

**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
	)	
Petition of Grande Communications, Inc. for Waiver	)	

**OPPOSITION OF CENTURYTEL, INC.**

CenturyTel, Inc. (“CenturyTel”), through its attorneys, hereby opposes the Petition for Waiver (“Petition”) of Grande Communications, Inc. (“Grande”) filed on June 30, 2003, in the above-captioned proceeding.<sup>1</sup> In its Petition, Grande seeks a waiver of Commission rules necessary to allow it to receive high cost universal service support retroactive to May 22, 2003, the date on which it alleges that the Public Utility Commission of Texas (“Texas PUC”) designated it as an eligible telecommunications carrier (“ETC”).

CenturyTel opposes the Grande Petition because: (1) the Texas Commission’s designation of Grande as an ETC did not take effect under Texas law until August 15, 2003 or, at the earliest, July 15, 2003, considerably after the funding date Grande seeks; and (2) Grande has neither shown special circumstances justifying a waiver nor demonstrated that a waiver would serve the public interest.

**I. GRANDE WAS NOT ELIGIBLE TO RECEIVE FEDERAL UNIVERSAL SERVICE SUPPORT UNTIL AUGUST 15, 2003**

As a matter of law, Grande may not receive support for the period claimed in its waiver Petition. The Communications Act of 1934, as amended (the “Communications Act”),

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<sup>1</sup> Public Notice, Wireline Competition Bureau Seeks Comment on Petition of Grande Communications Inc. for Waiver of Sections 54.307(c) and 54.314(d) of the Commission’s Rules, CC Docket No. 96-45, DA 03-2685 (rel. Aug. 15. 2003).

restricts the availability of federal universal service support to designated eligible telecommunications carriers. 47 U.S.C. § 254(e) (“[O]nly an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific Federal universal service support.”). The Texas Commission’s order designating Grande as an ETC only became effective on August 15, 2003 or, at the earliest, on July 15, 2003, but, in any event, not on May 22, as Grande claims in its Petition.

Grande’s error arises from Texas law governing the effective date of Texas PUC orders and a series of actions by the Texas PUC and others in the wake of the May 22 Grande order. The Texas PUC’s rules provide that, “[u]nless otherwise stated, the date a final order is signed is the effective date of that order, and such date shall be stated therein.” Tex. P.U.C. Proc. R. 22.263(c). Although the Texas PUC’s order attached to the Grande Petition is dated May 22, 2003, this order was superseded by a later Texas PUC order and, thus, *never became effective*. The Texas Administrative Procedure Act provides generally that an administrative order in a contested case becomes final on the expiration of the period for filing a motion for rehearing or, if a motion for rehearing is filed, on the date the motion is overruled by order or by operation of law. Tex. Gov’t Code Ann. § 2001.144(a)(1-2).<sup>2</sup> Grande’s petition fails to disclose that, on June 13, 2003, CenturyTel of San Marcos timely filed a motion for rehearing, and the

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<sup>2</sup> Tex. Gov’t Code Ann. § 2001.144(a) states, in pertinent part:

“(a) A decision in a contested case is final:

“(1) if a motion for rehearing is not filed on time, on the expiration of the period for filing a motion for rehearing;

“(2) if a motion for rehearing is filed on time, on the date:

“(A) the order overruling the motion for rehearing is rendered; or

“(B) the motion is overruled by operation of law . . . .”

Texas PUC set CenturyTel's motion for hearing in a notice issued July 3, 2003.<sup>3</sup> Grande also fails to disclose that, in a letter filed May 28, Grande itself sought changes in the May 22 order.<sup>4</sup>

On rehearing, the Texas PUC denied CenturyTel's motion, but deemed Grande's letter also to be a motion for rehearing.<sup>5</sup> The Texas PUC granted this Grande motion, and issued a new "Order on Rehearing" superseding the May 22 order.<sup>6</sup> The Order on Rehearing restates the prior May 22 order in full, correcting certain errors in the earlier order and stating in ordering paragraph 5, that all relief requested and not granted expressly in the Order on Rehearing is denied. The new order was signed on July 15, 2003. Thus, the May 22 order never became final or took effect.<sup>7</sup>

The Texas PUC's July 15, order, in turn, only became final on August 15, 2003, the date the Texas PUC overruled CenturyTel of San Marcos's further motion for rehearing or, at the earliest, on July 15, 2003, the date the Texas PUC issued the Order on Rehearing.<sup>8</sup> In light of its

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<sup>3</sup> This motion is attached as Exhibit A, while the Notice is attached as Exhibit B.

<sup>4</sup> This letter is attached to this Opposition as Exhibit C.

<sup>5</sup> A transcript of the Texas PUC's consideration of the motions for rehearing is attached as Exhibit D.

<sup>6</sup> This order is attached to this Opposition as Exhibit E.

<sup>7</sup> Tex. Gov't Code Ann. § 2001.144(a)(2) (requiring a motion for rehearing to be overruled for an order to achieve finality.)

<sup>8</sup> See Notice to All Parties, attached as Exhibit F. While the Order on Rehearing became effective July 15, 2003, pursuant to Texas PUC Proc. R. § 22-263(c), quoted above, there is a conflict between these rules and the Texas Administrative Procedure Act. Texas case law applying the Texas Administrative Procedure Act call into question whether an agency order can be implemented prior to the date it becomes administratively final. Tex. Govt. Code 2001.144; *Heat Energy Advanced Technology, Inc. v. West Dallas Coal. for Env'tl. Justice*, 962 S.W.2d 288, 292 n.2 (Tex. Ct. App. 1998) ([T]he APA may limit the agency's ability to implement the order before it is final and appealable."); *Texaltel v. Pub. Util. Comm'n*, 798 S.W.2d 875, 885 n.3 (Tex. Ct. App. 1990) ("There is a question whether an administrative agency may, under [the Administrative Procedure Act], implement an order before the order becomes administratively final. That is, may an agency implement an order that the agency

July 15 order on rehearing, the Texas PUC issued a new letter on August 28 to the Commission and to the Universal Service Administrative Company (“USAC”) providing notice of the Texas PUC’s findings in the July 15 order.<sup>9</sup> Because the May 22 order never became effective, however, Section 254(e) of the Communications Act precludes the Commission legally from granting Grande access to federal universal service support as of May 22, 2003, as Grande requests.

## **II. THE PETITION FAILS TO SATISFY THE COMMISSION’S WAIVER STANDARD**

The Commission’s rules require a party to show “good cause” when seeking a waiver of the Commission’s rules. 47 C.F.R. § 1.3. Under well-established precedent, a party seeking a waiver of the Commission’s rules must show that it is facing special circumstances that justify a deviation from the general rule and that such a deviation would serve the public interest. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). Even putting aside the fact that Grande was not eligible for federal universal service support on May 22, Grande’s petition satisfies neither prong of this test.

*First*, Grande has made no allegation that it faces special circumstances that would justify a waiver. To the contrary, throughout its Petition, it describes a perceived inequity that would apply equally to any CLEC in the first few months after a state PUC designated it as an

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still has the power to change? There is some authority tending to support the view that [the Administrative Procedure Act], in general, precludes the implementation of an order that is not administratively final. [The Administrative Procedure Act] directly implies that an agency can implement an order immediately on issuance (*i.e.*, before it is administratively final) only if the agency finds that ‘an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision order.’ . . . However, we need not address this issue . . . .” (*quoting* Tex. Gov.t Code Ann. § 2001.144(a)(3)) (citations omitted). Thus, while the better reading of the statute is that the Order on Rehearing became effective on August 15, it became effective at the earliest on July 15 in any event.

<sup>9</sup> See Letter from Janis Ervin, Senior Policy Specialist, Telecommunications Division, Texas PUC, to Marlene H. Dortch, Secretary, FCC and Irene Flannery, Vice President of High Cost and Low Income Divisions, USAC, dated August 28, 2003, attached as Exhibit G.

