

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Federal-State Joint Board on Universal)
Service)
)
Rules Relating to High-Cost Universal)
Service Support and the ETC Designation)
Process)
_____)

CC Docket No. 96-45

To: Federal-State Joint Board on Universal Service

REPLY COMMENTS OF CENTURYTEL, INC.

John F. Jones
Vice President,
Federal Government Relations
CENTURYTEL, INC.
100 CenturyTel Park Drive
Monroe, Louisiana 71203
(318) 388-9000

Karen Brinkmann
Tonya Rutherford
LATHAM & WATKINS LLP
555 11th Street, N.W.
Suite 1000
Washington, D.C. 20004-1304
(202) 637-2200

Counsel for CenturyTel, Inc.

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I. INTRODUCTION & SUMMARY

CenturyTel, Inc. (“CenturyTel”), through its attorneys, hereby offers the following Reply Comments in response to the Public Notice issued by the Federal-State Joint Board on Universal Service (“Joint Board”) in the above-captioned proceeding and the Comments filed therein.¹

CenturyTel supports meaningful changes to the regulations and policies of the Federal Communication Commission (“Commission” or “FCC”) related to the designation and funding of multiple eligible telecommunications carriers (“ETCs”) in rural areas. Specifically, CenturyTel urges the Commission to adopt competitively neutral rules for incumbent local exchange carriers (“ILECs”) and competitive eligible telecommunications carriers (“CETCs”). Such rule changes should require that CETCs provide comparable services and serve the ILEC’s entire study area or receive support based on the ILEC’s costs only for the area that the CETC seeks to serve. Furthermore, CETCs should be required to demonstrate and certify how they use support. The Commission should reject proposals by commenters that would leave the ILEC with no support for its network when a customer chooses a UNE-based competitor, would base support on a forward-looking cost model, or would lift the rural exemption. These “solutions” will only exacerbate the disparate manner in which ILECs and CETCs, particularly CMRS carriers, are currently regulated. CenturyTel urges the Commission to act quickly as the issues raised in this proceeding are significant to the provision of universal service in rural areas.

¹ Public Notice, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission’s Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, FCC 03J-1, CC Docket No. 96-45 (rel. Feb. 7, 2003) (“*Joint Board PN*”). Comments were filed May 5, 2003 by 39 parties, according to the Commission’s website.

II. CETCS SHOULD BE REQUIRED TO SERVE THE ILEC'S ENTIRE STUDY AREA OR RECEIVE SUPPORT BASED ON THE ILEC'S COST ONLY FOR THE AREA THE CETC SEEKS TO SERVE.

Under the Commission's current universal service rules, even though CMRS carriers are allowed to serve a smaller area than the ILEC's study area, CMRS carriers nevertheless receive support based on the ILEC's costs, which are averaged across the entire study area (or zone). The groundwork for this unparallel juxtaposition between CETC support and ILEC costs was first unveiled in 1997, when the Commission concluded that "requiring a carrier to serve a non-contiguous service area as a prerequisite to eligibility might impose a serious barrier to entry, particularly for wireless carriers."² Rather than requiring ILECs and wireless ETCs to provide comparable services, the Commission's universal service rules inure a significant competitive advantage to CMRS carriers by encouraging them to "pick and choose" their service areas within an ILEC's larger territory, while receiving support based on the ILEC's average costs of serving both high-cost and low-cost areas within the study area.

Allowing a CETC to target the lines and customers they wish to serve in this manner results in a windfall for the CETC and provides no incentive for the CETC to attempt to provide services to all customers. As CenturyTel explained in its Comments,³ the natural business strategy for a CMRS carrier given this opportunity is to maximize profits by choosing to serve only those customers it can most profitably reach, rather than serve all customers in the ILEC's entire study area. The potential for cherry-picking in rural markets is further intensified because state regulators and the Commission recently have begun to redefine the rural service

² *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8882 ¶190 (1997).

