

**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
	)	
Elimination of Rate-of-Return Regulation of Incumbent Local Exchange Carriers	)	RM No. 10822
	)	

**COMMENTS OF CENTURYTEL, INC.**

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

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

*Its attorney*

January 16, 2004

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CenturyTel, Inc. (“CenturyTel”),<sup>1</sup> through its attorneys, hereby urges the Commission to deny the above-captioned petition (“Petition”) filed by Western Wireless Corporation (“Western Wireless”).<sup>2</sup> In its Petition, Western Wireless seeks Commission elimination for all local exchange carriers of cost-plus-rate-of-return regulation – a system of regulation that has formed the foundation of the Commission’s policies governing these carriers for decades.

**I. Introduction And Summary**

The Commission should deny the Western Wireless Petition. As an initial matter, there is no procedural reason for the Commission to open the rulemaking Western Wireless seeks. As Western Wireless concedes, the Commission already has a broad spectrum of changes

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<sup>1</sup> CenturyTel, headquartered in Monroe, Louisiana, is a leading provider of integrated communications services to rural markets. CenturyTel provides a variety of high-quality communications services to nearly 3 million customers in rural communities in 22 states, including local exchange, interexchange, and advanced services, wireless service, security monitoring, information services, and broadband and dial-up Internet access. The vast majority of CenturyTel’s local exchange carrier (“LEC”) operating companies is regulated under rate-of-return regulation, although CenturyTel operates price cap LECs in Alabama and Missouri.

<sup>2</sup> See *Public Notice*, Consumer & Governmental Affairs Bureau Reference Information Center Petition for Rulemaking Filed, Report No. 2638 (rel. Nov. 19, 2003).

to its intercarrier compensation rules, including those Western Wireless advocates, under consideration in multiple dockets.<sup>3</sup> In addition, the universal service reforms that Western Wireless seeks are well covered in open Notices of Proposed Rulemaking in the Commission's existing universal service docket,<sup>4</sup> a fact acknowledged by Western Wireless in the very caption of the Petition, which references CC Docket No. 96-45.

Substantively, Western Wireless has not demonstrated that the elimination of federal rate-of-return regulation would be in the best interest of rural consumers nor help in any way to ensure that all Americans have access to high-quality, affordable telecommunications services. While Western Wireless spends considerable time discussing the competitive impact of its proposals, it fails to assess the impact of its proposal on universal service, an equally important goal of the Telecommunications Act of 1996 and a key statutory charge to the Commission. Apparently under a mistaken belief that competition should be a goal of the Commission's universal service policies, Western Wireless calls rate-of-return regulation and

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<sup>3</sup> See Petition at 47 (“[A]ccess charge issues should be addressed in the context of the pending *Inter-carrier Compensation* proceeding”). See also, e.g., *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 (2001), paras 212-240 (seeking comments on incentive regulation proposals for rate-of-return carriers); *Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC 01-132 (rel. Apr. 27, 2001), at para. 97 (seeking comment on replacing interstate access charges with a bill-and-keep regime).

<sup>4</sup> For example, questions surrounding the basis on which rural LECs should receive federal high-cost universal service support are before the Federal-State Joint Board on Universal Service. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 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 (Jt. Bd. rel. Feb. 7, 2003) (Joint Board Notice); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 02-307 (rel. Nov. 8, 2002) (referring issues to Joint Board).

universal service support based on actual ILEC costs anti-competitive, Petition at 17-18, 31-36. In fact, the Communications Act of 1934, as amended (“Communications Act”), seeks to render federal universal service support consistent with the development of competition in markets that can sustain multiple carriers. The Communications Act makes clear, however, that universal service is a goal independent of local competition and, in areas where the two policies may conflict, that universal service takes precedence.

Any reform of universal service mechanisms does not require the radical surgery that Western Wireless proposes. Rather, CenturyTel has proposed a discrete set of targeted reforms to strengthen safeguards on federal universal service support mechanisms that could bring the program back into proper proportion and eliminate “gaming” of the process for obtaining universal service support perpetrated by the wireless industry. CenturyTel urges the Commission to deny Western Wireless’s petition and implement the reforms of the designation process for competitive eligible telecommunications carriers (“CETCs”) advocated by CenturyTel in CC Docket No. 96-45.

Finally, CenturyTel believes that, while rate-of-return regulation best serves the needs of many customers and carriers in rural America, the Commission can and should establish reasonable optional alternatives for the limited number of rural carriers that could operate successfully under such alternative regulation. CenturyTel has proposed a discrete set of reforms that it believes would advance the public interest by allowing additional rural carriers to elect price caps in areas where it makes sense for them to do so.