ETC. In truth, Grande's Petition seeks a change to the rules governing the submission of line count data by newly-designated ETCs and the requisite state PUC certifications that they have pledged to use universal service support in accordance with Section 245(e). As if to highlight this point, Grande itself cites two instances in which the Commission has granted a waiver "of the same rules for other ETCs, under strikingly similar facts and for identical reasons," Petition at 15. Grande nowhere even attempts to demonstrate why its situation is unique in the least respect. Grande simply is attempting to obtain by waiver a rule change that it ought to seek through the rulemaking process. The Commission does not allow parties to short-circuit its processes in this way.<sup>10</sup>

Further, Grande's Petition demonstrates that the delay in funding it now faces is a product of its own failure to make timely data submissions to USAC. Grande complains bitterly that no one at the FCC or USAC affirmatively advised it to begin submitting the necessary line count information in anticipation of its designation as an ETC, yet it fails to explain why it did not act proactively to protect its own interests in the face of a clear, unambiguous, on-point Commission rule. Indeed, far from being "illogical," Petition at 5, it would appear reasonable and prudent for a carrier with a pending application for ETC designation to contact USAC to

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<sup>10</sup> *E.g., Section 64.702 of the Commission's Rules With Respect to Non-Dominant Resellers Of Interexchange Services*, Order, 11 FCC Rcd 3014, para. (1996) ("We deny petitioners' request [for a waiver of the CPE bundling rule]. The relief requested, if granted, would significantly change the scope of the application of our current unbundling rule. Such a significant modification is more appropriately considered through a rulemaking than through a petition for waiver."); *Federal-State Joint Board on Universal Service; Request for Review of the Decision of the Universal Service Administrator by Hamilton County School Board, Jasper, Florida*, Order, 16 FCC Rcd 8403, para. 6 ("To the extent that it is requesting a waiver, Hamilton does not indicate that special circumstances exist warranting a deviation from the general rule. Rather, Hamilton argues that the general rule treats individual schools unfairly as compared to school districts. This is not a special circumstance justifying a waiver, but an argument in support for a rulemaking to change the Commission's rules. A Request for Review or a Request for Waiver is not the appropriate means for requesting such consideration. Instead, Hamilton should properly file a Petition for Rulemaking. Accordingly, we deny Hamilton's request.").

arrange to make the necessary filings in a timely manner in anticipation of favorable action on its application. Such filings would allow USAC accurately to compute demand for high cost funding, in order timely to report such demand to the Commission and establish contribution factors that produce the necessary support funding.<sup>11</sup>

*Second*, Grande has made no showing that a waiver would serve the public interest, either in Texas or as a national matter. Grande's Petition reveals that it has been providing telecommunications services, cable, and Internet access services as a deregulated entity to the public in Texas since February 2001, Petition at 2. Absent this waiver, it will apparently be eligible to receive support in January 2004, after a brief delay of only five months from the time it obtained ETC designation. Nowhere does Grande demonstrate that federal support for the May-December, 2003 period is essential to its continued success. Indeed, Grande makes no suggestion whatsoever that it will provide the public in Texas with greater services, improved services, or more affordable services whether it receives federal support for the waiver period or at any other time.

Further, at a time when the Joint Board is reviewing the entire ETC designation and high cost support process as a result of pressure on the support mechanism created by competitive ETCs, it would be contrary to the national public interest for the Commission to take extraordinary action to allow yet another competitive ETC to receive an additional measure of funding over and above that which the Commission's current rules (as interpreted by the states) allow. The Joint Board is already considering a host of issues surrounding ways in which it may

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<sup>11</sup> See *Federal-State Joint Board on Universal Service*, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, 16 FCC Rcd 11244, 11319, para 191 (2001) ("*Rural Task Force Order*"); *RFB Cellular, Inc. Petitions for Waiver of Sections 54.314(d) and 54.307(c) of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, DA 02-3316 (rel. Dec. 4, 2002), at para. 2.

protect rural universal service through clearer and more stringent federal standards governing the designation of additional competitive ETCs and the redefinition of rural ILEC service areas.<sup>12</sup> Meanwhile, access by Grande and other competitive ETCs to federal universal service support affects the rapidly increasing contribution factor for all carriers and their customers nationwide. While Grande has already been designated an ETC under existing processes, there is no reason for the Commission to exacerbate the pressures competitive ETCs place on the federal high cost funding mechanism by granting this waiver.

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<sup>12</sup> See 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). CenturyTel has commented extensively on these issues and provided live testimony to the Joint Board. See *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Comments of CenturyTel, Inc. (filed May 5, 2003), Reply Comments of CenturyTel, Inc. (filed June 3, 2003), Prepared Testimony of Jeff Glover, Vice President of CenturyTel, Inc., on Behalf of Independent Telephone & Telecommunications Alliance (filed July 22, 2003).

**III. CONCLUSION**

For the foregoing reasons, CenturyTel opposes Grande's Petition for waiver and urges the Commission to deny it forthwith.

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Respectfully submitted,  
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August 29, 2003

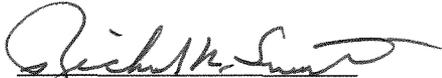
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**CERTIFICATE OF SERVICE**

I, Richard W. Smith, hereby certify that a copy of the foregoing Opposition to the Petition for Waiver of Grande Communications, Inc. in CC Docket No. 96-45 was served this 29<sup>th</sup> day of August, 2003, by first-class mail, postage prepaid, upon the following:

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Richard W. Smith

## **Exhibit A**

SOAH DOCKET NO. 473-03-1655  
PUC DOCKET NO. 26404

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BEFORE THE  
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APPLICATION OF GRANDE §  
COMMUNICATIONS NETWORKS, §  
INC. FOR DESIGNATION AS AN §  
ELIGIBLE TELECOMMUNICATIONS §  
CARRIER (ETC) PURSUANT TO §  
P.U.C. SUBST. R. 26.418 AND §  
ELIGIBLE TELECOMMUNICATIONS §  
PROVIDER (ETP) PURSUANT TO §  
P.U.C. SUBST. R. 26.417 §

STATE OFFICE OF

ADMINISTRATIVE HEARINGS

CENTURYTEL'S MOTION FOR REHEARING

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SOAH DOCKET NO. 473-03-1655  
PUC DOCKET NO. 26404

APPLICATION OF GRANDE § BEFORE THE  
COMMUNICATIONS NETWORKS, §  
INC. FOR DESIGNATION AS AN §  
ELIGIBLE TELECOMMUNICATIONS §  
CARRIER (ETC) PURSUANT TO § STATE OFFICE OF  
P.U.C. SUBST. R. 26.418 AND §  
ELIGIBLE TELECOMMUNICATIONS §  
PROVIDER (ETP) PURSUANT TO §  
P.U.C. SUBST. R. 26.417 § ADMINISTRATIVE HEARINGS

**CENTURYTEL'S MOTION FOR REHEARING**

TO THE HONORABLE COMMISSION:

CenturyTel of San Marcos, Inc., ("CenturyTel") presents the following Motion for Rehearing, and urges the Commission to reconsider its final order in this docket on the following grounds:

**I. INTRODUCTION AND SUMMARY OF ARGUMENT**

CenturyTel seeks rehearing of the Commission's order to the extent it grants Grande's request for universal service funds ("USF") without first affording CenturyTel the opportunity to disaggregate its state USF. CenturyTel files simultaneously with this Motion for Rehearing its request to disaggregate USF funding for the San Marcos exchange.

If Grande is awarded eligibility, Grande will recover annually from state and federal universal service funds approximately one million dollars.<sup>1</sup> Seventy-two percent of the \$1 million in annual funding will come from the pockets of Texas consumers. The remainder comes from federal funding sources.

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<sup>1</sup> Mr. Brown calculated the annual payment Grande would receive assuming the combined TUSF and FUSF per-line support of \$28.24 times an estimated 3,000 access lines times 12 months (CT Ex. 2 at pp. 7-8.) The actual line count is somewhat less. See CT Ex. 18.

It has been CenturyTel's position throughout this proceeding that, absent the ability to disaggregate its USF, granting Grande's application results in competitive harm by providing Grande "artificial" financial compensation. Grande is not justified in receiving universal service compensation because, within its limited area of facility-based service, it does not incur high costs.

CenturyTel receives state and federal universal service funds to compensate it for the costs of building and maintaining facilities to serve all customers within a geographic area which in this case encompasses over 200 square miles. The costs which give rise to the level of funding CenturyTel receives are the costs of providing the physical facilities necessary to provide telephone service to every customer within this geographic area, and DSL service to approximately 98% of the area.