³ CenturyTel Comments filed on May 5, 2003 in CC Docket No. 96-45 at 27 ("CenturyTel Comments").

areas for CETCs down to the wire center level, in one case resulting in dozens -- as many as 53 -
- smaller CETC service areas in a single state.⁴

Wireless CETCs take the view that no demands in service area coverage should be placed on them,⁵ even while they continue to receive support based on the ILECs' costs. As stated in CenturyTel's comments, CenturyTel believes that support for CETCs should be based on their own costs.⁶ They do not have the same costs as the ILECs, nor do they provide comparable services. However, if the Commission concludes that a CMRS carrier is entitled to support based on the ILEC's costs, the Commission also should conclude that those carriers should serve the same service area as the ILEC. Otherwise, the Commission's universal service rules will never be competitively neutral as required by the Commission's reading of Section 254 of the Communications Act of 1934, as amended (the "Act").⁷ In the alternative, if the Commission does not require the CMRS carrier to serve the ILEC's entire study area, the Commission should base the CMRS carrier's support payment on a measurement of the ILEC's costs only for the area that the CMRS carrier serves, whether a wire center or even a few lines. This formulation would go part of the way toward eliminating regulatory disparities between ILECs and wireless CETCs.

⁴ 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 (filed Aug. 1, 2002).

⁵ Reply Comments of N.E. Colorado Cellular, Inc. filed in CC Docket No. 96 -45 on Sept. 27, 2002 at 3-4.

⁶ CenturyTel Comments at 31-39.

⁷ 12 FCC Rcd 8776, 8801 ¶47.

III. CETCS SHOULD BE REQUIRED TO DEMONSTRATE THEIR COSTS AND CERTIFY HOW THEY USE SUPPORT.

A. The Commission should require CETCs to demonstrate their costs.

The Commission's current rules do not require CETCs to demonstrate their costs or how their costs relate to the support they receive. For example, CMRS carriers argue that their costs are both higher *and* lower than those of ILECs.⁸ In order to make informed decisions about the support carriers should receive, the Commission needs adequate and reliable cost support data from CETCs. A coalition of wireless CETCs admits that this data can be provided, either on an embedded cost basis or a forward-looking basis.⁹

Some CETCs apparently believe they are entitled to universal service support because they receive less support in the form of access charges. These arguments overlook the fact that the statutory goal of universal service is to benefit *customers* through quality service at reasonable and affordable rates. The statutory purpose of universal service support is *not* to support competitors. Similarly, the Commission should reject wireless carriers' complaints that the loss of roaming revenues justifies support for wireless ETCs.¹⁰ While such comments underscore the reality that wireless service is primarily a substitute for long distance service, they are not relevant to universal service policy. Interexchange service is not a supported service under the Commission's current rules.¹¹ To administer the fund responsibly, the Commission should demand that the costs of CETCs be reviewed. Only then will the Commission be able to conclude whether support is being used for the purpose for which it is intended.

⁸ General Communication, Inc. Comments filed on May 5, 2003 in CC Docket No. 96-45 at 9 n.10 and 55.

⁹ Rural Independent Competitive Alliance Comments filed on May 5, 2003 in CC Docket No. 96-45 at 28.

¹⁰ Dobson Comments filed on May 5, 2003 in CC Docket No. 96-45 at 5-6.

¹¹ Although access to an interexchange carrier's network is a service designated for high-cost support, interexchange service itself is not a supported service. 47 C.F.R. § 54.101(a).

B. The Commission should implement a system to verify how CETCs use universal service support.

CenturyTel also has observed that that the Commission does not appear to have in place a system for verifying how CETCs are actually using high cost funds.¹² Although Section 254(e) requires that support be used “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended,”¹³ a recent example demonstrates that neither the Universal Service Administrative Company (“USAC”) nor state administrators have employed a mechanism to verify that universal service funds are, in fact, being used for the purpose intended.

In an FCC proceeding involving the designation of CETCs, the FCC recently asked the parties which carriers in the state were certified as ETCs. The parties submitted information in response to the FCC’s inquiry indicating, among other things, that a certain wireless carrier was one of three competitive carriers eligible to receive universal service support for service to a portion of the ILEC’s study area.¹⁴ The state PUC then submitted its own response and denied that the wireless carrier was certified as an ETC in the state.¹⁵ The PUC argued that it must first issue a formal order specifically designating the wireless carrier as an ETC, which, according to the PUC, had not yet occurred. The wireless carrier responded that nothing in any of the PUC’s decisions required it to return to the PUC for a formal designation

¹² CenturyTel Comments at 34-39.

¹³ 47 U.S.C. § 254(e).