## **II. Rate-Of-Return Regulation Best Serves the Needs of Many Parts of Rural America**

Western Wireless argues that the Commission should eliminate rate-of-return regulation, essentially for three reasons: that it somehow precludes the development of competition in areas served by rate-of-return carriers; that it promotes allegedly inefficient

carrier operations; and that it unnecessarily expands the size of federal universal service funding mechanisms. Ironically, this last charge has been frequently leveled at Western Wireless and other CETCs that *refuse* to have their costs examined according to rate-of-return principles and instead seek support based on the costs of their competitors, despite the fact that the incumbent local exchange carrier (“ILEC”) generally provides a higher level of service quality. None of these three allegations can withstand scrutiny, and none supports the elimination of rate-of-return regulation.

To the contrary, the elimination of rate-of-return regulation would disserve the public interest. For decades, rate-of-return regulation has been a vital core component of Commission policies that have promoted and achieved reliable, high-quality, ubiquitous telecommunications services in rural America. Far from constituting a threat, when applied to many carriers, rate-of-return regulation serves Commission policy goals better than any other form of regulation the industry or regulators have been able to identify.

**A. Rate-of-Return Regulation Does Not Inhibit the Development of Competition or Impede Innovation in Local Telecommunications Markets**

In its Petition, Western Wireless disingenuously states that rate-of-return regulation has been a means of giving small ILECs “immunity from marketplace forces.” Petition at 3. Especially coming from a company that has, as the focus of its business strategy, the targeting of the areas receiving the highest levels of universal service support, this is a vacuous argument.<sup>5</sup> The reality is that facilities-based competitive local exchange carriers

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<sup>5</sup> Although its concern is touching, in the event Western Wireless truly believed its own alternate argument that rate-of-return regulation inhibits innovation by rural ILECs, *e.g.*, Petition at 23, it remains a mystery why Western Wireless would complain to the Commission of this belief rather than exploiting this perceived market opportunity with its new-found federal support dollars.

(“CLECs”) are doing well in markets served by rate-of-return carriers, even without CETC status.

While rate-of-return regulation is intended to offer carriers a *reasonable opportunity* to recover their costs, plus the authorized rate of return, it does not provide any guarantee of such recovery. In fact, as competition develops, carrier earnings may erode, even under rate-of-return regulation, if a competitor without similar regulatory obligations enters the market. Further, consumer demands for new and improved services, as well as the equipment and technology needed to deliver these services, are evolving rapidly, and incumbents and competitors alike often rush to meet these demands. These trends, in turn, dampen demand for the ILEC’s existing services. For example, for the first time in modern memory, both line counts and access minutes of use have shown negative growth over the past several years, as customers turn to wireless services, broadband, and other alternatives to switched telecommunications services to meet their needs.

Even if an ILEC has an opportunity to raise rates on its traditional switched voice services in an attempt to maintain its rate of return, these higher rates simply increase its exposure to competitive losses and hasten the transition to newer service offerings. As the Commission has explained, “rate-of-return carriers are not insulated from competitive pressures. High per-minute charges may place them at a disadvantage in competing with new market entrants . . . .”<sup>6</sup> Thus, ILECs must make network planning and investment decisions based on the demands of the markets they serve, and not to exploit particular systems of rate regulation.

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<sup>6</sup> *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket

## **B. Irrational Exuberance in Certifying CETCs, and Not Support for Rate-of-Return ILECs, Poses the Greatest Threat to Universal Service Funding Mechanisms**

Contrary to Western Wireless's allegations, Petition at 24, rate-of-return principles do not threaten universal service today. To the contrary, imprudent certification of CETCs has caused rapid increases in the size of federal universal service mechanisms with little resulting benefit to the public. Today, state commissions and this Commission have certified scores of CETCs to receive federal universal service support, often without undertaking any substantial review of whether these CETCs will use their new-found federal support to provide the public with improved or more affordable services. In many cases, wireless carriers such as Western Wireless seek certification to receive federal support for garden-variety commercial mobile radio service ("CMRS") that: (1) they have long been providing to the public without support; (2) CMRS subscribers are already purchasing at unsupported market rates, often as a mobile supplement to their wireline service; and (3) will continue to be available at the same rates, even with federal support. In such a case, the public receives little value in exchange for the expenditure of scarce federal universal service resources yet, from its parochial perspective, the state commission charged with evaluating CETC applications may see little downside to a decision that diverts federal dollars to in-state businesses.

### **1. The Commission Should Preserve and Advance Universal Service by Adopting Stricter Controls on Eligibility for Federal Universal Service Support**

The Commission's liberal ETC certification rules, as interpreted by state commissions hungry for federal support dollars, constitute the greatest threat to federal universal service mechanisms today. As a result of lax safeguards on ETC certification, CETCs will

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No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 (2001), at para. 6.

receive over \$41 million in federal support for roughly 120 service areas in the first quarter of 2004 alone, and USAC has identified an additional \$4.8 million in demand for quarterly support from newly-certified CETCs that have not yet completed USAC administrative processes.<sup>7</sup> This figure, which represents roughly five percent of all federal high cost support, is up from virtually zero only a few years ago, and is expected to continue to escalate at an increasing rate, as additional CMRS carriers seek support.