If Grande's application is granted, it will receive USF funding not to serve high-cost areas, but for facilities located **only** within the urban core of San Marcos, where Grande also provides cable television service. CenturyTel's testimony shows this core urban area is a low-cost area.<sup>2</sup> Grande makes no promise to extend facilities into the high-cost area of the exchange – but only to resell CenturyTel service.

In adopting the PFD, the Commission's order concludes that giving consideration to the limited area in which Grande would deploy facilities is **forbidden** by the PUC's rules.<sup>3</sup> Applying this standard in future cases, the Commission would be obligated to grant an application for USF eligibility even if it were to conclude that an applicant had no need for USF support. This result is in error as a matter of law as well as inappropriate public policy.

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<sup>2</sup> CenturyTel Ex. 2, p. 10, ln. 5 – p. 12, ln. 19.

<sup>3</sup> Finding of Fact 69: "Subjecting Grande to a public interest test based in part on a requirement that it build facilities throughout the CenturyTel service area would violate P.U.C. Subst. R. 26.417(e)(1)(C) and 26.418(c)(1), since both rules require only that an applicant serve the designated area through a combination of facilities and resale of another carrier's service."

In adopting the PFD, the Commission also chooses not to examine, in determining the public interest issue, whether the San Marcos service area has both high-cost and low-cost areas, or whether a second carrier would gain a windfall by serving only low-cost areas of the service area, even if the facts, as here, show cream-skimming by the applicant. The PFD states that even though there may be justifiable concerns about cream-skimming by Grande (PFD at p. 27), this issue cannot be considered because of a mistaken belief that, in adopting Subst. R. 26.404, “the Commission has determined the entire CenturyTel service area is a rural high-cost area eligible for TUSF support by eligible ETPs.” (See Order, Finding of Fact 71) The PFD recognizes that “CenturyTel’s concerns about cream-skimming may be justified” and that granting this application may send the wrong signal to other CLECs. (PFD at p. 27)

In addition, by adopting the PFD, the Commission precludes CenturyTel from filing to disaggregate its USF in the near term, because the PFD concludes that any cream-skimming issue be addressed only after a rulemaking addressing disaggregation of state USF funds or in a generic proceeding to review TUSF pricing. (PFD at p. 27) As a result, even if anti-competitive cream-skimming occurs, CenturyTel has no remedy.

If it is the case that the remedy of disaggregation must await a future rulemaking proceeding, then the Commission is remiss in awarding Grande access to funds where the circumstances show its facilities serve only in low-cost areas, and therefore its receipt of funds to be a windfall.

It is uncontested that Grande’s facilities will serve less than 10%<sup>4</sup> of the urban core of the total study area, and that Grande makes no commitment to extend facilities beyond this limited service area. Grande provides no substantive challenge to CenturyTel’s forward-looking cost

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<sup>4</sup> Grande’s facilities provide service to only 17.7 square miles of the 201.1 square-mile service area. (Brown, CT 2 at p. 11)

model showing Grande's facilities to be wholly within low-cost areas, and the PUC Staff acknowledges that "Grande's current facilities are established in areas where costs are low . . . ."<sup>5</sup>

If the Commission believes it must grant the application despite Grande's limited deployment of facilities, then it must allow CenturyTel the opportunity to file a plan for disaggregation of its USF support, as any other result is anticompetitive and therefore contrary to the public interest.

## II. ERRORS IN THE ORDER

CenturyTel excepts to the following portions of the Commission's final order:

1. The adoption of the following pages of the Proposal for Decision: pages 15-28;
2. Findings of Fact 56-71;
3. Conclusions of Law 14, 19-24; and
4. Ordering Paragraphs 1-5.

A. *The Order is in Violation of Law and Arbitrary and Capricious in Failing to Address the Cream-Skimming Issue*

The purpose of universal service funding is to ensure affordable telephone service in high-cost rural areas. As described by the FCC:

The purpose of the high-cost universal service support is to **help provide access to telecommunications service in areas where the cost of such service otherwise might be prohibitively expensive.**<sup>6</sup>

(Emphasis supplied.) *See also* PUC Subst. R. 26.401(a), which states that the Texas Universal Service Fund (TUSF) is a mechanism that "will assist telecommunications providers in providing

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<sup>5</sup> Staff Ex. 1, p. 26, lns. 1-3.

<sup>6</sup> *In re Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256; 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 (rel. May 23, 2001) (hereinafter "Fourteenth Report and Order") at ¶ 13 (emphasis supplied).

basic telecommunications service at reasonable rates in **high-cost** rural areas." (Emphasis supplied.) The order is inconsistent with this fundamental goal of universal service funding.

In recent orders, the FCC has recognized that existing USF mechanisms in which the same average per-line support is paid throughout the study area create uneconomic incentives for competitive entry by providing above-cost support to a competitive carrier choosing to serve only low-cost urban lines within a rural carrier's study area. As stated in its Fourteenth Report and Order:

We agree with the Rural Task Force and commenters that the provision of uniform support throughout the study area of a rural carrier may create uneconomic incentives for competitive entry and could result in support not being used for the purpose for which it was intended, in contravention of section 254(e). **Because support is averaged across all lines served by a carrier within its study area under the existing mechanism, the per-line support available throughout the study area is the same even though the costs throughout the study area may vary widely. As a result, artificial barriers to competitive entry in the highest-cost areas and artificial entry incentives in relatively low-cost portions of a rural carrier's study area are created. For example, support would be available to a competitor that serves only the low-cost urban lines, regardless of whether the support exceeds the cost of any of the lines. We conclude therefore that, as a general matter, support should be disaggregated and targeted below the study area level so that support will be distributed in a manner that ensures that the per-line level of support is more closely associated with the cost of providing service.**

(Fourteenth Report and Order, at ¶ 145 (emphasis added).) In its recommendation to the FCC that it permit disaggregation, the Rural Task Force concluded that, without disaggregation, the existing averaged support mechanisms "create uneconomic incentives for competitive entry" and that these mechanisms "**must** be modified to be consistent with the Act and the principle of competitive neutrality." (Fourteenth Report and Order at ¶ 136 (emphasis added).)

To alleviate these artificial and dis-economic incentives created by averaged per-line support, the FCC has adopted alternatives which permit an incumbent LEC to disaggregate its federal USF for a given study area by cost zones within the study area. (See Fourteenth Report

and Order at ¶¶ 136-164 and 47 C.F.R. §§ 54.307 and 54.315.) PUC Subst. R. 26.418(k) implements these alternatives for disaggregation of federal USF. However, this rule does not provide a mechanism to disaggregate the state USF.

While CenturyTel could disaggregate its \$7.89 of federal USF, no mechanism is available to disaggregate the \$20.35 in state USF, which constitutes 72% of the combined USF per-line funds available to Grande if its application is granted.<sup>7</sup> If state support remains averaged, Grande gains an artificial competitive advantage if awarded USF eligibility because its facilities serve only the low-cost areas of the exchange.

Consequently, Grande's receipt of Texas USF ("TUSF") and federal USF ("FUSF") is not in the public interest because it provides Grande with funding at a dis-economic level, thereby violating the universal service goal of competitive neutrality, and because it does not further the purpose for which the funds are made available, to support service in high-cost areas.

In addition, the Commission's own rules recognize that it was aware of some of the same cream-skimming concerns as the FCC has recognized, even at the time in 1998 when the state USF rules were first adopted. As stated in the preamble to adopting the state universal service rules, the Commission chose small geographic areas with the least amount of averaging for the determination of USF support, where it could do so based on available cost models. The preamble states:

**The Commission concludes that the use of small geographic areas allows for determination of high cost areas with the least amount of averaging, leading to more accurate determination of the support amount. The Commission also concludes that averaging cost over small geographic areas will lessen the ability of ETPs to selectively target relatively higher revenue/lower cost customers and receive THCUSP support. It is the Commission's opinion that such targeting in areas that have**

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<sup>7</sup> See CT Ex. 2, Brown, at p. 7, lns. 17-19. FUSF is \$7.89 per line; State USF is \$20.35 per line, for a total of \$28.24 in funds. The \$20.35 of state USF is not subject to disaggregation. Staff Ex. 1, at p. 15, lns. 20-23.  $\$20.35 \div \$28.24 = 72\%$ ).