¹⁴ Ex Parte Letter from Karen Brinkmann, Counsel for CenturyTel of Eagle, Inc. to Marlene Dortch, Secretary, FCC (dated Apr. 8, 2003); Ex Parte Letter from David A. LaFuria and Steven M. Chernoff, Counsel for N.E. Colorado Cellular, Inc. to Marlene H. Dortch, Secretary, FCC (dated Apr. 14, 2003).

¹⁵ Ex Parte Letter from Anthony Marquez, First Assistant Attorney General, State of Colorado, Department of Law, Office of the Attorney General to Marlene H. Dortch, Secretary, FCC (dated May 6, 2003).

order.¹⁶ Significantly, the wireless carrier noted in its letter to the FCC that, not only had it rolled out residential service in the ILEC's service area, but it had *used high cost support* to upgrade its network.¹⁷ This story highlights one of the fundamental problems with the administration of the universal service fund: lack of accountability. The state does not always know who is receiving support and, evidently, USAC does not always know whether the state has designated a recipient to receive support. This does not appear to be the type of oversight that Congress envisioned, or expects of federally mandated programs.¹⁸ The FCC and the states must hold CETCs accountable to the public interest goals of universal service and must establish better processes to determine eligibility.

IV. IF A CMRS CARRIER RECEIVES THE SAME SUPPORT AS A LEC, IT SHOULD BE REGULATED AS A SUBSTITUTE FOR THE LEC.

A. ILECs and CETCs should be regulated similarly.

Many of the CETCs comment that the Commission should refrain from aligning support with an ETC's costs because such a policy "would have the effect of punishing a competitor for being efficient."¹⁹ Universal service support is not intended to be used either as a "punishment" or a "reward" but only to ensure that rural customers have access at affordable

¹⁶ Ex Parte Letter from David A. LaFuria and Steven M. Chernoff, Counsel for N.E. Colorado Cellular, Inc. to Marlene H. Dortch, Secretary, FCC (dated May 14, 2003) at 2-4.

¹⁷ *Id.* at 4.

¹⁸ Section 254(e) of the Act requires that carriers use support for the provision, maintenance, and upgrade of facilities and services for which it was intended. 47 U.S.C. § 254(e). In addition, the Commission appointed USAC to be responsible for reporting to the Commission an itemization of all expenses, receipts, and payments associated with the administration of the universal service support mechanisms as well as a detailed report related to the amounts of payments made and monies received in the universal service support mechanisms. 12 FCC Rcd 8776, 9218 ¶¶ 868-69. The Commission requires each state annually to certify to USAC that all federal high-cost support provided to carriers in that state is being used only for the provision, maintenance, and upgrading of supported services. 47 C.F.R. §§ 54.313, 54.314.

¹⁹ Sprint Comments filed on May 5, 2003 in CC Docket No. 96-45 at 10-11; *see also* WorldCom, Inc. d/b/a MCI Comments filed on May 5, 2003 in CC Docket No. 96-45 at 3 (support should be divorced from the incumbent's, or any other carrier's, individual embedded costs); CTIA Comments filed on May 5, 2003 in CC Docket No. 96-45 at 6-7; General Communication, Inc. Comments filed on May 5, 2003 in CC Docket No. 96-45 at 45-61.

rates to services comparable to those in non-rural areas, as discussed in CenturyTel's Comments.²⁰ Yet, those same parties fail to acknowledge that while CMRS carriers (which often have lower costs than the ILEC) receive support based upon the ILEC's costs, the ILEC is prohibited from deaveraging its prices and is subject to carrier-of-last-resort ("COLR") and service quality requirements that are not imposed on CMRS carriers.²¹ Thus, the ILEC is expected to compete with a CLEC that has a cost advantage conferred by regulators, while the ILEC has both hands tied behind its back. If a CMRS carrier receives the same support as a LEC, then the CMRS carrier and the ILEC should be subject to the same regulatory requirements.

The Act provides a mechanism for states to regulate CMRS carriers as a substitute for the ILEC. Section 332(c)(3) provides that

. . . the Commission shall grant such petition [to regulate the rates for any commercial mobile service] if such State demonstrates that (i) market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or (ii) such market conditions exist and such service is a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within such State.²²

The Commission has denied every petition filed since 1995 requesting authorization to retain state regulatory authority over entry and rate regulation of mobile service.²³ Now is the time,

²⁰ CenturyTel Comments at 37-38.