Moreover, the Commission's present compliance certification requirement constitutes little or no deterrent to CETC abuses. The rule, which in many cases requires a CETC merely to self-certify that it will use federal support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended," 47 U.S.C. § 254(e), and requires no investigation as to what actual uses the CETC makes of the support, fails to provide adequate protection against CETC abuses and, owing to its vagueness, would provide the Commission with little support for an enforcement proceeding based on any misrepresentation.

To preserve and advance universal service, CenturyTel therefore recommends that the Commission adopt rules to require that all eligible telecommunications carriers adhere to the same reporting, service quality, and service capability requirements, as follows:

- The states (or the Commission in the case of applications under 47 U.S.C. § 214(e)(5)) should require CETCs to serve the ILEC's entire study area in order to receive the same per-line support as the ILEC;
- All ETCs should be required to provide the same minimum level of service (service quality, reliability, network support, customer service, and coverage) to all customers as a condition of receiving support (based on what the state requires of the carrier-of-last-resort or the ILEC serving the area);

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<sup>7</sup> Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter 2004 (filed Oct. 31, 2003), at 9 and Appendix HC01.

- All ETCs should be required to make available the same basic “universal service” calling plan to customers for whom the carriers receive support (such as the availability of basic dial-tone at a specified rate, flat-rated local calling for a minimum number of minutes within a specified area, free incoming calls, and similar state requirements);
- All decisions to grant CETC designations and rural service area redefinitions should be accompanied by a cost-benefit analysis demonstrating that the state (or the FCC) finds that the grant will result in a net benefit in the protection and advancement of universal service to the public;
- All ETCs should be required to demonstrate in their annual §54.314 certification<sup>8</sup> that they are using federal high-cost support to invest in network facilities and the advancement of universal service in the area intended to be covered by the support; and
- All ETCs should bear the same reporting requirements to the FCC or the state, to demonstrate compliance with the above conditions, and the FCC assume oversight responsibilities to enforce these conditions.<sup>9</sup>

With competitively-neutral ETC certification criteria such as these in place, the Commission would take great strides in preserving and advancing rural universal service without the types of precipitous, disruptive, and anti-consumer changes Western Wireless advocates. Such meaningful safeguards would substantially cut growth in the size of federal high cost support mechanisms and ensure that recipients in fact use federal support dollars to advance the Commission’s universal service goals.

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<sup>8</sup> The FCC requires the states (and federally-approved CETCs) annually to certify that support is being used for the purpose for which it is intended, and the state commissions, in turn, require state-approved CETCs to so certify to them. *See* 47 C.F.R. §54.314.

<sup>9</sup> *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, CenturyTel, Inc., Citizens Communications, Iowa Telecommunications Services, Inc. d/b/a/ Iowa Telecom, Matanuska telephone Association, TDS Telecom, TXU Communications Telephone Company, Fort Bend Telephone Company, and Valor Telecommunications *Ex Parte* Communication Concerning Highland Cellular and Virginia Cellular ETC Designation Petitions (filed Nov. 18, 2003) (“*Midsized Carrier ETC Certification Ex Parte*”) at 5.

## 2. Embedded Costs and Rate-of-Return Principles Should Continue to Govern Federal Universal Service Support

Contrary to Western Wireless's arguments, Petition at 24-25, a shift to a universal service support mechanism based on forward-looking costs poses a far greater threat to rural universal service than do any perceived incentives created by the use of embedded costs and rate-of-return principles. *First*, while wireless networks can be constructed and operated more quickly and more cheaply than wireline networks,<sup>10</sup> it is widely recognized that wireless networks provide significantly inferior service.<sup>11</sup> Further, in rural areas, as a result of sparse populations with below-average disposable income, long distances, rugged terrain, low line density, and other factors, rural demand for services is thin and costs are high, no matter what measure is used.<sup>12</sup> Because investment in new services in rural areas is therefore inherently more risky than comparable investments in urban areas, investors measuring a project on a forward-looking basis will demand a correspondingly higher return on those investments, driving up even forward-looking costs.

*Second*, because investments in rural telecommunications are riskier than those made by larger carriers or in more urban areas, it is critical that the Commission's efforts to preserve and enhance universal service create the greatest possible amount of certainty and predictability surrounding rural investments. Rate-of-return mechanisms are well understood by carriers and investors alike. Over and above the other benefits of rate-of-return regulation,

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<sup>10</sup> *Promotion of Competitive Networks in Local Telecommunications Markets*, Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99-217, and Third Further Notice of Proposed Rulemaking in CC Docket No 96-98, 14 FCC Rcd 12673 (1999).

