Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers	)	CC Docket No. 00-256
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation	)	CC Docket No. 98-77
	)	
Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers	)	CC Docket No. 98-166

Reply Comments of CenturyTel, Inc.

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CenturyTel, Inc. ("CenturyTel"), through its attorneys, hereby offers the following Reply Comments on the Second Further Notice of Proposed Rulemaking ("Second Further Notice") issued in the above-captioned proceedings released February 26, 2004.[1]

I. INTRODUCTION AND SUMMARY

In response to the issuance of the Second Further Notice seeking comments on the merits of incentive regulation for rate-of-return carriers, CenturyTel submitted for the Commission's consideration a five year, optional incentive regulation plan in which rate-of-return carriers would be permitted to elect a modified form of price cap regulation by study area.[2] The

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1 *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 04-31 (Feb. 26, 2004) ("*MAG Order*").

2 Ex Parte Letter from Karen Brinkmann to Secretary Marlene Dortch in CC Docket No. 00-256, filed Dec. 23, 2002 ("CenturyTel Plan").

plan would eliminate the all-or-nothing rule in Section 61.41(c)(2) and (3) of the Commission's rules so that rate-of-return carriers acquiring price cap exchanges would not be required to convert to price cap regulation at the holding company level.[3] The CenturyTel Plan also would eliminate Section 61.41(b) of the Commission's rules, thereby permitting rate-of-return carriers to elect price cap regulation on a study area basis.[4] The average traffic-sensitive target rates under the plan would vary based on line density. The CenturyTel Plan would contain a low-end adjustment of 10.25% and would set the productivity factor equal to GDP-PI. Finally, the plan would permit a rate-of-return carrier to elect price cap regulation for some study areas and remove those study areas from the NECA pools, while leaving its other study areas in the NECA pools subject to rate-of-return regulation.

After more than a year of deliberation, on February 26, 2004, the Commission released a Second Further Notice seeking comment on the CenturyTel Plan as well as the Rate-of-Return Carrier Tariff Option Proposal,[5] another incentive plan jointly filed by ALLTEL Communications, Inc., Madison River Communications, LLC, and TDS Telecom, Inc. CenturyTel believes that carriers and consumers will benefit from these new options for rate-of-return incumbent local exchange carriers ("ILECs"). In particular, the record developed in response clearly demonstrates the benefits of and the need for the CenturyTel Plan and the Rate-of-Return Carrier Tariff Option Proposal. Those commenters that opposed the proposals or recommended modifications provide no reasonable basis for their position.

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3 47 C.F.R. § 61.41(c)(2), (3).

4 47 C.F.R. § 61.41(b).

5 Ex Parte Letter to Secretary Marlene Dortch in CC Docket No. 00-256, filed Jan. 31, 2003 ("Rate-of-Return Tariff Option Proposal").

In light of the significant changes in the competitive environment and the need for reform, the Commission should adopt the CenturyTel Plan and the Rate-of-Return Carrier Tariff Option Proposal without any further delay. The plans allow rate-of-return carriers that wish to adopt incentive regulation to do so on a study area basis. Significantly, the CenturyTel Plan encourages competition, promotes efficient pricing, and reduces access charges without impairing a carrier's ability to continue investing in rural markets. The CenturyTel Plan will confer benefits on consumers, rate-of-return local exchange carriers ("LECs"), and interexchange carriers ("IXCs") alike. There is no downside for IXCs to implement the CenturyTel Plan as proposed.

II. DISCUSSION

A. The Competitive Environment Has Changed Dramatically.

The competitive environment that ILECs face today is considerably different from the market that existed when the Commission initially adopted price cap regulation. Since enactment of the Telecommunications Act of 1996,[6] barriers to competitive entry in the local telecommunications market have fallen, allowing competition in local telecommunications markets to flourish. According to Commission statistics, total competitive LEC ("CLEC") end-user switched access lines increased more than threefold for the period December 1999 to June 2003 from 8.1 million to 26.9 million lines.[7] Nationwide, for the same period, wireless telephone subscribership almost doubled from 79.7 million to 147.6 million subscribers.[8] Significantly, the amount of federal universal service support that competitive eligible telecommunications carriers ("CETCs") receive (mostly CLECs and wireless carriers) has grown

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6 Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

7 *Local Competition: Status as of June 30, 2003*, Industry Analysis and Technology Division, Wireline Competition Bureau (Dec. 2003) at Table 1.