**average cost above the benchmark could leave the ILECs serving the lower revenue/higher cost customers.**

*See* 23 Tex. Reg. 968 (Feb. 6, 1998) (emphasis supplied).

Thus, the concern CenturyTel expresses is one the Commission has also recognized, even at an early stage, before a means of disaggregation had been promulgated by the FCC. Contrary to Grande's argument, recognizing these effects does not ignore the PUC's decision in Docket No. 18516 or Substantive Rule 26.404. Rather, it is an application of the facts to the rules, which clearly permit the Commission to deny eligibility to a second carrier in a rural area if that carrier's designation would not serve the public interest.

Lastly, denying Grande's application sends the correct signal to carriers in rural areas: they are not eligible for USF support if they choose to extend their facilities only to the low-cost area of a rural exchange. As recognized by the FCC, granting Grande's request would create an "artificial incentive" for competitors to serve only the low-cost areas of a rural exchange. For this reason also, granting Grande's application is not in the public interest.

While the PFD is correct that the USF rules do not require an applicant to serve the entire service area using its own facilities, the PFD errs in its failure to take Grande's limited service area into account in determining whether Grande's application is in the public interest. The PFD dismisses this concern, concluding that, in adopting Subst. R. 26.404, the Commission has determined the entire CenturyTel service area is a high-cost area, and therefore, "there is no basis for subdividing the area into high- and low-cost areas." (PFD at p. 27) This conclusion is erroneous.

Subst. R. 26.404 does not constitute a finding that the entire CenturyTel service area is a high-cost area. It simply describes the mathematics for calculating the average per-line TUSF amount. It identifies each source of former implicit support, and states these amounts are to be

accumulated and then divided by total access lines to create an average per-line TUSF support amount.<sup>8</sup>

To reach the conclusion that the PFD attributes to this rule, the rule would have to state that the costs for which USF support is provided are uniform across the study area. The rule makes no statement to this effect – it simply provides the math for calculating the state USF as an average per-line support. Consequently, there is no support for the conclusion that the PFD draws that in adopting Subst. R. 26.404, “the entire CenturyTel service area has been defined by the PUC as a high-cost area and there is no basis for subdividing the area into high- and low-cost-areas.” (PFD at p. 27)

On the other hand, the only record evidence regarding costs shows that costs are not uniform across the San Marcos exchange. CenturyTel’s forward-looking proxy model cost study specific to the San Marcos exchange shows that costs of service vary widely within the exchange based on the subscriber density of the area served. The record also shows that this Commission has adopted a rule permitting rural Texas carriers to disaggregate their federal support, to allow the matching of federal USF revenues to high cost areas within a study area, in compliance with the FCC’s Fourteenth Report and Order. Such a rule would be unnecessary or inappropriate if the Commission had already determined that the entire study area of the rural ILECs is a high-cost area. The PFD’s conclusion in this respect is without logic and therefore wholly insupportable.

CenturyTel’s forward-looking cost study also shows that Grande, by limiting its facilities to the low-cost areas, is already receiving a true economic benefit compared to CenturyTel,

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<sup>8</sup> See also Docket 18516 Order, at p. 74, stating: “Monthly per-line support for each eligible SRILEC consists of the sum of (1) the amount necessary to replace support previously provided by the intraLATA toll poll and (2) the loss of revenue realized by the SRILEC upon implementing Commission-ordered switched access and intraLATA toll rate reductions. This amount is then divided by the number of test year eligible lines and then divided by 12.”

which is required to build facilities to serve a much larger service area. Thus, denying Grande eligibility does not place it at a competitive disadvantage in this core urban area vis-à-vis CenturyTel.

However, the reverse – to grant Grande eligibility to receive USF to support its facilities in the low-cost areas of the exchange – gives Grande a competitive advantage over CenturyTel. As the FCC recognized in the Fourteenth Report and Order when it implemented the remedy of disaggregation, “uniform support throughout the study area of a rural carrier may create uneconomic incentives for competitive entry and could result in support not being used for the purpose for which it was intended, in contravention of Section 254(e).”<sup>9</sup> Granting Grande eligibility to receive USF funding to provide a competitive service only in low-cost areas of the San Marcos service area grants it a windfall and creates a competitive disadvantage to CenturyTel. Granting Grande eligibility in these circumstances does not serve the public interest and is not competitively neutral.

Competitive neutrality in USF funding is a goal of both the state and federal USF mechanisms. In its Docket 18516 Order, the PUC defined “competitively neutral” to mean a result which “do[es] not result in a competitive advantage or disadvantage for any retail or wholesale provider of like services.”<sup>10</sup> As defined in the FCC’s universal service rules, “competitive neutrality” means “universal support mechanisms and rules [that] neither unfairly advantage nor disadvantage one provider over another and neither unfairly favor nor disfavor one technology over another.”<sup>11</sup> As the underlined phrases in the definitions show, the principle

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<sup>9</sup> Fourteenth Report and Order at ¶ 145.

<sup>10</sup> Docket 18516 Order at p. 35.

<sup>11</sup> First Report and Order at ¶ 47.

of competitive neutrality is a two-way street, to be analyzed from the perspective of each carrier – incumbent and new carrier alike.

Competitive neutrality does not result where one carrier obtains the same averaged USF support as the incumbent but serves only the low-cost areas of the study area. In fact, the FCC calls such a result an “artificial entry incentive.” (Fourteenth Report and Order at p. 145.) The PFD also recognizes that competitive neutrality is a concern based on the facts contained in this record, stating:

CenturyTel’s concerns about cream skimming may be justified. Like CenturyTel, the ALJ is concerned that Grande’s success may encourage even more competitors to target other urbanized rural areas particularly along the IH35 corridor. But that concern should not be addressed here but in a rulemaking for disaggregation in Texas or in a new look at the TUSF pricing. As CenturyTel points out, the federal response to cream skimming has been disaggregation, not redefining the public interest.

(PFD at p. 27)

The order is in error in concluding that these concerns cannot be considered in the Commission’s public interest determination. If cream-skimming is a result of granting the application, and if disaggregation is the only available remedy to avoid this anticompetitive result, then the Commission must either deny the application or allow CenturyTel a concurrent opportunity to disaggregate its USF.

***B. Alternatively, the Commission Should Condition Grande’s Eligibility to the Approval of a Plan for Disaggregating Support for the San Marcos Service Area***

The Commission can recognize both Grande’s request for universal service funding and CenturyTel’s concerns that Grande’s limited deployment of facilities results in cream-skimming under the current averaged USF support by permitting CenturyTel to disaggregate its universal service support. Under Subst. R. 26.418(k)(5), CenturyTel may file a plan to disaggregate its federal universal service support. The Commission would also have to permit CenturyTel to file a comparable plan for disaggregation of its state universal service funding. Simultaneously, with

its Motion for Rehearing, CenturyTel has filed a plan to disaggregate both its state and federal USF. While CenturyTel does not favor this alternative, but favors the alternative that would provide the greatest incentive for competitive carriers to serve the whole of a rural service area, this disaggregation could be used to alleviate the disparity in funding that would occur if Grande's application is not denied.

For this reason, CenturyTel presents this as an alternative for the Commission's consideration.

*V. CONCLUSION*

The order is in error in concluding that Grande's application meets the public interest test. This result is based on legal error and, if allowed to stand, this order will significantly limit the Commission's options in considering future USF applications. The facts here show that while Grande is a competitor to CenturyTel, its application does not further the purpose for which USF support is made available: to extend telecommunications service to high-cost rural areas. Granting Grande eligibility to receive USF funds awards it a \$1 million annual windfall, and serves as an incentive for limited competitive entry solely within the low-cost areas of rural exchanges. Awarding Grande USF support in such circumstances is not competitively neutral, and is therefore in violation of state and federal law.

In this respect, the order is (1) in violation of statutory provisions; (2) in excess of the Commission's statutory authority; (3) affected by error of law; (4) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; and (5) arbitrary and capricious, and characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

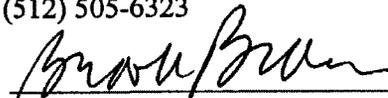
For these reasons, CenturyTel respectfully requests that this motion be granted and that Grande's application for eligibility for state and federal universal service funds be denied.

Alternatively, CenturyTel requests that approval of Grande's application be conditioned upon approval of a plan for disaggregating CenturyTel's USF support for the San Marcos service area.

