

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
ALLTEL Communications, Inc.)	DA 03-4112
)	
Petition for Consent to Redefine the Service)	
Areas of Rural Telephone Companies)	
In the State of Michigan)	

**REPLY COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS COMPANIES**

I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these reply comments in response to the proceeding on the ALLTEL Communications, Inc. petition requesting FCC concurrence with the Michigan Public Service Commission's (Michigan PSC) proposal to redefine the service areas of seven Michigan rural telephone companies.¹ OPASTCO is a national trade association representing more than 550 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 3.5 million customers. All of OPASTCO's members are rural telephone companies as

¹*The Wireline Competition Bureau Seeks Comment on ALLTEL's Petition to Redefine Rural Telephone Company Service Areas in the State of Michigan*, CC Docket No. 96-45, Public Notice, DA 03-4112 (rel. Dec. 30, 2003).

defined in 47 U.S.C. §153(37). In addition, they are all eligible telecommunications carriers (ETCs) in their respective service areas.

OPASTCO agrees with commenters who have urged the Commission to stay consideration of ALLTEL's petition pending the resolution of the proceeding that is considering changes to the Commission's rules relating to high-cost support in competitive study areas as well as the process for designating ETCs. However, if the Commission deems it necessary to address ALLTEL's petition prior to the resolution of this related proceeding, then it should reject the Michigan PSC's proposal to fragment the seven rural ILEC study areas, since the petition fails to provide a compelling rationale for such an action.

II. COMMENTS

On February 7, 2003, the Federal-State Joint Board on Universal Service (Joint Board) issued a Public Notice which sought comment on numerous competitive universal service issues.² These issues include the methodology for calculating support in competitive study areas, the process for designating additional ETCs, and the factors that should be considered "when determining whether the designation of a competitive ETC below the study area level is in the public interest."³ Comments and reply comments have been filed in this proceeding, and the Joint Board conducted a hearing on these issues on July 31, 2003. It is quite possible that, as a result of this proceeding, there will be significant changes in the way in which competitive ETCs are designated, and in the level of support that they receive.

² *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*, CC Docket No. 96-45, Public Notice, 18 FCC Rcd 1941 (2003) (Joint Board Portability Public Notice).

³ Joint Board Portability Public Notice, 18 FCC Rcd 1956-1957, para. 35.

CenturyTel, Inc. (CenturyTel) has recommended that until the issues being considered in the Joint Board Portability Public Notice are resolved, the Commission should stay consideration of the proposed service area redefinition addressed in ALLTEL's petition.⁴ While key policies related to ETC designations are currently under review, it remains unclear how the Commission should evaluate whether or not the Michigan PSC's proposed redefinition of multiple rural telephone company service areas would serve the public interest. Thus, a stay on the review of ALLTEL's petition is the most reasonable approach for the FCC to take at this time.

However, if the Commission deems it necessary to address ALLTEL's petition prior to the resolution of the portability proceeding, then it should reject the Michigan PSC's proposal to fragment the seven rural telephone company study areas, since the petition fails to provide a compelling rationale for such an action. Service area redefinitions are not a required component of the Michigan PSC's designation of ALLTEL as an ETC, as claimed in the petition.⁵ Moreover, the redefinition of the seven rural service areas so as to facilitate financially supported competition distorts the intended purposes of the High-Cost universal service program.

⁴ CenturyTel, Inc. Comments, pp. 8-9. Similar recommendations have been made in relation to the Commission's consideration of service area redefinitions for rural telephone companies in both Minnesota and Wisconsin. See, CenturyTel, Inc. Comments in CC Docket No. 96-45 (filed Aug. 26, 2003), pp. 7-8 and Comments in CC Docket No. 96-45 (filed Dec. 19, 2003), pp. 8-9; Citizens Telecommunications Company of Minnesota, Inc. and Frontier Communications of Minnesota, Inc. Comments in CC Docket No. 96-45 (filed Aug. 26, 2003), pp. 1-2, 6; Minnesota Independent Coalition Comments in CC Docket No. 96-45 (filed Aug. 26, 2003), pp. 10-11; OPASTCO Reply Comments in CC Docket No. 96-45 (filed Sept. 9, 2003), p. 3 and Reply Comments in CC Docket No. 96-45 (filed Jan. 5, 2004), p. 3; United States Telecom Association Comments in CC Docket No. 96-45 (filed Aug. 26, 2003), pp. 3-4; Wisconsin State Telecommunications Association-ILEC Division (WSTA) Comments in CC Docket No. 96-45 (filed Dec. 19, 2003), pp. 2-4.

⁵ *Petition of ALLTEL Communications, Inc. for Consent to Redefine the Service Areas of Rural Telephone Companies in the State of Michigan*, CC Docket No. 96-45, p. 2 (filed Dec. 17, 2003) (ALLTEL Petition).