8 *Id.* at Table 13.

at exponential rates.[9] Voice Over Internet Protocol ("VOIP") service also is expected in the coming years to provide additional competition to ILEC offerings. All of these service providers – resellers, CLECs, wireless carriers, VOIP providers, as well as cable television operators and satellite broadband providers – have launched services in rural areas that compete directly with ILEC service offerings.[10]

Regulation of non-price cap ILECs simply has not kept pace with the technological developments and market forces that drive the telecommunications industry. For example, smaller non-price cap ILECs remain subject to stringent state and federal regulations that constrain their ability to compete effectively in the marketplace, while their competitors generally are not subject to the same rules. Now is the time for the Commission to direct its attention to providing greater pricing and regulatory flexibility so that non-price cap ILECs can position their businesses and effectively respond to competition in their markets and continue deploying advanced telecommunications services to rural America.

B. The Commission Should Adopt Its Tentative Conclusions That Alternative Regulation Should Be Optional For Rate-Of-Return Carriers And May Be Elected By Study Area.

In the *MAG Order*, the Commission tentatively concluded that alternative regulation should be optional for rate-of-return carriers,[11] and that rate-of-return carriers should

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9 Stuart Polikoff, Director of Government Relations for Organization for the Promotion of Small Telecommunications Companies, *Universal Service in Rural America: A Congressional Mandate at Risk*, Jan. 2003 at Table 3.

10 *See* Comments of ALLTEL Communications, Inc., CenturyTel, Inc., Madison River Communications, LLC and TDS Telecommunications Corp., filed in CC Docket No. 00-256 on Feb. 14, 2002; Reply Comments of ALLTEL Communications, Inc., CenturyTel, Inc., Madison River Communications, LLC and TDS Telecommunications Corp., filed in CC Docket No. 00-256 on Mar. 18, 2002.

11 *MAG Order* at ¶86.

be permitted to elect alternative regulation on a study area basis.[12] CenturyTel supports the Commission's tentative conclusions. The diversity of rate-of-return carriers and the heterogeneity of their study areas militate strongly in favor of optionality by study area. It would be nearly impossible, as the Commission itself has acknowledged,[13] for the agency to adopt a form of incentive regulation that would be suitable for all rate-of-return carriers or for all rate-of-return study areas within a holding company.[14] Indeed, this is the very reason that the Commission declined to impose price cap regulation on small and midsize carriers when it first adopted ILEC price cap regulation.[15] Among the approximately 1400 ILECs that existed at the time, the Commission noted significant difference in the number and concentration of their access lines, the geographic location, the dispersion of their customers, and the significant financial and operational differences. The Commission concluded in the *LEC Price Cap Carrier Order* that such "vast differences among LECs caution against applying a single price cap plan to such a broad spectrum of companies."[16]

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12 *Id.*

13 *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service*, CC Docket No. 00-256, 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, 19707 ¶227 (2001).

14 *See also* Rural Task Force, *The Rural Difference*, White Paper #2 (Jan. 2000) ("*Rural Task Force White Paper #2*"); Comments of ALLTEL Communications, Inc., CenturyTel, Inc., Madison River Communications, LLC, and TDS Telecommunications Corp., filed in CC Docket No. 00-256 on Feb. 14, 2002.

15 *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786, 6818 ¶¶257-65 (1990) ("*LEC Price Cap Carrier Order*"), *aff'd sub nom. Nat'l Rural Telecom Ass'n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993).

16 *LEC Price Cap Carrier Order*, 5 FCC Rcd at 6818 ¶257.

That same diversity among ILECs persists today. CenturyTel, on the one hand, specializes in serving a diverse set of study areas that vary greatly in size and diversity, spread across the nation in rural, suburban and a few small, urban markets. CenturyTel's widely diverse and geographically-dispersed territory covers 22 largely rural states. Some rate-of-return carriers, on the other hand, serve more compact or primarily urban areas.[17] The same variation that exists *among carriers* within the rate-of-return carrier community also exists *within* rate-of-return carrier holding companies. For example, the number of access lines CenturyTel serves ranges from 211 access lines for CenturyTel of Chester in Iowa to 221,874 access lines for CenturyTel of Southwest Missouri.