<sup>11</sup> See Section II.B.4., below.

<sup>12</sup> See, e.g., *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Rural Task Force White Paper No. 2, The Rural Difference (Rural Task Force Jan. 2000).

therefore, this form of regulation allows stability and predictability that support based on forward-looking costs could not.

In contrast, Western Wireless's proposal seems primarily designed to reduce universal service support for rural areas, without regard for whether these support levels would allow incumbents to continue to provide the only high-quality, reliable, affordable services available in many rural areas today and without explaining how it would address the consequences of such a precipitous change. The Commission's forward-looking mechanism, if applied to rural carriers, produces erratic results and fails to meet the criteria the Commission has established in the Universal Service proceeding for evaluating the performance of forward-looking cost models. The Rural Task Force found that it significantly underestimated the number of lines and the physical size of the area to be served, the inside and outside plant needed to provide that service, and the cost of doing so. As a result, the non-rural carrier mechanism would reduce rural carrier support by over \$1 billion, from roughly \$1.5 billion to less than \$0.5 billion.<sup>13</sup>

In fact, Western Wireless offers few details of how its proposed forward-looking cost mechanism would work at all. To the extent that a forward-looking support mechanism creates the risk of substantial reductions in universal service support (a result that would be all but assured under Western Wireless's proposal to base support on the lesser of the forward-

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<sup>13</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Rural Task Force White Paper No. 4, A Review of the FCC's Non-Rural Universal Service Fund Method and the Synthesis Model for Rural Telephone Companies (Rural Task Force Sept. 2000), at 8-10.

looking cost wireline and wireless technology), however, investors are likely to reevaluate their willingness to invest in telecommunications in rural America, with dire consequences.<sup>14</sup>

Finally, as a practical matter, the Commission lacks the tools necessary to establish a forward-looking universal service support mechanism for rural telephone companies of the type Western Wireless advocates. The Commission has already concluded that existing cost models in use for non-rural carriers do not produce reliable results when applied to rural telephone companies, *e.g.*, *Rural Task Force Order* at paras. 175-77, and, in any event, the Commission has never undertaken the task of formally comparing the forward-looking costs of wireline and wireless technologies to serve any location, whether rural or non-rural under the Communications Act. Moreover, it is far from clear that such a comparison would provide any meaningful results. As discussed below, CMRS service today falls far short of wireline in terms of service quality and reliability, and fails to reach an acceptable standard for meeting the critical communications needs of customers that have the right to depend on access to communications networks, especially in times of emergency.

### **3. Rate-of-Return Carriers Are Not Systematically Defrauding the Federal Universal Service Fund**

In a transparent attempt to deflect attention from the questionable practices of Western Wireless and other CMRS carriers seeking access to federal universal service funds, while offering inferior services, Western Wireless claims in its Petition that rate-of-return

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<sup>14</sup> For many years, Wall Street analysts have shown considerable interest in potential changes in, and threats to, federal universal service support in rural areas, making clear that this topic is of critical importance to investors' evaluation of rural carriers' prospects for success. *See, e.g.*, Legg Mason Equity Research, *Reshaping Rural Telephone Markets: Financial Perspectives on Integrating Acquired Access Lines* (Fall, 2001), at 130 (highlighting role of universal service in support investment in rural areas), 177 (highlighting adequacy of universal service support levels in investor valuation of rural carrier transactions).

regulation generates opportunities for “waste, fraud and abuse” that could improperly inflate the size of federal universal service funding mechanisms. Petition at 26-31. Western Wireless fails, however, to offer any convincing evidence of systematic wrongdoing by rate-of-return carriers. Of eight purported examples of “cross-subsidization and other improper accounting practices” caused by rate-of-return regulation, Petition at 27-28, four involve Qwest and Verizon – BOCs operating under federal price cap regulation. Another example involved actions by Roseville Telephone Company, a non-rural carrier that receives no federal universal service support other than a small amount of Long Term Support. Most of the remaining purported “examples” stem from a series of investigations by the Kansas Corporation Commission that Western Wireless concedes generated “no detailed findings and conclusions,” Petition, Attachment A, at 4. The remaining few cases hardly constitute evidence of any systematic problem that would justify the upheaval caused by a complete overhaul of federal rate regulation and universal service mechanisms governing rural telephone companies.