²¹ Section 332(c)(3) of the Act provides, in relevant part, that "no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services." 47 U.S.C. § 332(c)(3).

²² *Id.*

²³ *In the Matter of Petition of the People of the State of California and the Public Utilities Commission of the State of California to Retain Regulatory Authority over Intrastate Cellular Service Rates*, Report and Order, 10 FCC Rcd 7486 (1995), *recon. denied*, 11 FCC Rcd 796; *In the Matter of Petition of New York State Public Service Commission to Extend Rate Regulation*, Report and Order, 10 FCC Rcd 8187 (1995); *In the Matter of Petition of the Connecticut Department Public Utility Control to Retain Regulatory*

however, for the Commission to employ Section 332(c)(3) as the vehicle for placing ILECs on equal footing with CMRS carriers that receive the same support as the ILEC. For good reason, legislators and state regulators are growing increasingly frustrated with their inability to impose entry and rate regulation on CMRS carriers while watching CMRS service quality deteriorate with no real regulatory recourse. To remedy this problem, as a minimum condition of CETC designation, a CMRS carrier should be required to provide service to the ILEC's entire study area and to meet minimum service quality standards. Further, if a CMRS carrier is found eligible to receive the same high-cost support that the ILEC receives, the ILEC's regulations should be adjusted to reflect this competition. ILECs should be given pricing flexibility and reduced reporting obligations, to match those of their competitors.

B. CETCs should not receive support if they cannot assume carrier-of-last-resort responsibilities.

Unlike CMRS carriers, ILECs have significant carrier-of-last-resort and service quality obligations. Historically, as the carrier-of-last-resort, the ILEC has been expected to provide service to all customers in the service area even if it is not economically beneficial to do so. In addition, some states place a ceiling on the rate the carrier-of-last-resort can charge for services provided and limit the carrier's ability to exit a particular market. It is this carrier-of-last resort responsibility, in part, that raises the ILEC's costs above those of competitive carriers,

Control of the Rates of Wholesale Cellular Service Providers in the State of Connecticut, Report and Order, 10 FCC Rcd 7025 (1995); *In the Matter of Petition of the Louisiana Public Service Commission for Authority to Retain Existing Jurisdiction over Commercial Mobile Radio Services Offered Within the State of Louisiana*, Report and Order, 10 FCC Rcd 7898 (1995); *In the Matter of Petition on Behalf of the State of Hawaii, Public Utility Commission, for Authority to Extend its Rate Regulation of Commercial Mobile Radio Services in the State of Hawaii*, Report and Order, 10 FCC Rcd 7872 (1995); *In the Matter of Petition of Arizona Corporation Commission, to Extend State Authority over Rate and Entry Regulation of All Commercial Mobile Radio Services*, Report and Order and Order on Reconsideration, 10 FCC Rcd 7824 (1995); *In the Matter of Petition of the State of Ohio for Authority to Continue to Regulate Commercial Mobile Radio Services*, Report and Order, 10 FCC Rcd 7842 (1995), *recon. denied*, 10 FCC Rcd 12427 (1995).

as CenturyTel noted in its Comments.²⁴ Thus, if a CMRS carrier that is designated as a CETC receives support based on the ILEC's costs, the CMRS carrier should be prepared to step in as the carrier-of-last resort if required to do so. Only in this way can the Commission and states be assured that the support is being used to preserve and enhance universal service in rural areas.

LECs -- and ILECs in particular -- also have significant quality of service obligations that elude CMRS carriers. For example, the FCC and state public service commissions require LECs to submit periodic reports to monitor service quality trends. Pursuant to FCC regulation, price cap LECs are required to file service quality reports.²⁵ In addition to relying upon the FCC's ARMIS data, many state utility commissions, pursuant to state administrative code, require LECs to conform to service standards and make service quality reports publicly available.²⁶

CMRS carriers, on the other hand, currently are not required to submit service quality reports.²⁷ While Smith Bagley claims it does not oppose having reasonable service quality standards imposed on wireless carriers, it argues that such requirements are not necessary in a competitive environment.²⁸ The FCC historically has taken a similar view that call quality data from CMRS carriers is unnecessary because the competitive marketplace will provide

²⁴ CenturyTel Comments at 32.