There is far too much variability among study areas to require all rate-of-return carriers to elect the same alternative regulation plan. In light of the heterogeneity of CenturyTel's properties, many CenturyTel study areas would be appropriate for the incentive regulation proposed by CenturyTel,[18] while some would continue to be more successful under traditional price caps or rate-of-return regulation. Rate-of-return regulation, for example, has well served the needs of many customers in rural America for decades and will continue to be the best form of regulation for many rural study areas in the future.[19] The Commission should ensure that carriers are allowed to evaluate for themselves whether individual study areas will perform well under incentive regulation.

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17 Commonwealth Telephone Enterprises, for example, has nearly 300,000 lines, one of the largest study areas in Pennsylvania.

18 Ex Parte Letter from Karen Brinkmann to Secretary Marlene Dortch in CC Docket No. 00-256, filed Dec. 23, 2002.

19 Comments of CenturyTel, Inc., filed in CC Docket No. 96-45 and RM No. 10822 on Jan. 16, 2004.

The record contains strong support for CenturyTel's position, as numerous commenters cited the benefits of optionality in this context.[20] For example, OPASTCO noted that forcing carriers to elect a new form of incentive regulation could dampen incentives to invest in some markets, and deprive customers in those markets of the benefits of new services.[21] In contrast, some commenters indicated an interest in acquiring price cap exchange properties provided that they would not have to move all of their study areas to incentive regulation.[22] The IXCs were the only parties that oppose optionality. They focus primarily on reducing access charges and promoting greater efficiencies, two of the benefits that the CenturyTel Plan is designed to achieve, but they do not offer a credible reason to deny carriers the ability to elect this form of regulation study area by study area.

C. <u>One Of The Most Important Benefits Of The CenturyTel Plan Is The Significant Reduction In Access Charges.</u>

There is significant pressure from IXCs and in proposals made in various dockets to lower ILEC access charges.[23] Under the CenturyTel Plan, electing ILECs would lower

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20 Comments of NECA, filed in CC Docket No. 00-256 on Apr. 23, 2004; Comments of Organization for the Promotion and Advancement of Small Telecommunications Companies, filed in CC Docket No. 00-256 on Apr. 23, 2004 at 2-4; Comments of USTA, filed in CC Docket No. 00-256 on Apr. 23, 2004 at 4; Comments of Verizon, filed in CC Docket No. 00-256 on Apr. 23, 2004 at 8-9.

21 Comments of Organization for the Promotion and Advancement of Small Telecommunications Companies, filed in CC Docket No. 00-256 on Apr. 23, 2004 at 3.

22 Comments of NTCA, filed in CC Docket No. 00-256 on Apr. 23, 2004 at 2-3.

23 *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 04-31 (Feb. 26, 2004); *In the Matter of Developing a Unified Intercarrier Compensation Regime, Notice of Proposed Rulemaking*, CC Docket No. 01-92, 16 FCC Rcd 9610 (2001); *In the Matter of Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long Distance Users; Federal-State Joint Board On Universal Service*, Sixth Report and Order in CC Docket

interstate access charges significantly without unduly disrupting the ILECs' rate structure. Intrastate rates also would decline in states where intrastate access rates mirror federal rates. Significantly, AT&T supports the average traffic sensitive rates proposed in the CenturyTel Plan, noting that the reduction in the rates will "reduce the pressure on nationwide IXCs to broadly deaverage toll rates to meet long distance competition from the BOCs."[24] As AT&T's comments underscore, rate reductions will stimulate additional long distance competition and further facilitate rate integration, as required by Section 254(g) of the Communications Act of 1934, as amended (the "Act").[25] As a result, the CenturyTel Plan will benefit end-users in at least two ways: it should spur additional price competition in the already highly competitive long-distance market, and it will lower the rates access customers pay, a cost-savings that *should* be passed on to end-users.[26] The Commission should adopt the CenturyTel Plan to ensure that access customers and end-users alike reap the benefits of significant reductions in access charges.

D. The IXCs Provide No Reasonable Basis For Rejecting The CenturyTel Plan.

1. *The Commission's current safeguards will protect against cost-shifting.*

As the Commission noted in the *MAG Order*, commenters that support retaining the all-or-nothing rule "typically assert, *without specific examples*, that relaxation of the rule will result in cost-shifting."[27] Similarly, commenters that complained of cost-shifting in this

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Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report And Order in CC Docket No. 96-45, 15 FCC Rcd 12962, 13038, ¶182 (2000).