Respectfully submitted,

MCGINNIS, LOCHRIDGE & KILGORE, L.L.P.  
919 Congress Avenue, Suite 1300  
Austin, Texas 78701  
Tel: (512) 495-6023  
Fax: (512) 505-6323

By:



Brook Bennett Brown  
State Bar No. 03094560

ATTORNEYS FOR  
CENTURYTEL OF SAN MARCOS, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion for Rehearing has been served on the following parties of record on this the 13<sup>th</sup> day of June, 2003, by e-mail and hand delivery:

Ms. Katherine Farrell  
Legal and Enforcement Division  
Public Utility Commission of Texas  
1701 N. Congress Ave., Room 8-110  
Austin, Texas 78711-3326  
[katherine.farrell@puc.state.tx.us](mailto:katherine.farrell@puc.state.tx.us)

Mr. Philip Ricketts  
Bracewell & Patterson, L.L.P.  
111 Congress Avenue, Suite 2300  
Austin, Texas 78701-4043  
[pricketts@bracepatt.com](mailto:pricketts@bracepatt.com)

By   
\_\_\_\_\_  
Brook Bennett Brown

## **Exhibit B**

**Rebecca Klein**  
Chairman  
**Brett A. Perlman**  
Commissioner  
**Julie Parsley**  
Commissioner  
**W. Lane Lanford**  
Executive Director



RECEIVED  
2003 JUL -3 PM 3:22  
PUBLIC UTILITY COMMISSION  
FILING CLERK

***Public Utility Commission of Texas***

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**TO:** All Parties of Record

**FROM:** Lisa Cantu *lc*  
Policy Development Division

**RE:** Docket No. 26404; Application of Grande Communications Networks, Inc.  
for Designation as an Eligible Telecommunications Carrier (ETC) Pursuant  
to P.U.C. Subst. R. 26.418 and Eligible Telecommunications Provider (ETP)  
Pursuant to P.U.C. Subst. R. 26.417

**DATE:** July 3, 2003

The above-referenced docket has been placed on the July 10, 2003 open meeting agenda. By individual ballot, the commissioner's voted to consider CenturyTel's Motion for Rehearing.

/lc

125

## **Exhibit C**



MAY 28 AM 11:23

PUBLIC UTILITY COMMISSION  
FILING CLERK

Philip F. Ricketts  
Partner

111 Congress Avenue, Suite 2300  
Austin, Texas 78701-4043  
Phone: 512.494.3630  
Fax: 512.472.9123  
pricketts@bracepatt.com

May 28, 2003

Mr. Stephen Journeyay  
Senior Director  
Policy Development Division  
Public Utility Commission of Texas  
1701 North Congress Avenue  
Austin, Texas 78701

Re: PUC Docket No. 26404, SOAH Docket No. 473-03-1655; *Applications of Grande Communications Networks, Inc. for Designation as an Eligible Telecommunications Carrier (ETC) pursuant to P.U.C. SUBST. R. 26.418 and Eligible Telecommunications Provider (ETP) Pursuant to P.U.C. SUBST. R. 26.417*

Dear Mr. Journeyay:

In reviewing the final order in the referenced case, I noticed that the findings of fact are misnumbered. Specifically, Finding of Fact Nos. 3 and 4 were numbered 5 and 6, with all subsequent findings of fact being off by two from the numbers in the Proposal for Decision. As a result, Conclusion of Law No 14, which references Finding of Fact Nos. 12-17 and 56-71, is off by two numbers in those references. Also the reference in Conclusion of Law No. 73 to Finding of Fact Nos. 18-71 is off by two numbers.

This issue could be cured by simply renumbering the findings of fact to include numbers 3 and 4. Grande Communications Networks, Inc. respectfully requests that any such correction be made on a *nunc pro tunc* basis so that the effective date of the order will remain the same.

Thank you for your consideration of this matter.

Very truly yours,

Bracewell & Patterson, L.L.P.

Philip F. Ricketts

PFR/pm

cc: All Parties

Houston

Austin

Corpus Christi

Dallas

Fort Worth

San Antonio

Washington, D.C.

London

Almaty

## **Exhibit D**

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
AUSTIN, TEXAS

IN THE MATTER OF THE OPEN MEETING )  
OF THURSDAY, JULY 10, 2003 )

OPEN MEETING  
THURSDAY, JULY 10, 2003

BE IT REMEMBERED THAT AT 8:48 a.m., on Thursday, the 10th day of July, 2003 that the above-entitled matter was heard at the Offices of the Public Utility Commission of Texas, William B. Travis Building, 1701 North Congress Avenue, Commissioners' Hearing Room, Austin, Texas, before CHAIRMAN REBECCA KLEIN and COMMISSIONERS BRETT PERLMAN and JULIE C. PARSLEY; and the following proceedings were reported by Lou Ray, William C. Beardmore and Evelyn Coder, -Certified Shorthand Reporters of:

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1 CHAIRMAN KLEIN: Did you-all have  
2 anything different?

3 COMM. PERLMAN: No.

4 CHAIRMAN KLEIN: Okay. In that  
5 case, I'll entertain a motion to approve the  
6 PFD.

7 COMM. PERLMAN: So moved.

8 COMM. PARSLEY: Agreed.

9 CHAIRMAN KLEIN: And approved.  
10

11 **AGENDA ITEM NO. 21**

12 **DOCKET NO. 26404** - APPLICATION OF  
13 GRANDE COMMUNICATIONS NETWORKS INC.  
14 FOR DESIGNATION AS AN ELIGIBLE  
15 TELECOMMUNICATIONS CARRIER (ETC)  
16 PURSUANT TO P.U.C. SUBST.R.26.418  
17 AND ELIGIBLE TELECOMMUNICATIONS  
18 PROVIDER (ETP) PURSUANT TO P.U.C.  
19 SUBST. R.26.417

20 CHAIRMAN KLEIN: On to 21. This  
21 is the Grande docket. They had a request for an  
22 order nunc pro tunc. And then we have, also,  
23 CenturyTel that filed a motion for rehearing.

24 I certainly agree that we need to  
25 correct our order. And given that we don't have  
any Procedural Rules regarding nunc pro tunc, I  
just would propose that we treat it as an MFR  
and reissue it with the particular corrections,

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1 which are renumbering the findings of facts,  
2 beginning with 3. And -- let's see -- 3 and 4,  
3 which --

4 COMM. PARSLEY: Were numbered 5  
5 and 6.

6 CHAIRMAN KLEIN: -- were numbered  
7 5 and 6.

8 COMM. PERLMAN: I hate when that  
9 happens.

10 CHAIRMAN KLEIN: And then any  
11 conforming changes as they affect the  
12 Conclusions of Law. As far as CenturyTel's  
13 motion for rehearing, I do see in their filing  
14 that they also are looking for a plan to  
15 disaggregate that's being looked at in another  
16 docket, which is where I think that issue should  
17 be properly addressed.

18 I would deny CenturyTel's motion for  
19 that reason, since we're going to be looking at  
20 how that would be done -- you know, to  
21 disaggregate. I'm definitely interested in that  
22 docket, because I think that there is virtue in  
23 trying to do that.

24 COMM. PERLMAN: Right.

25 CHAIRMAN KLEIN: So if there's any

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1 additions or changes... In that case, I'll  
2 entertain a motion consistent with the  
3 discussion.

4 COMM. PERLMAN: So moved.

5 COMM. PARSLEY: Agreed.

6 CHAIRMAN KLEIN: And approved.

7

8 AGENDA ITEM NO. 22

9 DOCKET NO. 25188 - PETITION OF EL PASO  
10 NETWORKS, LLC, FOR ARBITRATION OF AN  
11 INTERCONNECTION AGREEMENT WITH  
12 SOUTHWESTERN BELL TELEPHONE COMPANY

12 CHAIRMAN KLEIN: 22, El Paso.

13 Okay. Let me address my memo first, because I  
14 had the change -- the tiny change on that memo,  
15 plus I want to verbalize another change, and  
16 then we'll go on to the other two memos. I  
17 think that might be a quick way to -- a quicker  
18 way to do it.