In contrast, Western Wireless and other CMRS carriers are routinely raiding federal universal service mechanisms whenever they are able to exploit state commissions with “loose” policies toward certifying CETCs. While CMRS carriers routinely prosecute applications for CETC status in states where they are able to receive certification free from any commitments as to service quality levels, they also have withdrawn applications in states that show significant interest in adopting non-discriminatory service quality, calling plan (such as free incoming calls, minimum local usage, flat-rate local calling, and others), network reliability, customer service, or other requirements.<sup>15</sup>

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<sup>15</sup> For example, ALLTEL recently withdrew its application for certification as a CETC in South Carolina and agreed further not to file another application for one year. *See* Letter from

#### **4. Wireless Technology Today Cannot Provide Adequately Reliable Universal Service**

The Commission should reject as improvident Western Wireless's suggestion to base federal universal service support on the lesser of the forward-looking cost of ILEC network technology or the forward-looking cost of wireless network technology. Western Wireless asserts that such a change would reduce universal service support by nearly one-half. Petition at 35-36. Assuming Western Wireless is correct then, by definition, federal support would be insufficient to meet even the forward-looking cost of wireline technology in rural areas and providers of rural telecommunications would therefore be unable to offer affordable wireline service.

The Commission should not force rural Americans to accept wireless technology as their only telecommunications choice. Today's ubiquitous wireline telecommunications networks provide high-quality, reliable telecommunications services that are the envy of the world. The United States is a world leader in teledensity (*i.e.*, number of telephones per person), as a direct result of the Commission's policies promoting universal service.<sup>16</sup> It would represent a tremendous leap backwards for the Commission to limit future support only to wireless technology that has proven to provide less reliable, less capable, and inferior quality service.

A series of reports from the General Accounting Office ("GAO") during 2003 found significant wireless service quality problems that would preclude the Commission from taking this action consistent with its universal service goals. Universal service ensures that all

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Robert D. Coble to Bruce F. Duke, Deputy Executive Director of the South Carolina Public Service Commission, dated Nov. 6, 2003; Motion to Withdraw Application filed by ALLTEL Communications, Inc. dated Oct. 29, 2003.

<sup>16</sup> International Telecommunications Union data (available at [http://www.itu.int/itudoc/itu-com3/focus/72404\\_v7.xls](http://www.itu.int/itudoc/itu-com3/focus/72404_v7.xls)) (The United States has roughly 70 main telephone lines per 100 people, one of the highest teledensities in the world).

Americans have access to a telephone to meet critical life, health, public safety, and personal welfare needs. Yet, as a result of its own survey, the GAO found substantial CMRS service quality problems, including large numbers of CMRS users that suffer from a lack of signal coverage, insufficient network capacity, dropped calls, or poor sound quality.<sup>17</sup> Furthermore, and even more recently, the GAO found that wireless enhanced 911 service, which would provide the location of a CMRS user calling 911, will not be fully implemented for years.<sup>18</sup> Indeed, the GAO found that only 18 percent of public safety answering points (PSAPs) are receiving Phase II location information today, and that implementation will remain piecemeal for the foreseeable future.<sup>19</sup> Perhaps most troubling, as has been repeatedly demonstrated during the terrorist attacks of September 11, 2001, the more recent northeast power blackout, the landfall of Hurricane Isabel on the Atlantic seaboard, and other disasters, members of the public cannot count on the availability of CMRS service when they are likely to need it most.<sup>20</sup>

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<sup>17</sup> General Accounting Office, *FCC Should Include Call Quality in Its Annual Report on Competition in Mobile Phone Services*, GAO-03-501 (Apr. 2003) at 28-29.

<sup>18</sup> General Accounting Office, *Uneven Implementation of Wireless Enhanced 911 Raises Prospect of Piecemeal Availability for Years to Come*, GAO 04-55 (Nov. 2003) at 4.

<sup>19</sup> *Id.*

<sup>20</sup> See, e.g., Stern, Christopher and Yuki Noguchi, *Traditional Phones Gain New Respect; Power Failures Cut Cell Signals*, THE WASHINGTON POST, (Sept. 20, 2003), at E1; Dalton, Richard J., Jr., *They Didn't Answer the Call; Flaws in Cell Phones Revealed in Power Blackout*, NEWSDAY (Aug. 24, 2003), at A8 (During major power blackout, “[l]ess than two years after the cellular network faltered following the Sept. 11, 2001, terrorist attacks, the cellular system – which the wireless industry promotes as a safety net during emergencies – choked again . . . . **Industry executives question whether it’s worth investing substantial capital into the system to prevent service problems during a major power failure. . . .**”) (emphasis added); *Telecom Companies Weather Terrorist Attacks*, Communications Daily (Sept. 12, 2001), at 1 (On CMRS networks nationwide, “blocked calls . . . were running 6-9% Tues. [Sept. 11] . . . . However, in lower Manhattan, rate of blocked calls was closer to 100%”).

