACS of Fairbanks, Inc. filed a Petition for Declaratory Ruling demonstrating why high-cost loop support for CETCs should not be based on ILEC costs. ACS of Fairbanks, Inc., Petition for Declaratory Ruling and Other Relief Pursuant to Section 254(e) of the Communications Act, filed July 24, 2002.

10 Remarks of Commissioner Jonathan S. Adelstein, "Rural America and the Promise of Tomorrow, NTCA Annual Meeting and Expo in Phoenix, Arizona (Feb. 3, 2003) at 3.

11 *Id.*

12 *Id.*

13 *WWC Holding Co., Inc., v. Public Serv. Comm'n of Utah*, No. 20000835 (Sup. Ct. filed Mar. 5 2002).

consistent with Section 254(e) because the carrier had failed to make certain filings.[14] That some states have observed problems associated with the ETC designation process provides additional support for the Alabama Rural LECs' plea that the FCC halt its designation of additional ETCs in rural areas until it thoroughly reviews the impact of CETC high-cost support on the universal service fund.

2. Designation was improper because RCC and Cellular South do not provide minimum local usage.

The Bureau held that RCC's and Cellular South's commitment to provide local usage was sufficient to conclude that the carriers will offer minimum local usage as part of their universal service offerings.[15] The Bureau failed to adequately consider, however, that wireless carriers often have rate plans that, at the low end, provide little or no local usage at all, while, in contrast, many wireline carriers provide unlimited local calling. Without a minimum local usage, wireless carriers may be able to maximize support payments by winning many customers with "free" or nearly free monthly access while minimizing the cost of service by discouraging its use through extremely high per-minute usage charges.

The Minnesota Public Service Commission ("MPSC") has advocated an increase in the minimum local usage afforded universal service customers. The MPSC approved Minnesota Cellular as an ETC in 1999,[16] requiring the carrier to file a tariff for its universal service package offering that would encompass "at least one package which includes *both* unlimited local usage or the minimum level of local usage set by the FCC and a price that does

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[14] *In the Matter of the Request of WWC License LLC for Certification Regarding Its Use of Federal Universal Service Support*, TC02-156, Order Denying Certification (Sept. 27, 2002).

[15] *RCC Order* at ¶ 19; *Cellular South Order* at ¶ 19.

not exceed 110% of the current rates of the incumbents."[17] Unlimited local usage or service priced at rates comparable to the incumbent's enables the consumer to avoid additional per-minute fees and ensures that the consumer receives the benefits universal service is designed to promote. The FCC should follow the MPSC's lead. The FCC should quickly resolve the critical issue of minimum local usage to ensure that only service offerings that meet the definition of universal service are supported. Otherwise, universal service goals could be frustrated by the proliferation of wireless ETCs, all demanding support for services that do not advance the FCC's universal service goals.

3. Designation was improper because RCC and Cellular South have gaps in coverage in their service areas.

The Bureau concluded that the existence of dead spots in RCC's and Cellular South's network did not preclude it from designating the two carriers as ETCs.[18] The Bureau's conclusion was based on the carriers' commitment to improve their networks and the FCC's prior finding that "a telecommunications carrier's inability to demonstrate that it can provide ubiquitous service at the time of its request for designation as an ETC should not preclude its designation."[19] Even after being designated as an ETC, however, many wireless carriers fail to eliminate coverage gaps within their advertised (and supported) service areas. As a condition of the FCC's approval to designate carriers as ETCs, the FCC should require that RCC and Cellular South certify that they will eliminate any gaps in coverage.

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16 *In the Matter of Minnesota Cellular Corporation's Petition for Designation as an Eligible Telecommunications Carrier*, Order Granting Preliminary Approval and Requiring Further Filings, Docket No. P-5695/M-98-1285, (rel. Oct. 27, 1999) ("Minnesota Order").

17 Minnesota Order at 22.

18 *RCC Order* at ¶16; *Cellular South Order* at ¶18.

19 *RCC Order* at ¶16; *Cellular South Order* at ¶17.

