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August 7, 2003

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45

Dear Ms. Dortch:

In this letter, CenturyTel corrects the most egregious misstatements and half-truths contained in Western Wireless's July 16, 2003 *ex parte* presentation made in the above-referenced docket. In its *ex parte*, Western Wireless attempts to deflect scrutiny from the real issues presented by the Commission's policy of providing universal service support to competitive ETCs, particularly wireless ETCs, that do little to advance the Commission's universal service policies.

Western Wireless's latest attack amounts to little more than its past disingenuous and opportunistic arguments against rural universal service support. For years, Western Wireless has tilted at this particular windmill in an elaborate attempt to turn the Commission's focus onto secondary issues concerning rural ILECs and away from the genuine central questions surrounding its own motives, actions, and intentions in rural America. The fact is that the Commission should not reduce universal service support to rural America and Western Wireless knows it. If indeed rural universal service support levels were as inflated as Western Wireless argues, it would make little sense for Western Wireless – itself the beneficiary of tens of millions of dollars in support – to launch such an attack when it stands to receive the same amount per line as the ILECs.

Western Wireless attempts to use smoke and mirrors to draw attention away from the thorny questions it cannot answer: How does supporting existing CMRS carriers as ETCs advance universal service in rural America? Why should regulators substantially broaden the scope and intent of federal support mechanisms to cover mobility in addition to network access? What has changed that will prevent Western Wireless from remaining in rural markets when it has done so profitably for many years with no support? It is widely known in the wireless industry that rural wireless carriers have had the incentive to build out rural markets for years in order to capture highly profitable roaming revenues from other wireless providers. In the absence of the ILEC, could Western Wireless provide universal, affordable, reliable connectivity to every home and business in the regions where it is certified as an ETC, and meet the high quality of service and regulatory standards ILECs provide today? What investments has it made with the support it has received to further that objective? The fact that Western Wireless does not mention is that it is making paltry investments at best that do not reflect the level of support

they are now receiving. Rather, every month, it pockets its support payment at the expense of American consumers, doing nothing to enhance universal service in high-cost areas. Wall Street analysts and company executives have cited that USF support received as an ETC is practically pure margin.

Rural ILECs do not receive "excessive" universal service funding. The Commission should view Western Wireless's claim that "[t]he data show a $1.36 Billion growth in projected annual high-cost universal service funds to ILECs over the past seven calendar quarters" with great skepticism. Not only has CenturyTel been unable to replicate Western Wireless's calculation, it is at odds with both common sense and the detailed calculations performed by OPASTCO only a few months ago. As OPASTCO demonstrated in a detailed *ex parte* presentation to the Commission, total high-cost support federal mechanisms provided to *all* carriers increased by roughly $670 million between 2001 and 2003.[1]

This increase does *not* represent any dramatic increase in overall ILEC revenues, however. Rather, it is largely the result of two Commission decisions restructuring rural carrier interstate access charges and universal service support. First, in the 2001 *MAG Order*, the Commission eliminated the carrier common line charge (CCLC) by creating a new universal service support mechanism, interstate common line support (ICLS), to replace it. This change, which created roughly $400 million in new explicit universal service support according to USAC's latest projections,[2] was completely revenue-neutral and did "not affect overall recovery of interstate access costs by rate-of-return carriers serving high-cost areas."[3]

Second, in the *RTF Order*, the Commission re-sized the rural carrier high cost loop support fund to relieve a portion of the critical pressure on rural rates that its cap on funding growth had created since 1993 when the Commission put the cap in place.[4] USAC data reveals

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[1] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Ex parte* presentation by Organization for the Promotion and Advancement of Small Telecommunications Companies of Stuart Polikoff, *Universal Service in Rural America: A Congressional Mandate at Risk* (filed Jan. 28, 2003), at Table 2 (*Universal Service in Rural America*).

[2] Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter 2003 (May 2, 2003), at 15 (*USAC Third Quarter 2003 Projections*).

[3] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in C 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, para. 15 (2001).