### **III. Properly-Constructed Optional Alternatives to Rate-of-Return Regulation Would Benefit Rural America**

While CenturyTel firmly believes that rate-of-return regulation best meets the needs of many customers and carriers in rural America, CenturyTel has long championed industry and Commission efforts to find realistic optional alternatives to rate-of-return regulation for rural carriers that could operate successfully under such alternative regulation. CenturyTel therefore disagrees with many of the assumptions apparently underlying Western Wireless's petition, specifically including:

- (1) That rate-of-return carriers are not open to alternative forms of regulation and seek only to exclude competitors and establish protected monopoly status; and
- (2) That federal universal service mechanisms are a tool for promoting the development of local telecommunications competition.

Before commenting more specifically on Western Wireless's proposals, CenturyTel takes this opportunity to correct the record on these points.

#### **A. CenturyTel Believes that Realistic Optional Alternatives to Rate-of-Return Regulation Could Advance the Public Interest**

Rural telephone companies today face unprecedented challenges in responding to seismic shifts in the legal and competitive landscape, technology, and customer demands for products and services. Legal and regulatory barriers to entry have fallen and competitors are now entering markets served by rural telephone companies nationwide.<sup>21</sup> CLECs, cable system

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<sup>21</sup> Congressional protections designed to safeguard universal service in rural areas, such as the rural exemption contained in Section 251(f) and the more rigorous showing required in Section 214(e)(2) for competitors to become certified to receive federal universal service support, have not been enforced with adequate vigor. CenturyTel has called repeatedly on the Commission to strengthen safeguards in this area to ensure that such competition truly serves the public interest, rather than the interests of investors in CLECs and CMRS carriers that boost profits by aggressively seeking windfall universal service support payments. *See, e.g., Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, CenturyTel, Inc.

operators, CMRS carriers such as Western Wireless, satellite providers, and others all provide services that consumers can substitute for those of the ILEC. As a result, growth in line counts and access minutes of use has turned flat or negative in recent years, a trend that is expected to continue.<sup>22</sup>

Technological advancements now make it possible for even small start-up companies to offer new and innovative services that compete with or go beyond the capabilities of the incumbent's circuit-switched network. VOIP offerings, broadband Internet access and data services, mobile voice and data services such as wireless Internet access, Blackberry-type email and data offerings, wi-fi-based services, and others all siphon traffic from the PSTN. To meet market and regulatory demands, ILECs must continue to invest heavily in new equipment and service offerings. These services, in turn, may quickly be supplanted in the future. At the same time, CenturyTel has been required to invest substantial amounts in software and facilities upgrades to meet legally-mandated requirements such as local number portability, CALEA, E-911 service, network element unbundling, and equal access, regardless of whether competitors have the same obligations (and they often do not), or whether customer demand justifies the expenditures.

CenturyTel, however, does not believe that it would serve the public interest to eliminate rate-of-return regulation as an option. Rather, CenturyTel has sought realistic

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*Ex Parte* Communication Concerning Highland Cellular and Virginia Cellular ETC Designation Petitions (filed Nov. 18, 2003).

<sup>22</sup> See, e.g., *Local Telephone Competition: Status as of June 30, 2003* (Ind. Analysis and Tech. Div., Wireline Comp. Bur. rel. Dec. 22, 2003) at Table 1 (ILEC lines in decline since at least December 1999, when data collection began, and total lines – ILEC and CLEC – in decline since December 2000); *Trends in Telephone Service*, (Ind. Analysis and Tech. Div., Wireline Comp. Bur. rel. Aug. 7, 2003), at Table 10.3 (showing decline in interstate switched access minutes from 567.0 billion in 2000 to 486.0 billion in 2002).

alternatives to rate of return regulation for many of its operating companies – options that would allow CenturyTel to respond to competition and offer the kinds of bundled service offerings its competitors already have brought to market. CenturyTel has spent considerable time and effort examining a host of possible optional alternatives to rate-of-return regulation for independent carriers, both in consultation with other industry members and independently.<sup>23</sup>

To help meet the needs of other ILECs currently under rate-of-return regulation – those with the size or scope of service offerings to operate successfully under an alternative form of regulation – CenturyTel proposed, over a year ago, that the Commission modify its rules to permit rate-of-return carriers to elect incentive regulation that reflects the needs of rural service areas and carriers on a study area basis. Key elements of CenturyTel’s proposal include:

- Elimination of the price cap “all-or-nothing” rules to allow individual rate-of-return carrier study areas to elect price caps;
- Reduction of average traffic-sensitive (“ATS”) interstate access rates for electing carriers to levels approaching those in effect for larger price cap carriers, including a rate of \$0.0125 per minute for carriers that serve less than 15 lines per square mile at the holding company level and \$0.0095 for others;
- Creation of new universal service support to facilitate these rate reductions without causing end-user rate shock; and
- Elimination of the “all-or-nothing” rule governing participation in the NECA common line pool to allow carriers to remove study areas electing price caps from the pool while leaving others in the pool.<sup>24</sup>

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<sup>23</sup> See, e.g., *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers*, CC Docket No. 00-256, *Ex Parte* Presentation of CenturyTel, Inc. (filed Dec. 23, 2002) (“*CenturyTel Alternative Regulation Proposal*”); *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers*, CC Docket No. 00-256, Comments of ALLTEL Communications, Inc., CenturyTel, Inc., Madison River Communications, Inc., and TDS Telecommunications Corporation (filed Feb. 14, 2002).