4. **Designation was improper because the mobile nature of the service offering undermines the universal service fund.**

The impact of the mobile nature of a service offering is an issue currently being considered by the Joint Board.[20] CenturyTel has pointed out in other Commission proceedings[21] that the Commission should give full consideration to the impact on the universal service fund of the mobile nature of a wireless CETC's service offering. The Commission's rules provide that mobile wireless ETCs "shall use the customer's billing address for purposes of identifying the service location of a mobile wireless customer in a service area."[22] However, because the service area in which a customer resides may bear no relationship to the location where wireless service is actually used, high-cost support may be used to serve customers where such support is not needed, in violation of Section 254(e) of the Act -- unless certain protections are put into place. In addition, any policy that allows subsidies to flow to carriers that might not provide service in high-cost areas will send incorrect market signals to potential entrants. A wireless CETC may experience a windfall if it is allowed to receive high-cost support based on a rural LEC's higher average costs of the service area in which the customer's address is located, while service actually is used primarily in a relatively low-cost area. For these reasons, CenturyTel urges the Commission to adopt safeguards, similar to those that Smith Bagley stipulated to in New Mexico,[23] prohibiting wireless ETC customers from using more than 25% of minutes

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20 *CETC High-Cost Support Proceeding* at *14.

21 *E.g.,* CenturyTel Comments filed in CC Docket 96-45 on Apr. 4, 2002.

22 47 C.F.R. § 54.307(b). The Coalition of Rural Telephone Companies (CRTC) filed a petition for reconsideration of this rule. CRTC Petition for Reconsideration (filed in CC Docket 96-45, CC Docket No. 00-256 on July 5, 2001). CenturyTel filed comments in support of CRTC's petition. CenturyTel Comments (filed in CC Docket 96-45, CC Docket No. 00-256 on July 31, 2001).

23 Smith Bagley, Inc. for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. 214(e), Utility Case No. 3026, Recommended Decision of the Hearing Examiner and Certification of Stipulation, Exhibit A (NM PRC rel. Aug. 14, 2002). The New Mexico Commission, without explanation, eliminated from the Hearing Examiner's Recommended Decision the requirement that SBI comply with its mobility

included in the universal service plan outside of the wireless ETC's service area. Because the mobile nature of a service offering has serious implications for the universal service fund, it would be premature for the FCC to designate additional CETCs before this issue has been resolved.

B. REDEFINITION OF THE RURAL LECS' SERVICE AREAS IS PREMATURE.

1. The Joint Board's Recommendation must be considered before establishing a different service area definition for a rural telephone company.

For areas served by a rural telephone company, Section 214(e)(5) of the Communications Act of 1934, as amended,[24] provides that the company's "service area" for federal support purposes[25] will be its study area "unless and until the Commission and the States, after taking into account the recommendations of a Federal-State Joint Board . . . , establish a different definition of service area for such company."[26] The plain language of the statute mandates that the state and the FCC must take the Joint Board's recommendations into consideration before establishing a different service area definition for a rural telephone company. There is no evidence in the Bureau's *RCC Order* or *Cellular South Order*, however, that it considered the Joint Board's recommendation on whether disaggregation for funding and entry should be parallel before it proposed redefinition of the affected ILECs' service areas. Indeed, the Joint Board has not yet made a recommendation on this issue. Until the Joint Board

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stipulation. Smith Bagley, Inc. for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. 214(e), Utility Case No. 3026, Final Order (NM PRC rel. Feb. 12, 2002).

24 47 U.S.C. § 214(e)(5).

25 Section 54.207(a) of the FCC's rules defines service area as the geographic area "for which the carrier shall receive support from federal universal service support mechanisms." 47 C.F.R. § 54.207(a).

26 47 U.S.C. § 214(e)(5). The FCC's rules reiterate the presumption that the service area for universal service funding purposes should be the rural LEC's entire study area and sets forth the requirement for state petitions in order to change that definition. 47 C.F.R. § 54.207(a).

makes its recommendations, the FCC should defer its designation decision in the underlying proceedings.

2. The Bureau has not justified the redefinition of the rural LECs' service areas as required by Section 214(e) of the Act.