[4] *Federal-State Joint Board on Universal Service*, 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, para. 37.

that this change added approximately $77 million in much-needed funding to the HCL mechanism to cover a portion of the funding shortfall that the cap has created.[5]

The bulk of the remaining increase since 2001 consists of high cost support payments to newly-minted wireless CETCs. USAC data shows that, in the past seven calendar quarters, the number of CETC study areas receiving universal service funding has nearly quintupled, from 22 in the fourth quarter of 2001 to 105 in the third quarter of 2003.[6] OPASTCO data from January, 2003 show that, since 2001 alone, overall high-cost funding to CETCs has increased from approximately $12 million to approximately $107 million annually, the overwhelming majority of this going to wireless CETCs.[7] Western Wireless's *ex parte* shows that this total has continued to grow, placing overall growth in high-cost support to CETCs since 2001 at $121 million.[8]

Indeed, whether the current figure is $107 million or $121 million, it is only the tip of the proverbial iceberg. The percentage growth in CETC USF support is staggering when compared with the overall growth of the fund normalized for the impact of the MAG and RTF orders. Whether this nation can afford to provide federal universal service support for almost 140 million existing handsets receiving plain vanilla CMRS service is a $2 billion policy question for the Commission and the Joint Board.[9] CenturyTel believes that, with broadband services, schools and libraries, rural health care providers, and other worthy causes competing for universal service dollars, the Commission potentially on the brink of a comprehensive

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[5] *USAC Third Quarter 2003 Projections* at 11.

[6] *Id.* at 10; Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter 2001 (Aug. 2, 2001), at Appendix HC-1 (showing 22 CETCs receiving support).

[7] *Universal Service in Rural America*, at Table 3.

[8] Western Wireless *Ex Parte* at 1.

[9] According to OPASTCO, if the remaining wireless carriers nationwide were to receive CETC status, high cost funding would need to grow by at least $2 billion. *Universal Service in Rural America*, at 21 and n.40. OPASTCO computed this figure by applying the ratio of wireless to wireline lines to the existing $3.2 billion in high-cost support federal mechanisms provide. While OPASTCO computed that ration at 69 percent, its calculations appear to be conservative for at least two reasons. First, the ratio of wireless-to-wireline lines has grown to 73 percent as of Dec. 31, 2002, according to the latest Commission data, *see Local Telephone Competition: Status as of December 31, 2002* (Ind. Analysis and Tech. Div., Wireline Comp. Bur., rel. June 2003) at Table 1 (showing 187,508,810 wireline lines), Table 13 (showing 136,261,491 wireless handsets). Second, the wireline count includes approximately 24.8 million lines served by CLECs. Counting only ILEC lines, the ratio grows to almost 84 percent. Third, the computations assume that CMRS carriers would not focus additional marketing efforts in areas where support amounts were higher, and would resist the incentive to "game the system" by, for example, counting all handsets sharing a common bucket of minutes as individual lines or encouraging customers to designate a billing address in areas where greater amounts of support are available.

overhaul of intercarrier compensation mechanisms, and contribution factors escalating rapidly beyond subscribers' ability or willingness to pay, this is not the time to give a $2 billion handout to a CMRS industry that has made no showing of need. To the contrary, multiple CMRS carriers are already operating profitably in most rural markets today without such support.

High-cost universal service support helps keep rural rates affordable and reasonably comparable to urban rates. Western Wireless's broadside attack on rate-of-return regulation and rural ILEC accounting verges on libel. Offering no evidence, but plenty of rank speculation and innuendo, Western Wireless suggests that rate-of-return carriers have invested inefficiently and violated the Commission's accounting rules in preparing their regulatory books of account. This is particularly offensive in light of the fact that wireless CETCs are not required to file cost studies to justify their receipt of support but receive funding based on the ILEC's costs.

The fact is that the Commission debunked the so-called "gold plating" myth years ago, stating that, "our experience in reviewing section 214 entry applications received in recent years leads us to conclude that virtually no carriers, rate-of-return carriers or others, are in fact attempting to 'gold-plate' their networks at the expense of consumers."[10] In today's uncertain economic, competitive, and regulatory climate, a carrier would be foolish to engage in such conduct. Further, while certain large telecommunications companies evidently have engaged in questionable accounting practices, there has been no showing whatsoever of any systematic accounting problem among independent rate-of-return carriers that faced correspondingly less pressure from Wall Street in the years leading up to the bursting of the "tech bubble."