²⁵ The ARMIS 43-05 and ARMIS 43-06 reports provide measures of service quality. Specifically, the ARMIS 43-05 report covers service LECs provide to IXCs, the provision of local service, blockage on common trunk groups between the LEC wire centers and access tandems, LEC switch downtime, and service quality complaints filed with the Commission and with state commissions.

²⁶ New York, for example, requires all LECs to file periodic service quality or standard of service reports. NY Comp. Codes R. & Regs, tit. 16, Sec. 603 (2003); *see also* 83 Ill. Admin. Code tit. 83, Sec. 730.500 (2003); Mo. Code Regs. Ann. tit. 4 Sec. 240-32.070 (2003); NJ Admin Code tit. 14, Sec. 10-1-1.10 (2003); Or. Admin R. 860-23-055 (2003).

²⁷ Report to the Honorable Anthony D. Weiner, House of Representatives, *Telecommunications: FCC Should Include Call Quality in its Annual Report on Competition in Mobile Phone Services*, United States General Accounting Office (Apr. 2003) ("GAO Report").

²⁸ Smith Bagley Comments filed on May 5, 2003 in CC Docket No. 96-45 at 18.

consumers with the level of call quality information they need.²⁹ The United States General Accounting Office (“GAO”), however, disagrees.

A recent GAO report raises questions about the call quality of CMRS. Although only one-tenth of mobile users participating in the GAO survey expressed dissatisfaction with their service, GAO observed that consumers nevertheless are experiencing call quality problems, including a lack of coverage, limited network capacity at times, dropped calls, and poor sound quality.³⁰ The report estimated that 22% of users were unable to successfully complete 10% or more of their calls as a result of calls being dropped from the network.³¹ Based on the results of its survey of call quality problems associated with mobile phones, GAO recommended that the FCC include call quality in its mandated report analyzing whether there is effective competition in the mobile phone services marketplace.

Legislators, state regulators, and consumer groups alike have raised concerns about mobile phone call quality. States such as New York and California have noted an increase in the number of CMRS-related complaints. Indeed, the New York State Consumer Protection Board reported that cell phone complaints increased 1400% in 2001.³² California reported that complaints about call quality constituted about 8% of total mobile phone complaints in 2002.³³ Similarly, approximately 12% of the mobile phone consumer complaints received by the FCC

²⁹ GAO Report at 3.

³⁰ *Id.*

³¹ *Id.*

³² *Schumer Unveils First Comprehensive Cell Phone User Bill of Rights*, Press Release (dated Feb. 25, 2003). CenturyTel notes that this figure is not limited to service quality issues. The press release notes that consumers also complain that they are being locked into long-term rate plans and are unable to switch providers.

³³ GAO Report at 26.

were related to service quality.³⁴ Of particular importance is the difficulty wireless carriers experience in properly determining the location of 911 callers.

Others do not share the FCC's viewpoint that the marketplace will supply customers with the information they need regarding call quality. United States Senator Schumer is expected to introduce a bill, the "Cell Phone User Bill of Rights," that will require carriers to collect and make publicly available to customers service quality data so that customers can compare signal strength among providers, observe dropped call counts per carrier, and compare dead zones across carriers. The bill, which will authorize the FCC to monitor CMRS service quality industry-wide, will give customers access to high resolution maps that demonstrate the variations in call quality across a provider's service area. Legislators are taking steps to ensure that CMRS carriers are held accountable for the quality of service they provide consumers because the market alone has not proven sufficient in this regard. The Commission should not assume, just because CMRS customers enroll in a service plan, they consider CMRS to be comparable to local exchange service offered by ILECs.

V. A RULE LIMITING HIGH-COST SUPPORT TO A SINGLE CONNECTION PER HOUSEHOLD WOULD BE IMPRACTICABLE TO ADMINISTER.

A number of commenters suggested that in order to limit growth in the high-cost fund, support should be limited to a single connection per household.³⁵ While CenturyTel agrees that there is some potential for abuse in the current system, particularly by wireless providers that cannot verify support is being used in high-cost areas, CenturyTel disagrees with the proposed change. Notably, the Commission has already rejected proposals to deny support for second

³⁴ According to the GAO Report, this figure also includes complaints that the carrier ceased doing business in the customer's service area. GAO Report at 25.