<sup>24</sup> See *CenturyTel Alternative Regulation Proposal* at 2-4. CenturyTel has now waited for over one year for the Commission to seek public comment on its proposal. CenturyTel once again takes this opportunity to urge the Commission quickly to do so.

The Commission has not yet ruled on CenturyTel’s proposal, nor even sought comment on it. CenturyTel, however, believes its proposal is consistent with Commission policies favoring rate structures appropriate for a competitive environment without diminishing service to high-cost areas. While CenturyTel would welcome Commission action to give rate-of-return carriers additional regulatory options, it disagrees in the strongest terms with Western Wireless’s proposal to make price caps mandatory for all areas. As discussed in greater detail below, CenturyTel’s experience demonstrates that price cap regulation would disserve the public interest if applied on a mandatory basis to all areas of the country.

**B. Federal Universal Service Mechanisms Must Promote Universal Service and Do Not, Themselves, Constitute Tools for Promoting Local Competition**

**1. Universal Service and Local Competition are Independent Means for Promoting the Availability of Affordable, High-Quality Telecommunications Services to All Americans**

The Commission’s primary statutory charge under the Communications Act is to bring high-quality, affordable telecommunications services to all Americans.<sup>25</sup> The 1996 Act articulated two primary means of advancing that goal: the preservation and advancement of universal service and the opening of local telecommunications markets to competition. In markets that can sustain multiple competitors, the advent of competition to provide local telecommunications services has the potential to bring consumers well-recognized benefits, including lower prices and innovative new service offerings. To ensure that universal service is sustainable as competition develops, the Commission has, since 1996, worked assiduously to render explicit any universal service support that formerly was implicit in interstate access

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<sup>25</sup> See 47 U.S.C. §§ 151 (Commission established “to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communications service with adequate facilities at reasonable charges . . .”).

charges and encouraged state commissions to do the same with respect to their local rate designs.<sup>26</sup>

Contrary to Western Wireless's apparent assumptions, universal service support emphatically is not intended to promote the advancement of local competition, nor is local competition simply a goal to be pursued for its own sake. Rather, competition and universal service are two independent statutory means through which the Commission must ensure that all Americans have access to affordable, high-quality telecommunications services. The universal service mechanisms required by the Communications Act do not have competition as their goal; rather they are intended to be sustainable to the greatest extent possible despite the development of competition, and competition is barred to the extent that they are not.<sup>27</sup>

Western Wireless's proposal to move to a universal service support mechanism based on forward-looking cost of the lowest-cost technology, see Petition at 35, and to require local rates to be above a particular benchmark as a condition of receiving support, is inconsistent with the Commission's statutory mandate. Such changes would undoubtedly make it easier for Western Wireless to compete against ILECs that would be forced to raise local rates as a result, but this is hardly a public interest goal of the Commission or of Congress. Changes like these would undermine the Commission's universal service goals by severely impairing the ability of

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<sup>26</sup> See, e.g., *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, FCC 03-249, at para. 64 (establishing new cost benchmark, above which federal universal service support is available), 70-71 (concluding that, while Section 254 does not require the Commission to induce all states immediately to remove implicit subsidies, but instituting a rate comparability review to track degree to which states achieve reasonable comparability of rates nationwide).

<sup>27</sup> See, e.g., 47 U.S.C. § 251(f)(1)(A) (rural telephone companies exempt from ILEC-specific interconnection requirements until state commission determines that, *inter alia*, compliance is consistent with the universal service provisions of Section 254).

the only carriers with ubiquitous, reliable, local rural networks to provide affordable service. They therefore would conflict with the Commission's statutory mandate to ensure that universal service support is sufficient to achieve the goals of the statute. 47 U.S.C. § 254(e).

CenturyTel believes that the "alternatives" Western Wireless offers are designed primarily to divert still more federal universal service funds to its own shareholders, and away from their intended use to provide services to rural Americans, rather than to serve any overarching public interest goal of the Commission. Western Wireless cherry-picks state commissions that are willing to certify it to receive federal universal service support without imposing on it any obligations that would truly ensure that Western Wireless advances the Commission's universal goals, and its proposals merely seek to cement in place its ability to do so in other states in the future. Western Wireless repeatedly has rejected state and Commission efforts to more closely monitor its use of federal universal service support, leaving it free to use that support to benefit shareholders, not customers in its service areas. If Western Wireless has pro-competitive and universal service goals in mind, it should explain, for example, why these goals would be served by (1) raising local rates, an action that would have no direct impact on federal universal service support levels, and (2) continuing to subject rural ILECs uniquely to state regulation of rates, carrier of last resort obligations, and other costly burdens, while Western Wireless cream-skims the customers it desires while avoiding obligations to provide truly universal service.