Contrary to Western Wireless's unfounded allegations, rate-of-return regulation neither constitutes a government "guarantee" of investment recovery nor does it harm competition. ILECs are provided only with a reasonable opportunity to recover their costs including their authorized rate of return. Competition may prevent an ILEC from achieving full recovery. (Indeed, if an 11.25 percent return were in fact inflated, as Western Wireless suggests, then countless competitors basing their rates on lower rates of return would be consistently undercutting rural ILEC prices, driving down rates and earnings for ILECs and CLECs alike). This proceeding is neither the time nor the place for a wholesale reexamination of rate-of-return regulation or the authorized rate of return.

No one knows the uses to which CETCs put their universal service support windfall. While CenturyTel welcomes Western Wireless's concession that it is required to comply with Section 254's mandate that it use USF funds to support and maintain universal service, the fact is that no one at the Commission, state commissions, or the Joint Board knows whether any particular CETC actually is complying with this mandate. Unlike ILECs, a CETC's support is not based on any measure of its own costs but, rather, on those of the ILEC. Thus, in blatant violation of Section 254(e), a CETC may receive high-cost support whether or not its costs are actually "high," as defined by the Commission, and therefore, whether or not such

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[10] *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996*, Report and Order in CC Docket No. 97-11 and Second Memorandum Opinion and Order in AAD File No. 98-43, 14 FCC Rcd 11364, para. 13 (1999).

support can actually be used "for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 U.S.C. § 254(e).

Indeed, CenturyTel finds it nothing short of laughable for Western Wireless to attack the use of rural carrier actual costs to compute support levels, given that CETC support is not based on *any* measure of the CETC's costs, but rather, strictly mirrors the ILEC's support.[11] ILECs receive support based on actual investments they have already made in prior years. CETC support, in contrast, is not tied to CETC investment at all, but simply mimics the ILEC's support levels whether the CETC intends to deploy any facilities whatsoever or not.

In many cases, wireless CETCs use federal universal service support to fund inherent inefficiencies in the wireless industry due to the lack of a common wireless standard. Most rural wireless carriers like Western Wireless cannot decide which technology platform to use: CDMA, TDMA, GSM, analog, etc. Yet in order to capture the maximum amount of roaming revenue Western Wireless invests in multiple technologies to capture revenues from other wireless providers, yet its own consumers have access to the wireless standard the company chooses to sell them.

Even putting aside costs, CETCs are subject to virtually no scrutiny either at the Commission or before state PUCs that would reveal the CETC's use of high-cost universal service funds. While ILECs routinely must justify their use of universal service funds, CETCs are free as a practical matter to simply treat such support as a windfall for their shareholders. As CenturyTel pointed out in its comments, CenturyTel Comments at 34-35, many states require little more than a one-sentence affidavit from a CETC before certifying its compliance with Section 254(e). Plainly, the intent of that section requires more.

Neither the Commission nor state commissions typically fully consider the impact on rural telecommunications that the Act requires before designating additional ETCs in rural areas. As CenturyTel explained in its comments, CenturyTel Comments at 17-31, Section 214(e) of the Communications Act requires the Commission or state commission to make an affirmative public interest determination before designating additional ETCs in rural areas, 47 U.S.C. § 241(e)(2), and establishes the default that a CETC should serve a rural ILECs entire study area, 47 U.S.C. § 214(e)(5). Despite this clear statutory command, state commissions and this Commission have routinely granted applications for CETC certification to serve only a portion of a rural carrier's study area without engaging in the rigorous analysis required. Indeed, the Commission often issues no written order whatsoever, relying instead on an "auto-grant" procedure that operates despite the filing of substantial and material written objections.

Rural ILECs are on fundamentally different footing from other rural competitors. Contrary to Western Wireless's assertion, rural ILECs have obligations that differ substantially from those of other carriers serving rural areas. These obligations increase a rural ILEC's costs and would justify providing it with greater support than a competing CETC.

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[11] *See* CenturyTel Comments at 34.