19 Anyway, in my particular memo, all I  
20 suggested is, in an ordering paragraph, making  
21 sure that we direct the parties to file a  
22 briefing on the TRO so that this is -- as we  
23 have discussed previously, this order is a  
24 virtual tickler for them to do that

25 The other change I would have to the

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## **Exhibit E**

PUC DOCKET NO. 26404  
SOAH DOCKET NO. 473-03-1655

2002 JUL 15 11:04  
PUBLIC UTILITY COMMISSION  
FILING CLERK

APPLICATION OF GRANDE	§	PUBLIC UTILITY COMMISSION
COMMUNICATIONS NETWORKS,	§	
INC. FOR DESIGNATION AS AN	§	OF TEXAS
ELIGIBLE	§	
TELECOMMUNICATIONS	§	
CARRIER (ETC) PURSUANT TO	§	
P.U.C. SUBST. R. 26.418 AND	§	
ELIGIBLE	§	
TELECOMMUNICATIONS	§	
PROVIDER (ETP) PURSUANT TO	§	
P.U.C. SUBST. R. 26.417	§	

**ORDER ON REHEARING**

This Order approves the application of Grande Communications Networks, Inc. for designation as an eligible telecommunications provider (ETP) pursuant to P.U.C. Subst. R. 26.417 and as an eligible telecommunications carrier (ETC) pursuant to P.U.C. Subst. R. 26.418 in the service area of CenturyTel of San Marcos, Inc. The Commission adopts the proposal for decision issued by the State Office of Administrative Hearings without modification.

The Commission adopts the following findings of fact and conclusions of law:

**I. FINDINGS OF FACT**

**A. Background, Notice, and Procedural History**

1. Grande Communications Networks, Inc. (Grande) is a telecommunications utility that provides bundled telecommunications, cable, and Internet access services to the public in several regions of Texas, including the City of San Marcos.
2. On August 2, 2002, Grande filed an application with the Public Utility Commission of Texas (Commission) for designation as an Eligible

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Telecommunications Carrier (ETC) pursuant to 47 U.S.C. § 214(c) and P.U.C. SUBST. R. 26.418 so as to be eligible to receive support from the Federal Universal Service Fund (FUSF), and as an Eligible Telecommunications Provider (ETP), pursuant to 47 U.S.C. § 214(e) and P.U.C. SUBST. R. 26.417, so as to be eligible to receive support from the Texas Universal Service Fund (TUSF).

3. Grande requested designation as an ETC and ETP in the service area of CenturyTel of San Marcos, Inc. (CenturyTel).
4. Notice of Grande's application was issued by the Commission's Policy Development Division, on behalf of the Commission, and published in the *Texas Register* on August 16, 2002.
5. On September 5, 2002, CenturyTel filed a motion to intervene and comments in opposition to the application. Its motion to intervene was granted.
6. On September 23, 2002, the Commission referred Grande's application to the State Office of Administrative Hearings (SOAH) for a hearing on the merits.
7. On September 26, 2002, Grande appealed the referral to SOAH.
8. On October 23, 2002, the Commission granted Grande's appeal and recalled the case from SOAH.
9. On December 13, 2002, a Commission Administrative Law Judge (ALJ) determined that the application should be docketed and referred the case to SOAH.
10. Grande filed its direct testimony on December 23, 2002, which established an effective date for the application of April 22, 2003, pursuant to P.U.C. SUBST. R. 26.417(f)(2)(D) and 26.418(g)(2)(D). The SOAH ALJ extended the effective date to May 22, 2003.
11. The evidentiary hearing on the merits was held on March 10 and 11, 2003.

**B. Designation as an ETC (Uncontested Facts)**

12. Grande is a common carrier as required by 47 C.F.R. § 214(e)(1) and P.U.C. SUBST. R. 26.418(c), as that term is defined by 47 U.S.C. § 153(10).
13. Grande currently offers and upon designation as an ETC will offer the following services supported by the FUSF:
  - (a) voice grade access to the public switched network;
  - (b) local usage;
  - (c) dual tone multi-frequency signaling or its functional equivalent;
  - (d) single party service or its functional equivalent;
  - (e) access to emergency services;
  - (f) access to operator services;
  - (g) access to interexchange service;
  - (h) access to directory assistance; and
  - (i) toll limitation for qualifying low-income consumers.
14. Grande currently has the ability to provide the services referred to in Finding of Fact No. 13 through a combination of its own facilities and resale of CenturyTel's services.

**C. Designation as an ETC (Contested Facts)**

15. The means of advertising currently used by Grande constitute media of general distribution. Grande commits to using those means to advertise the availability of and charges for the services referred to in Finding of Fact No. 13.
16. Grande commits to making the services referred to in Finding of Fact No. 13 available throughout the requested designated service area.
17. Grande's requested designated service area as an ETC includes the entirety of CenturyTel's service area, which is a rural high-cost area.

**D. Designation as an ETP (Uncontested Facts)**

18. Grande is a telecommunications provider as that term is used in P.U.C. SUBST. R. 26.417 because it holds a Service Provider Certificate of Operating Authority.
19. Grande currently provides and will provide the required basic service throughout the CenturyTel service area through a combination of its own facilities and resale of CenturyTel's service.
20. Grande currently provides and will provide the following requirements of basic telephone service:
  - (a) Flat rate, single party residential and business local exchange telephone service, including primary directory listings;
  - (b) Tone dialing service;
  - (c) Access to operator service;
  - (d) Access to directory assistance services;
  - (e) Access to 911 service where provided by a local authority;
  - (f) Dual party relay service;
  - (g) The availability to report service problems seven days a week;
  - (h) Availability of an annual local directory;
  - (i) Access to toll services; and
  - (j) Lifeline and tel-assistance services.
21. Grande demonstrated that it will offer Lifeline service and Link Up service upon designation as an ETP.
22. Grande demonstrated that it does provide and commits to providing continuous and adequate service in compliance with the quality of service standards defined and codified in P.U.C. SUBST. R. 26.52-26.53, as required by P.U.C. SUBST. R. 26.417(c)(1)(D).

23. Grande complies with the requirements of P.U.C. SUBST. R. 26.52 by having both permanently installed standby generators and a battery reserve of 12 hours.
24. Grande complies with the requirements of P.U.C. SUBST. R. 26.53(a) by having a program of periodic tests, inspections, and preventive maintenance aimed at achieving efficient operation of its system and rendition of safe, adequate and continuous service.
25. Grande complies with the requirements of P.U.C. SUBST. R. 26.53(b) by having a full-feature network control center in San Marcos that provides constant monitoring of its switching and transmission components, and the performance of all equipment and facilities.
26. Grande complies with the requirements of P.U.C. SUBST. R. 26.53(c) by having a permanent office that is equipped with a 1,000 +/- Hz milliwatt test signal generator, a 900 ohm balanced termination test set (quiet term set), and a 108 (loop-back) test line.
27. Grande has the technical capability of measuring the performance standards required by the Commission's rules and can meet any reporting requirements for telephone service in the CenturyTel service area required by the Commission's rules.
28. Grande demonstrated that it does provide and commits to providing continuous and adequate service in compliance with the quality of service standards defined and codified in P.U.C. SUBST. R. 26.54(b) and (c)(1)(I) and (J) and (3)-(7), as required by P.U.C. SUBST. R. 26.417(c)(1)(D).
29. Grande complies with the requirements of P.U.C. SUBST. R. 26.54(b)(1) by providing one-party line service to all subscribers.
30. Grande complies with the requirements of P.U.C. SUBST. R. 26.54(b)(2) since it uses no open wire in its loop or trunk network.
31. Grande complies with the requirements of P.U.C. SUBST. R. 26.54(b)(3) since it uses a combination of fiber-to-the-curb and copper drop-wire in its loop

transmission plant. This supports data transmission in excess of 45,000 bits per second, as compared to the Commission's requirement of 14,400 bits per second.