³⁵ AT&T Comments filed on May 5, 2003 in CC Docket No. 96-45 at 4-16; General Communication, Inc. Comments filed on May 5, 2003 in CC Docket No. 96-45 at 67-69; SBC Comments filed on May 5, 2003 in CC Docket No. 96-45 at 12-17.

lines,³⁶ and none of the commenters have stated any principled basis to alter the Commission's policy of supporting multiple residential and business lines now.

Today, 52% of households in the 25 largest U.S. markets use wireless phones,³⁷ and more than 25% of homes have a second telephone line.³⁸ In some instances, the second line is used principally for Internet access; while, in other cases, particularly in group or multi-resident home environments, the "second" line may serve as the primary line for some of the residents.³⁹ This new social and technological phenomenon raises many questions regarding the distribution of universal service payments in a multi-carrier and multiple technology environment. The Commission should not alter the current rule without first seeking additional comment on how to administer practicably a rule that limits high-cost support to a single connection per household. In so doing, the Commission must develop a complete record to fully understand how such a change will impact the multitude of potential living arrangements that may exist in various geographic areas.

VI. SUPPORT SHOULD NOT BE CAPPED AT CURRENT PER-LINE LEVELS, BUT BASED ON NETWORK COSTS.

GCI and AT&T argue for withdrawing support from an ILEC when a CLEC "wins" the customer, even though the CLEC may provide service over UNEs, which require that the ILEC continue to maintain the underlying network. MCI argues that support should be based

³⁶ In 1997, the Commission determined that multiple residential and business lines shall be supported by the universal service fund. *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8829, ¶96.

³⁷ *U.S. Wireless Penetration Continues Climb*, Wireless Today, (Sept. 28, 2001).

³⁸ *Trends in Telephone Service*, Industry Analysis and Technology Division, Wireline Competition Bureau, Table 8.4 (rel. May 2002).

³⁹ Worldcom, Inc. d/b/a MCI Comments filed on May 5, 2003 in CC Docket No. 96-45 at 6-7; Montana Universal Service Task Force Comments filed on May 5, 2003 in CC Docket No. 96-45 at 36.

on a forward-looking cost proxy model. These proposals should be rejected as contrary to Section 254's requirement that support be sufficient and predictable.

A. ILECs must be allowed a reasonable opportunity to earn their authorized rate of return without raising rates to unaffordable levels.

AT&T incongruously claims that, because the ILEC does not forego support when it loses a line to a competitor, universal service support "guarantees" the ILEC a portion of its revenue stream. Any supposed "guarantee" of a portion of the ILEC's revenue stream is limited by the Act's requirement that support be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."⁴⁰ Furthermore, while an ILEC receives support based on prior investments actually made, CETCs receive support based on the ILEC's costs which often does not bear any resemblance to the CETC's own cost structure. Although ILECs are not guaranteed an authorized rate of return, they must be allowed a reasonable opportunity to earn their authorized rate of return without raising rates to unaffordable levels.⁴¹ AT&T's comments ignore the needs of rural consumers and overlook central objectives of the high-cost fund: keeping rates affordable and ensuring that rates in rural areas are reasonably comparable to rates charged for similar services in urban areas.⁴²

AT&T suggests that any revenues ILECs lose from reductions in federal support can be recovered through subscriber line charge ("SLC") increases.⁴³ However, AT&T fails to

⁴⁰ 47 U.S.C. § 254(e).

⁴¹ AT&T is inaccurate when it states that the Commission's current universal service rules "guarantee" rate-of-return carriers an authorized rate-of-return. AT&T Comments filed on May 5, 2003 in CC Docket No. 96-45 at 17. Under traditional cost of service regulation, a carrier's rates have always been set at a level to allow the carrier a reasonable opportunity to recover its costs and to earn a fair return on its invested capital. Inability to predict changes in cost, demand, and other factors affect whether a carrier actually achieves an authorized rate of return in any given year.

⁴² 47 U.S.C. §§ 254(b)(3), 254(e).

⁴³ AT&T Comments filed on May 5, 2003 in CC Docket No. 96-45 at 24-29.

acknowledge that the very purpose of federal high-cost support is to keep rates affordable and reasonably comparable. That is why support is required to be sufficient, under the statute.⁴⁴

Raising SLCs directly contravenes that purpose. In fact, raising SLCs would likely have the worst impact on fixed income customers most in need of supported services. The Commission should reject any suggestion by AT&T that ILECs be required to recover through SLC increases any revenues lost when a CETC captures a subscriber.