The Bureau concludes in its *RCC Order* and *Cellular South Order* that designation of the carriers in those areas served by rural telephone companies serves the public interest by promoting competition in high-cost and rural areas of Alabama.[27] Promoting competitive entry alone, however, is not enough to satisfy the public interest standard set forth in Section 214(e). As the Utah Supreme Court stated in its decision affirming the PSC's order denying Western Wireless ETC status, "the PSC's Order is not against competition per se, but, rather, merely recognizes that in some instances competition in rural areas by multiple ETCs receiving state universal service support may not be in the public interest." Indeed, as the Alabama Rural LECs point out,[28] the statute itself acknowledges that, in rural areas, not all competitive entry serves the public interest. If Congress had intended for all carriers serving rural areas to be approved as ETCs, it would not have required that additional ETCs be designated in rural areas only where the regulator finds such designation to be in the public interest.[29] Similarly, in a White Paper published in 1997, the Rural Policy Research Institute stated the following:

> It is not clear that the principle of competitive neutrality, in the context of universal service, embraces the prevention of the unintended negative effects of competition (e.g., potential for decreased quality of service or lack of access to advanced services) among rural, high-cost, or low-income communities. The competition in which companies engage nationally or regionally may have unfortunate side effects in rural, high-cost, or low-income (insular) communities,

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[27] *RCC Order* at ¶1; *Cellular South* at ¶1.

[28] RCC Application for Review at 18; Cellular South Application for Review at 18.

[29] 47 U.S.C. § 214(e)(2).

> including the potential for decreased infrastructure investment on the part of rural carriers as a protectionist response to competition. In these communities unintended consequences may result from competition between unequal actors (e.g., small incumbent LECs and competitive carriers) unless proactive regulations are in place, negative consequences are anticipated, and state and federal regulators work in tandem.[30]

The FCC has an obligation to actively consider whether the designation of an additional ETC would serve the public interest within the meaning of Section 214(e). Competition for competition's sake does not satisfy that standard.

Significantly, Section 254 requires that support be "sufficient" and "predictable." However, with the increasing demands on universal service support by CETCs, there is widespread concern that the growth of the universal service fund may not be commensurate with the public interest benefits. Indeed, the number of carriers being designated as ETCs is escalating. For example, data released by the Universal Service Administrative Company demonstrates that, while there were 11 ETCs present in 20 ILEC markets in the first quarter of 2002, 40 ETCs are projected to be present in 325 ILEC markets by second quarter 2003. Commissioner Adelstein noted in a recent speech that, when evaluating the public interest, the FCC and the state commissions "must ensure that the benefits that come from increasing the number of carriers we fund outweigh the burden of increasing contributions for consumers."[31] He scolded regulators that ETC designations should not be granted "as a matter of course just because it appears they meet other qualifications."[32]

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30 Critical Rural Considerations Regarding Joint Board Recommendations to the FCC Concerning Section 254 of the Telecommunications Act of 1996, RUPRI Rural Telecommunications Task Force (Apr. 8, 1997).

31 Remarks of Commissioner Jonathan S. Adelstein, "Rural America and the Promise of Tomorrow, NTCA Annual Meeting and Expo in Phoenix, Arizona (Feb. 3, 2003) at 3.

32 *Id.*

Dividing an ILEC's study area into smaller service areas at the wire center level does not advance Section 254's requirements that telecommunications services be offered at just, reasonable and affordable rates[33] and that services in rural areas be reasonably comparable to services in urban areas.[34] Rather, it will result in inefficient market entry. The *RCC Order* and the *Cellular South Order* will have a far-reaching impact on the entire industry and are critical to an efficient universal service support system – not just in Alabama but throughout the country. For this reason, the FCC should proceed based upon the Joint Board's recommendations.

III. CONCLUSION

For the foregoing reasons, CenturyTel urges the FCC to defer its decision in the *RCC Order* and the *Cellular South Order* until the Joint Board provides recommendations on CETC high-cost support. No consumer harm will result from such a delay. The issues raised in that proceeding have national implications affecting the federal universal service fund that the FCC must first address before designating any additional ETCs.

Respectfully submitted,
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33 47 U.S.C. § 254(b)(1).

34 47 U.S.C. § 254(b)(3).