32. Grande complies with the requirements of P.U.C. SUBST. R. 26.54(b)(4) since it has no need for an exemption to P.U.C. SUBST. R. 26.54(b)(3).
33. Grande demonstrated that it will comply with P.U.C. SUBST. R. 26.54(c)(1)(I) by not including service orders either to disconnect service or to make any record changes on a customer's account in the interval and equipment requirements of this rule.
34. P.U.C. SUBST. R. 26.54(c)(1)(J) does not apply to Grande since it provides only one-party service.
35. Grande complies with the requirements of P.U.C. SUBST. R. 26.54(c)(3)(A) by providing dial tone within three seconds on 99.9% of all calls.
36. Grande complies with the requirements of P.U.C. SUBST. R. 26.54(c)(3)(B) by having switching resources which complete more than 98 of intra-office calls without encountering an equipment busy condition or equipment failure.
37. Grande complies with the requirements of P.U.C. SUBST. R. 26.54(c)(3)(C) since its switch in San Marcos has been available for 100% of its four-year history.
38. Grande commits to complying with the requirements of P.U.C. SUBST. R. 26.54(c)(3)(D) that it provide a report detailing the cause and proposed correction action for failure to meet any of the above local dial service measurements.
39. Grande complies with the requirements of P.U.C. SUBST. R. 26.54(c)(4) since its trunking network is designed and sized for a minimum P.01 grade of service for the peak traffic period of each week, which means that less than one call per hundred in the busy hour is denied service due to a lack of interoffice trunking capacity. In addition, Grande's availability factor for stored program controlled digital and analog switching and inter-office transmission facilities is 99.99%, which exceeds the Commission requirement of 99.93%.

40. Grande complies with the requirements of P.U.C. SUBST. R. 26.54(c)(5) since it has a 99% completion rate on properly dialed toll calls, without encountering failure because of blockages or equipment irregularities.
41. Grande complies with the requirements of P.U.C. SUBST. R. 26.54(c)(6), since its trouble reports currently average less than one report per 100 customer access lines per month, its procedures for dealing with customer trouble reports are consistent with the requirements of this rule, and above 90% of out-of-service trouble reports are cleared within eight working hours and repeat trouble reports on residence and single line business lines are below 10%.
42. Grande complies with the requirements of P.U.C. SUBST. R. 26.54(c)(7) since it meets or exceeds each of the requirements in this rule. Grande's network utilizes digital transmission facilities on both loop and trunk plant. Trunks are operated with 0 decibel loss, while customer loops operate with 0 decibel transmit, -6 decibel receive. Because Grande's facilities are all digital, metallic noise levels are below those specified in the rule. Since Grande's loop and trunk transmission facilities are digital, noise and impulse noise limits are below those specified in the rule.

**E. Designation as an ETP (Contested Facts)**

43. Grande commits to meeting the requirement that it offer to provide basic local telecommunications service at a rate not to exceed 150% of CenturyTel's tariffed rate. Grande's current rate for basic local telecommunications service is \$5.25 per month, which is below the existing rate for that service provided by CenturyTel of \$5.70 per month.
44. Grande demonstrated that it can and will provide basic local telecommunications service to any requesting customer in the CenturyTel area.
45. Grande demonstrated that it does and commits to providing continuous and adequate service in compliance with the quality of service standards defined and

codified in P.U.C. SUBST. R. 26.549(c)(1)(A)-(H) and (2), as required by P.U.C. SUBST. R. 26.417(c)(1)(D).

46. Grande complies with the requirements of P.U.C. SUBST. R. 26.54(c)(1)(A) since it meets or exceeds the requirement that 95% of service installation orders for primary service be completed within five working days.
47. Grande complies with the requirements of P.U.C. SUBST. R. 26.54(c)(1)(B) since Grande consistently meets or exceeds the requirement that 90% of service orders for regular service installations be completed within five working days.
48. Grande complies with the requirements of P.U.C. SUBST. R. 26.54(c)(1)(C) since Grande consistently meets or exceeds the requirement that 90% of service orders for service installations be completed within 30 days.
49. Grande complies with the requirements of P.U.C. SUBST. R. 26.54(c)(1)(D) since Grande consistently meets or exceeds the requirement that 100% of service orders for service installations be completed within 90 days.
50. Grande demonstrated that it will comply with P.U.C. SUBST. R. 26.54(c)(1)(E) by establishing and maintaining installation time commitment guidelines for various complex services contained in its tariff, which will be available for public review and applied in a non-discriminatory manner.
51. Grande complies with the requirements of P.U.C. SUBST. R. 26.54(c)(1)(F) by using interval measurements that commence from the date the customer qualifies for service.
52. Grande complies with the requirements of P.U.C. SUBST. R. 26.54(c)(1)(G) by providing to the customer a due date on which the requested installation or change shall be made and that any appointment period for a premises visit shall not exceed a four-hour time period on the due date. In addition, Grande meets the requirements of the rule if an appointment cannot be met.

53. Grande complies with the requirements of P.U.C. SUBST. R. 26.54(c)(1)(H) by substantially exceeding the requirement that 90% of the company's commitments to customers for the date of installation of service orders shall be met.
54. Grande complies with the requirements of P.U.C. SUBST. R. 26.54(c)(2)(A), (C), (D), and (E) by establishing third-party contracts that contain requirements which meet or exceed each standard contained in this rule for directory assistance services and for operator services. In addition, Grande complies with P.U.C. SUBST. R. 26.54(c)(2)(B) by meeting the requirement that 90% of repair service calls and business office calls be answered within 20 seconds or that the average answer time shall not exceed 5.9 seconds.
55. Grande commits to advertising the availability of supported services in a manner that fully informs the general public within the designated service areas. Grande currently advertises through newspaper, television, radio, and billboard advertising and commits to using at least some of these same media of general distribution to advertise its universal service offering to business and residential consumers in the designated service area.

**F. Grande's Application is in the Public Interest**

56. As a new entrant into the CenturyTel service area, Grande provides an alternative choice of quality telecommunications service at just, reasonable, and affordable rates and promotes the deployment of advanced telecommunications and information services to the customers in the San Marcos area.
57. Grande began providing telecommunications service in San Marcos in February 2001. Grande is currently deploying in the San Marcos area a new fiber-to-the-curb network which allows Grande to deliver bundled telecommunications, cable, and Internet access services.
58. Grande prices its basic local telecommunications service offering at \$5.25 compared to CenturyTel's \$5.70. This rate is less than 150% of CenturyTel's rate for basic local telecommunications service.

59. As part of its facilities-based telecommunications offerings, Grande provides enhanced call features, including Caller ID, Call Waiting, Call Forwarding, Three-Way Calling, Speed Dial, Call Return, Auto Redial, Anonymous Call Rejection, Call Waiting ID, Call Blocker, Selective Call Forwarding, Distinctive Ring, and Voice Mail. In addition, Grande offers to its customers in the San Marcos area several domestic and international long distance calling plans, inbound 800 service, and calling card service.
60. Grande offers a variety of information services and advanced technologies, such as dial-up and broadband Internet access service, including three different levels of high-speed Internet access service. Internet customers may also order related information services such as additional web space, IP addresses, e-mail addresses, and filtered services which block unwanted Internet sites. In addition, Grande offers three levels of cable service to its customers.
61. Grande promotes the deployment of advanced telecommunications and information services in product bundles at discounted rates.
62. In response to Grande's entry into the San Marcos market, CenturyTel introduced its own bundled offerings, introducing additional choice and savings for customers.
63. The Texas Legislature and the United States Congress have articulated a policy in favor of competitive telecommunications choices for citizens in *all* areas of the country, including rural areas.
64. Competition is hoped to bring lower prices, higher quality, and the rapid deployment of new telecommunications technologies. Grande's entry into the CenturyTel service area brings these benefits of competition to the customers in the San Marcos area.
65. Fundamental goals of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act), and federal and state telecommunications policy, are to preserve and advance universal service.

66. The availability of quality telecommunications services at just, reasonable, and affordable rates, and the deployment of advanced telecommunications and information services to all regions of the United States, including rural and high-cost areas, are implicit goals encompassed by the fundamental purposes of the Act.
67. The availability of Grande as a second provider brings a choice of providers to consumers in the CenturyTel service area of San Marcos who would otherwise be served by a single provider.
68. A choice of providers can reasonably be expected to provide consumers with a greater range of service choices and pricing driven by the marketplace.
69. Subjecting Grande to a public interest test based in part on a requirement that it build facilities throughout the CenturyTel service area would violate P.U.C. SUBST. R. 26.417(e)(1)(C) and 26.418(c)(1), since both rules require only that an applicant serve the designated area through a combination of facilities and resale of another carrier's service.
70. The Commission determined that the entire CenturyTel service area is a rural high-cost area eligible for TUSF support by eligible ETPs.
71. The public interest will be served by granting Grande's applications for designation as an ETC and an ETP.