Finally, Congress recognized that the pursuit of local competition might in some cases, particularly in rural markets served by smaller carriers, be in tension with the

Commission's universal service mandate.<sup>28</sup> In that event, Congress made clear that the preservation and advancement of universal service is paramount. As the 1996 Act recognizes, not all local telecommunications markets can or should support multiple competitors. *See* 47 U.S.C. §§ 214(e)(2) (state commissions must make specific additional findings when designating ETCs in rural markets), 214(e)(5) (for rural carrier, CETC service area defaults to study area, absent public interest finding), 251(f)(1-2) (rural and two percent carriers treated specially under local competition statute), 254 (Commission must preserve and advance universal service; portability of support limited to carriers eligible under Section 241(e)). Western Wireless misleadingly mixes the goals of universal service and competition; the Communications Act treats each distinctly.

Importantly, while Section 254 enumerates an evolving and ambitious list of universal service objectives, *e.g.*, 47 U.S.C. §§254(b)(1-7), 254(e), nowhere does it state that the development of local competition is a universal service goal. Indeed, in conditioning the full implementation of Section 251 for rural telephone companies on a state commission finding that such action is consistent with the universal service mandates of Section 254, and in requiring state commissions to conduct a more rigorous analysis before designating CETCs in areas served by rural telephone companies, 47 U.S.C. § 214(e), Congress acknowledged that unrestricted competition might not produce reliable, affordable, high-quality universal service in high-cost,

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<sup>28</sup> *See, e.g.*, 47 U.S.C. §§ 214(e)(2) (establishing standards for the designation of CETCs in areas served by rural telephone companies different from those for areas served by non-rural telephone companies), 251(f)(1) (creating exemption from certain interconnection obligations for rural telephone companies, and allowing a state to lift the exemption only if, among other criteria, it determines that such action is *consistent with the universal service mandates of Section 254*), 251(f)(2) (allowing carriers serving fewer than two percent of the nation's access lines to petition state commissions for suspension or modification of certain interconnection obligations).

often sparsely-populated areas. Western Wireless cannot “wish” these principles away or “hide-the-ball” in an attempt to divert attention away from this primary universal service public policy goal.

**2. For the Good of Consumers, the Commission Should Establish that All Eligible Telecommunications Carriers Must Meet the Same Eligibility Criteria for Federal Universal Service Support**

Because federal universal service mechanisms are not intended as tools for promoting local competition, the Commission should cease, even today, treating them as such. Today, rural ILECs receive federal support for network investment months or years after they make it, and must thoroughly document such investments in cost studies submitted to the Commission and to the Universal Service Administrative Company (USAC). CETCs, in contrast, are eligible for support immediately after being certified, and need not make any particular showing of their costs, whether they are higher or lower than those of the ILEC on whose costs their support is based. Indeed, Western Wireless essentially concedes in its Petition that its costs are substantially below those of rural ILECs, Petition at 34. Given this admission, it has now become absolutely clear that federal universal service dollars are wasted on Western Wireless.

CenturyTel has advocated a limited set of reforms to the CETC designation process narrowly tailored to ensure that rates for service in rural areas remain both affordable and reasonably comparable to those in urban areas, even when provided by CETCs.<sup>29</sup> Instead of radically altering the entire regulatory framework that has served rural consumers admirably, CenturyTel advocates simply holding all ETCs to comparable standards, *see* Sec. II(B)(1),

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<sup>29</sup> *See, e.g., Midsize Carrier ETC Certification Ex Parte* at 5.

above. In this way, the Commission may be assured that recipients use support for the purpose for which it is intended, rather than only paying lip service to universal service principles.

#### **IV. Conclusion**

For the foregoing reasons, CenturyTel urges the Commission to deny Western Wireless's Petition forthwith. Rate-of-return regulation continues to play a critical part for small and rural carriers across the nation. To eliminate it precipitously would threaten the ability of these carriers to continue to provide affordable high-quality telecommunications services across to all Americans. Rather, the Commission should modify its price cap rules to provide reasonable optional alternatives for rural carriers that could operate successfully under such alternative regulation, and make appropriate reforms in the CETC designation process in the pending universal service rulemaking.

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

January 16, 2004

Respectfully submitted,  
CENTURYTEL, INC.

/s/ Karen Brinkmann  
Karen Brinkmann  
LATHAM & WATKINS LLP  
Suite 1000  
555 Eleventh Street, N.W.  
Washington, D.C. 20004  
(202) 637-2200

*Its attorney*