First, despite Western Wireless's claims, the carrier of last resort obligations that rural ILECs shoulder under federal law differ substantially from those placed on CETCs. Unlike their CETC competitors, each rural ILEC has always committed to providing high-quality, reliable, wireline service as the carrier-of-last-resort to the entire study area it serves. To meet this obligation, each rural ILEC has undertaken to construct the only ubiquitous rural network in its study area and is uniquely able to shoulder the carrier of last resort responsibility without relying on any another carrier's facilities. Section 214(e)(1)(A) permits ETCs to discharge their universal service obligations using a combination of their own facilities and resale. CETCs routinely take advantage of this Section 214(e) loophole, using the ILEC's UNEs and resale services to meet their universal service obligations. Such CETCs, however, do not advance the Commission's universal service goals or enhance the service options available to rural consumers.

Second, bowing to competitors' pleas regarding their lack of facilities, state commissions often certify a CETC to serve only a portion of the rural ILEC's study area *without imposing any obligation on the CETC to deploy new facilities or expand its coverage area.* Section 214(e)(5) establishes a congressional preference for CETCs serving rural areas to commit to serve the entire rural ILEC's study area. Thus, even if a CETC must initially provide service using a combination of resale and its own facilities, the Commission should enact policies that encourage all CETCs to progress to the point where they can shoulder carrier-of-last-resort obligations without resort to another carrier's network for assistance. Today, in contrast, CETCs serving rural areas frequently choose not to serve the entire study area, limiting themselves to the most profitable or most convenient customers and making no effort to expand to serve the entire study area.

Third, state commissions impose on rural ILECs service quality obligations and reporting requirements that few CETCs face. CETCs frequently use mobile wireless technology to provide service that is lower in cost, lower in quality, and lower in reliability than the ILEC's wireline network, with no obligation to meet any minimum service quality standards. Further, CETCs seldom, if ever, provide customers with long distance choices by offering equal access to the interexchange carrier of a customer's choosing, as ILECs must do.

Fourth and finally, unlike rural ILECs, few wireless CETCs provide unlimited local calling for a flat monthly rate, despite the Commission's conclusion that the supported package of services should include "minimum local usage component."

Fifth, some CETCs in rural areas seek out and exploit regulatory arbitrage opportunities. Rural study areas are not "gerrymandered," but reflect the historical growth of telephone service across America. These study areas typically contain areas with diverse cost characteristics that disaggregation of support cannot fully reflect. CenturyTel is not aware of any study area anywhere in America where implicit subsidies have been conclusively eradicated from the rate structure, and the Commission, even in concert with the Joint Board, cannot solve that problem alone. Rather, the solution lies in extensive work by state commissions to rebalance local rates, followed by deregulation to allow market forces to act. In the meantime, CETCs can be expected to attempt to target areas where it is most economically advantageous for them to do business. State commissions, therefore, should view with great skepticism the

commitment to rural America of any CETC proposing to serve only a portion of a rural study area without expanding beyond that initial footprint.

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In short, most CETCs, and wireless CETCs in particular, have demonstrated no commitment to providing high-quality, reliable, affordable telecommunications services to rural America. Instead, their nascent raid on the federal universal service support mechanisms does little to foster universal service goals in rural markets. As CenturyTel recommends in its comments, the Commission should not accommodate these profiteers at the expense of universal service in rural America. Rather, the Commission should:

- Adopt clear national rules that require the Commission and state commissions to engage in a rigorous public interest analysis and demonstrate that providing federal universal service funds to a competitive carrier will enhance service within a particular rural study area;

- Require rural CETCs to offer all supported services, including unlimited local usage, at the level of quality that existing carriers must meet, and to accept carrier of last resort obligations throughout the rural carrier study area;

- Require rural CETCs to serve the entire study area of the rural ILEC, as required by Section 214(e)(5), migrating all customers to its own facilities over a reasonable period of time; and

- Provide support to a CETC based on the CETC's own costs, not those of the ILEC.

These four simple steps would bring the Commission's implementation of Sections 214(e) and 254 far closer to the language and intent of the Communications Act, and pay great dividends for rural America. Western wireless's advocacy to the contrary threatens to create a "race to the bottom" in rural markets that would not serve the long-term best interests of rural consumers.

Very truly yours,

John F. Jones
Vice President
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