## II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this docket pursuant to the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (Act), 47 U.S.C. § 214(e)(6), and the Public Utility Regulatory Act (PURA) §§ 52.001 *et seq.*
2. The notice provided in this docket is sufficient, pursuant to P.U.C. PROC. 22.55 and P.U.C. SUBST. R. 26.417(f)(1) and 26.418(g)(1).

3. SOAH has jurisdiction over all matters relating to the conduct of the hearing in this proceeding, including the preparation of a Proposal for Decision with Findings of Fact and Conclusions of Law in accordance with PURA § 14.053 and TEX. GOV'T CODE ANN. § 2003.049 (Vernon 2000 and Supp. 2003).
4. The designation of a telecommunications provider as an ETC is the responsibility of the Commission. 47 C.F.R. § 54.201(b).
5. Only carriers designated ETCs are eligible for FUSF support. 47 C.F.R. § 54.201(a).
6. The TUSF was established to implement a competitively neutral mechanism to enable all residents to obtain basic telecommunications services. P.U.C. SUBST. R. 26.401(a).
7. Only providers designated ETPs are eligible for TUSF support.
8. Designation as an ETC is contingent upon a finding that the carrier satisfies the requirements of 47 C.F.R. § 54.201(d).
9. The Commission's Substantive Rule 26.418 incorporates the federal requirements for ETC designation.
10. To be designated an ETC, a carrier must reasonably demonstrate its ability and willingness to provide the services required of an ETC.
11. Requiring carriers to provide the supported services prior to designation as an ETC has the effect of prohibiting the ability of prospective market entrants from providing telecommunications services in violation of Section 253(a) of the Act. Even though such a requirement might be said to apply equally to both new entrants and incumbent LECs, the effect of such a requirement is not competitively neutral and is, therefore, preempted by federal law.
12. Based on Conclusions of Law Nos. 10 and 11, a carrier's designation as an ETC is dependent on offering, rather than providing, the supported universal services.
13. A carrier may make the required showing of offering the supported services by a description of the proposed service technology, a demonstration of the extent to

which the carrier provides telecommunications services within the state, a description of the extent to which the carrier has entered into interconnection and resale agreements with others, a sworn affidavit signed by the carrier's representative to ensure compliance, or other means that demonstrate the carrier's ability and willingness to provide service upon designation.

14. Based on Findings of Fact Nos. 12 through 17 and 56 through 71, Grande satisfies the federal and state requirements for designation as an ETC.
15. Although designation as an ETP is contingent on a finding that the telecommunications provider is designated an ETC, the Commission held that the administrative streamlining mandate reflected in the aggressive timetables set forth in SUBST. R. 26.417(f) and 26.418(g) requires that these and future such applications move forward simultaneously.
16. P.U.C. SUBST. R. 26.52 through 26.54 are applicable to all ETPs, regardless of whether the ETP is also a dominant certificated telecommunications utility.
17. Grande's ETP designation is dependent upon its advertising both the availability and the charges for the supported services and that Grande commits to complying with this requirement.
18. Section 214(e)(2) of the Act and P.U.C. SUBST. R. 26.418(e)(2) require the Commission to determine whether the designation of an additional ETC in an area served by a rural telephone company is in the public interest. P.U.C. SUBST. R. 26.417(d)(2) requires a finding that designation of an ETP in an area served by a rural carrier is in the public interest.
19. The Commission's analysis of the public interest is guided by the fundamental goal of preserving and advancing universal service, and the component goals of ensuring the availability of quality telecommunications services at just, reasonable, and affordable rates, and the deployment of advanced telecommunications and information services to all regions of the United States, including rural and high cost areas.

20. Section 253(a) of the Act is violated by any state provision that prohibits or has the effect of prohibiting the ability of any entity to provide interstate or intrastate telecommunications service.
21. Section 253(a) does not affect a state's ability to impose, on a competitively neutral basis and consistent with section 254 of the Act, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. 47 U.S.C. § 253(b).
22. Grande's proposed Lifeline and Link Up tariff, filed with its application was reviewed and approved by the Commission Staff and shall become effective upon Commission approval of Grande's joint ETC and ETP application.
23. Based on Findings of Fact Nos. 18-71, Grande satisfies the requirements for designation as an ETP.
24. Upon approval by the Commission of its joint application for ETC and ETP designation, and consistent with Docket No. 18516, Grande shall be eligible to receive FUSF and TUSF support for providing supported services in the CenturyTel service area.

### III. ORDERING PARAGRAPHS

In accordance with these findings of fact and conclusions of law, the Commission issues the following Order:

1. Grande's application for ETC and ETP designation is granted.
2. Grande shall file quarterly service quality performance reports with the Commission, as required by P.U.C. SUBST. R. 26.54(c).
3. Grande shall file annual reports with the Commission regarding its Lifeline and Link Up subscriberships, as required by P.U.C. SUBST. R. 26.54(j)(1).
4. Grande shall file an affidavit at the conclusion of its advertisement of its services through media of general distribution.

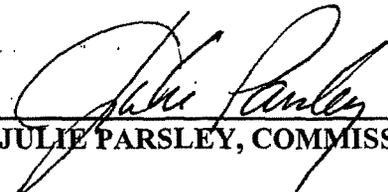
5. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, not expressly granted herein, are denied for want of merit.

SIGNED AT AUSTIN, TEXAS the 15<sup>th</sup> day of July 2003

PUBLIC UTILITY COMMISSION OF TEXAS

  
REBECCA KLEIN, CHAIRMAN

  
BRETT A. PERLMAN, COMMISSIONER

  
JULIE PARSLEY, COMMISSIONER

## **Exhibit F**

Rebecca Klein  
Chairman

Brett A. Perlman  
Commissioner

Julie Parsley  
Commissioner

W. Lane Lanford  
Executive Director



RECEIVED  
AUG 15 2002  
PUBLIC UTILITY COMMISSION

*Public Utility Commission of Texas*

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**TO:** All Parties of Record

**FROM:** Melissa Silguero *MS*  
Policy Development Division

**RE:** Docket No. 26404; SOAH Docket No. 473-03-1655 – Application of Grande Communications Networks, Inc. for Designation as an Eligible Telecommunications Carrier (ETC) Pursuant to P.U.C. Subst. R. 26.418 and Eligible Telecommunications Provider (ETP) Pursuant to P.U.C. Subst. R. 26.417

**DATE:** August 15, 2002

The Commissioners have voted by individual ballot not to consider CenturyTel's Motion for Rehearing of Order on Rehearing.

/ms

## **Exhibit G**

**Rebecca Klein**  
Chairman

**Brett A. Perlman**  
Commissioner

**Julie Parsley**  
Commissioner

**W. Lane Lanford**  
Executive Director



## *Public Utility Commission of Texas*

Marlene H. Dortch - Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W. - TWA 325  
Washington, D.C. 20554

Irene Flannery - Vice-President of High Cost and Low Income Divisions  
Universal Service Administrative Company  
2120 L. Street, NW - Suite 600  
Washington, D.C. 20037

**RE: *Federal-State Joint Board on Universal Service, CC Docket No. 96-45  
Grande Communications Network, Inc., TPUC Order on Rehearing***

TX PUC Project No. 25787 - FCC Letters regarding ETC Designation Pursuant to FTA '96 §214(e)(2)

August 28, 2003

Dear Ms. Dortch and Ms. Flannery:

On May 27, 2003, pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the "Act") and 47 C.F.R. sections 54.201 – 54.203, the Texas Public Utility Commission (TPUC) provided you with correspondence that Grande Communications Network, Inc. (Grande) had been designated as a competitive eligible telecommunications carrier (ETC). Attached to the correspondence was the *Order* issued by TPUC on May 23, 2003, granting ETC status to Grande.

The TPUC now advises that an *Order on Rehearing* was issued in Docket No. 26404 on July 15, 2003, and attaches this subsequent order for your records. Please note that the only change from the original order is to correct the numbering of certain paragraphs.

If you require any additional information please call Janis Ervin, Senior Policy Specialist, at (512)-936-7372.

Sincerely,

  
Janis Ervin - Senior Policy Specialist  
Telecommunications Division - Texas Public Utility Commission

(1Aug2003 Grande ETC)



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