B. Support should be based on the cost of the network in order to be "sufficient."

As the carrier-of-last-resort, the ILEC uses universal service support to maintain the network infrastructure and the facilities leading up to the lost line in the event that the customer returns to the ILEC, either because the ILEC has won back the customer or because the CETC has exited the market. Thus, support should not be taken away from the ILEC when it loses a customer to a competitor because, contrary to AT&T's claim,⁴⁵ the ILEC's network costs are not reduced. After a CETC captures an existing subscriber line, the ILEC -- particularly as the carrier-of-last resort -- must continue to maintain the facilities leading up to or passing by the premises for the subscriber line, regardless of whether it continues to serve the actual end user. The Commission should ensure that the ILEC does not lose all universal service support when a CETC captures a subscriber line formerly served by the ILEC.

C. Support should not be based on a hypothetical economic model.

MCI/Worldcom proposes that, rather than tie support to any individual company's embedded cost, support should be based on the hypothetical forward-looking economic cost of

⁴⁴ 47 U.S.C. § 254(e).

⁴⁵ AT&T Comments filed on May 5, 2003 in CC Docket No. 96-45 at 17-22.

providing service.⁴⁶ In 2001, in light of the significant diversity among rural carriers, the Commission rejected the use of a forward-looking high-cost support mechanism for rural carriers through 2006.⁴⁷ The Commission concluded that, while a forward-looking economic cost model may be sufficient for non-rural carriers, who have more homogeneous costs and larger service areas, it is inappropriate for rural areas. For example, the Commission noted that its forward-looking economic cost model developed for non-rural carriers “shows that the cost of providing a local loop in a rural area may be approximately *one hundred times greater than the cost in an urban area.*”⁴⁸ Rural ILECs’ costs vary too greatly to justify the use of a hypothetical cost model at this time. Moreover, as CenturyTel has previously pointed out, the smaller study areas of most rural carriers make them far more vulnerable than non-rural carriers to financial harm from divergence between the model and their actual costs.⁴⁹ High-cost support for rural areas should not be based on a hypothetical model, such as a forward-looking cost model.

VII. CENTURYTEL OPPOSES LIFTING THE RURAL EXEMPTION UNDER ANY CIRCUMSTANCES EXCEPT THOSE OUTLINED IN THE STATUTE.

Smith Bagley, which does not seek access to unbundled network elements, argues in its comments that, “if ILECs are to credibly argue that there will be duplicative network

⁴⁶ Worldcom, Inc. d/b/a MCI Comments filed on May 5, 2003 in CC Docket No. 96-45 at 3-5.

⁴⁷ *In the Matter of Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11256 ¶26 (2001).

⁴⁸ *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613, 19636 ¶45 (2001).

⁴⁹ CenturyTel Comments at 7-9.

construction and potentially stranded investment, then they must agree to drop the rural exemption.”⁵⁰ The Act already specifies the conditions for lifting the rural exemption set forth in Section 251(f)(1) of the Act. As the Commission noted in 1997, rural telephone companies are exempt from Section 251(c)’s interconnection and unbundled network element (“UNE”) requirements because “Congress recognized that it might be unfair to both the carriers and the subscribers they serve to impose all of Section 251’s requirements upon rural companies.”⁵¹ Smith Bagley makes no credible case for departing from that conclusion today. Indeed, Smith Bagley provides no evidence as to how many rural LECs still enjoy an exemption under Section 251(f). The exemption can be terminated by a state,⁵² and many rural LECs have voluntarily ceased invoking the exemption. CenturyTel, for example, has waived the rural exemption for approximately half of its lines, all of which were acquired from Bell Operating Companies.

Smith Bagley claims that it will remain expensive to access rural ILEC networks unless the rural exemption is terminated, and that competition in rural markets necessitates such access.⁵³ CenturyTel’s experience has been that the rural exemption has not impeded competition or prevented competitive carriers from introducing new services to customers in rural markets. CenturyTel and other rural LECs already face robust facilities-based and resale competition in a number of their rural service areas. Indeed, while CenturyTel offers UNEs in some markets, most of CenturyTel’s competition comes from carriers that do not require access to UNEs.⁵⁴ Ironically, the rural exemption probably has stimulated significantly more facilities-

⁵⁰ Smith Bagley Comments filed on May 5, 2003 in CC Docket No. 96-45 at 19.