In its petition, ALLTEL claims that it is unable to provide its universal service offerings throughout the entire service areas of the rural telephone companies addressed in the petition.⁶ As a result, the petition requests FCC concurrence with the Michigan PSC's proposal to redefine these service areas in a manner that conforms to the licensed service area of ALLTEL, so that the provisions of Section 214(e) of the Telecommunications Act of 1996 (the 1996 Act, the Act) would be met.⁷ This would require service area definitions at the wire center level.⁸

However, such an action is unnecessary since ALLTEL has the ability to provide service both inside and outside of its licensed service area, should it so choose.⁹ CenturyTel correctly indicates that ALLTEL can serve the entirety of the seven rural telephone company study areas – including those portions that extend beyond its licensed territory – through a combination of its own facilities, roaming agreements, and resale of other carriers' services, as permitted in Section 214(e)(1)(A) of the 1996 Act.¹⁰ Moreover, the FCC has previously noted that a wireless ETC could “supplement its facilities-based service with services provided via resale”¹¹ so as to extend service to those portions of a rural telephone company's study area not within the wireless carrier's license area.

⁶ ALLTEL Petition, p. 9

⁷ *Ibid.*, p. 3. Section 214(e)(1)(A) requires that in order for a carrier to be designated as an ETC, it must be able to offer all of the services supported by federal universal service support throughout the service area for which such designation is received.

⁸ *Id.*, pp. 5-6.

⁹ *See*, CenturyTel Comments, p. 7.

¹⁰ CenturyTel Comments, pp. 7-9.

¹¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8881-8882, para. 189 (1997).

Thus, it is clear that ALLTEL is not incapable of serving the segments of the seven rural study areas that fall outside of the area for which it has a wireless spectrum license. Rather, ALLTEL has simply made a business decision to deny service to these areas. It is entirely at odds with the principles of universal service to allow a competitive ETC to exercise a preference to ignore portions of a rural telephone company's study area that it deems unattractive or inconvenient to serve.

CenturyTel correctly notes that acceptance of the proposed redefinition would give ALLTEL a "strong incentive to serve only the lowest cost exchanges and to ignore the relatively high-cost exchanges."¹² It would also set a precedent for any future competitive ETCs that may be designated to target only those exchanges where the profit potential is greatest and the cost to serve is lowest, while ignoring the less lucrative, higher-cost exchanges.¹³ The ability of competitors to creamskim through the adoption of narrowly defined service areas does nothing to promote universal service. It only increases the cost of providing service to the remaining customers that only the incumbent has the obligation to serve. This, in turn, places at risk the incumbent's ability and incentive to continue investing in the infrastructure that brings high-quality services to these customers.¹⁴

Moreover, the Michigan PSC's decision to approve ALLTEL's application for ETC status for only the exchanges covered by its spectrum license¹⁵ was premature. In

¹² CenturyTel Comments, p. 4.

¹³ See, *Ibid.*, p. 5.

¹⁴ See, Stuart Polikoff, *Universal Service in Rural America: A Congressional Mandate at Risk*, OPASTCO, (January 2003), pp. 35-37 (OPASTCO White Paper).

¹⁵ *Michigan Public Service Commission, Application of ALLTEL Communications, Inc., for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e) of the Communications Act of 1934*, Case No. U-13765, pp. 13-16 (Sept. 11, 2003) (Michigan Decision).

the 1996 Act, Congress established a presumption that a rural telephone company's entire study area would be the area that a competitor would have to agree to serve before it could become eligible for universal service support.¹⁶ Thus, by designating ALLTEL as an ETC for only its licensed service area, prior to receiving FCC concurrence on the redefinition of the rural telephone company service areas, the Michigan PSC has put the cart before the horse.¹⁷

Ultimately, the fundamental flaw of both ALLTEL's petition and the Michigan PSC's ETC designation for ALLTEL is that they rest solely on vague generalities regarding the generic benefits of competition. Both presuppose that the designation of ALLTEL as an ETC and the alignment of the identified rural telephone company service areas with the cellular license area are in the public interest because they are "likely to promote competition."¹⁸ However, Congress did not intend for competition, in and of itself, to be used as the basis for designating additional ETCs in rural telephone company study areas or for facilitating their receipt of high-cost universal service support. As a result, if the Commission deems it necessary to act at this time, then it should reject the Michigan PSC's proposal to fragment the study areas of the seven rural telephone companies identified in the petition.

¹⁶ 47 U.S.C. § 214(e)(5).

¹⁷ *See*, Michigan Exchange Carrier Association Comments, pp. 4-5.

¹⁸ ALLTEL Petition, pp. 3, 6. *See also*, Michigan Decision, p. 11.

III. CONCLUSION

For the foregoing reasons, OPASTCO urges the Commission to stay consideration of ALLTEL's petition pending the resolution of the current proceeding that is considering changes to the Commission's rules relating to high-cost support in competitive study areas as well as the process for designating ETCs. However, if the Commission deems it necessary to address the petition prior to the resolution of this related proceeding, then it should reject the Michigan PSC's proposal to fragment the seven rural telephone company study areas, since the petition fails to provide a compelling rationale for such an action.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jeffrey W. Smith, hereby certify that a copy of the reply comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, on this, the 29th day of January, 2004, to those listed on the attached list.

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