⁵¹ 12 FCC Rcd 8776, 8936, ¶295.

⁵² 47 U.S.C. § 251(f)(1)(B).

⁵³ Smith Bagley Comments filed on May 5, 2003 in CC Docket No. 96-45 at 19.

⁵⁴ Ex Parte Letter from Karen Brinkmann, Counsel for Independent Telephone & Telecommunications Alliance to Marlene Dortch, Secretary, FCC filed in CC Docket Nos. 01-388, 96-98, 98-147 (dated Feb. 6,

based competition in rural areas than exists in non-rural areas today.⁵⁵ Accordingly, the rural exemption should not be viewed as a hindrance to competition, and there is no basis for a blanket termination of the exemption.

VIII. THE FCC SHOULD NOT DEFER ACTION UNTIL 2006 WHEN THE FCC RECONSIDERS THE PORTABILITY ISSUE.

In spite of overwhelming evidence and considerable commentary in this proceeding and elsewhere that the universal service fund is on the verge of unprecedented growth, one of the wireless CETCs, United States Cellular Corporation, commented that “there is no crisis in the USF necessitating precipitous FCC action prior to 2006, when the FCC had previously planned to reconsider USF portability issues.”⁵⁶ Several wireless commenters urge the Joint Board and the FCC to “wait and see” and continue the current system of funding CETCs indiscriminately based on ILECs’ costs.⁵⁷ These parties fail to acknowledge that the states are granting rural carriers CETC status in record numbers without requiring that they advance the public interest goals of universal service. The dramatic escalation in the number of subscribers for which CMRS carriers are seeking universal service support places increasing pressure on the fund, which ultimately harms consumers.⁵⁸ Pressure on the universal service fund will have reached epic proportions by 2006. CenturyTel urges the Joint Board and the Commission not to defer action in this proceeding any longer.

2003); Ex Parte Letter from Karen Brinkmann, Counsel for Independent Telephone & Telecommunications Alliance to Marlene Dortch, Secretary, FCC filed in CC Docket Nos. 01-388, 96-98, 98-147 (dated Jan. 29, 2003).

⁵⁵ Public Utility Commission of Texas Comments filed on May 5, 2003 in CC Docket No. 96-45 at Attachment A at 11, 14 (PUC’s 2003 Scope of Competition in the Telecommunications Market in Texas).

⁵⁶ United States Cellular Corporation Comments filed on May 5, 2003 in CC Docket No. 96-45 at i.

⁵⁷ Rural Cellular Association and the Alliance of Rural CMRS Carriers Comments filed on May 5, 2003 in CC Docket No. 96-45 at 6, 9-10; Western Wireless Comments filed on May 5, 2003 in CC Docket No. 96-45 at 6-8.

⁵⁸ CenturyTel Comments at 9-15.

IX. CONCLUSION

For the reasons articulated above and in CenturyTel's comments, CenturyTel urges the Joint Board to make recommendations to the FCC consistent with this pleading and CenturyTel's Comments. In particular, the Commission should adopt rules that require CETCs, in order to receive the same support as the ILEC, to 1) serve the ILEC's entire study area, 2) demonstrate their costs, and 3) certify how they use such support. CenturyTel opposes any rule that would withdraw support upon CETC entry into the market, would limit support to a single connection per household, or would base support on anything other than ILEC network costs. The Commission may not lift the rural exemption to facilitate CETC entry. Finally, CenturyTel urges that the Joint Board make its recommendations promptly, as these issues have an immediate and significant impact on the provision, maintenance and upgrade of telecommunications services in rural markets.

Respectfully submitted,

CENTURYTEL, INC.

John F. Jones
Vice President,
Federal Government Relations
CENTURYTEL, INC.
100 CenturyTel Park Drive
Monroe, Louisiana 71203
(318) 388-9000

Karen Brinkmann
Tonya Rutherford
LATHAM & WATKINS LLP
555 11th Street, N.W.
Suite 1000
Washington, D.C. 20004-1304
(202) 637-2200

Counsel for CenturyTel, Inc.

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