24 Comments of AT&T, filed in CC Docket No. 00-256 on Apr. 23, 2004 at 11.

25 47 U.S.C. § 254(g).

26 To be sure, some consumers have yet to reap the benefit of the more than $3 billion in reduced access rates under CALLS and other plans that have already reduced interstate access charges.

27 *MAG Order* at ¶11.

proceeding cite no evidence whatsoever.[28] As the Commission recognized, numerous safeguards already exist to prevent cost-shifting. State and federal tariff processes and the Commission's cost accounting, separations, and affiliate transaction rules were designed to prevent cost-shifting to a carrier's rate-of-return affiliates, or to make any cost-shifting easily detectable.[29] In addition, Section 204 of the Act gives the Commission broad powers, which it frequently exercises, to investigate the rates that carriers file in their tariffs and to examine the cost support provided therein.[30] Moreover, competitors, access customers, and end-user customers may review the relevant tariffs for any improper cost-shifting. All of these measures significantly protect against cost-shifting and, notably, the IXCs offer no evidence of any actual cost-shifting that has taken place among the carriers currently operating under both price caps and rate-of-return regulation pursuant to Commission waiver. The Commission should reject these unsubstantiated complaints and instead adopt its tentative conclusion that its "existing accounting and regulatory processes should permit parties and the Commission to detect cost-shifting by the rate-of-return carriers that file cost-based access tariffs."[31]

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28 Comments of MCI, filed in CC Docket No. 00-256 on Apr. 23, 2004 at 2; Comments of AT&T, filed in CC Docket No. 00-256 on Apr. 23, 2004 at 17-19.

29 *See e.g., Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756 (1997) (deciding that separate affiliates with separate books of account sufficiently protects against improper allocation of costs between an incumbent LECs' local services and interexchange services); *Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services*, Report and Order, 12 FCC Rcd 15668 (1997) (local service and CMRS separation).

30 47 U.S.C. § 204.

31 *MAG Order* at ¶92.

2. *LECs will not have the option of rotating in and out of the CenturyTel Plan.*

Contrary to AT&T's arguments,[32] LECs will not be allowed to "game the system" by moving in and out of incentive regulation. The CenturyTel Plan would last for five years, and include a one-way door rule, under which carriers would be required to elect alternative regulation for the entire remaining duration of the plan at the time of the election.[33] Such a rule would be consistent with the recent rule changes the Commission adopted allowing rate-of-return carriers to purchase price cap exchanges and return them to rate-of-return regulation for 5 years.[34]

3. *IXC complaints that the streamlined tariff process prevents them from challenging over-earnings are irrelevant and baseless.*

The IXCs complain that the streamlined tariff process prevents them from challenging over-earnings.[35] These complaints have nothing to do with the merits of the CenturyTel Plan, and in any event, are baseless. Section 204(a)(3) of the Act provides that LEC tariffs filed on a streamlined basis "shall be deemed lawful."[36] Although a tariff filed pursuant to Section 204(a)(3) that becomes effective without suspension and investigation is presumed to be a "lawful" tariff, the Commission retains authority to find the tariff unlawful in a hearing under Section 205 of the Act, or in a complaint proceeding under section 208.[37] Even after *ACS of Anchorage, Inc. v. FCC*, IXCs are still permitted to challenge a rate-of-return carrier's tariffed

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32 Comments of AT&T, filed in CC Docket No. 00-256 on Apr. 23, 2004 at 16.

33 *See* CenturyTel Plan at C4-C5.

34 *MAG Order* at ¶10.

35 Comments of AT&T, filed in CC Docket No. 00-256 on Apr. 23, 2004 at 7-9; Comments of MCI, filed in CC Docket No. 00-256 on Apr. 23, 2004 at 2.

36 47 U.S.C. § 204(a)(3).

37 *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, Report and Order, 12 FCC Rcd 2170, 2182-83 ¶20 (1997).

rates *before* the rates are deemed lawful.[38] That IXCs are required to challenge streamlined tariff rates within a short period of time does not justify imposing incentive regulation on "the broadest range of rate-of-return LECs," as AT&T suggests.[39] In fact, AT&T's comments bear no relevance to the CenturyTel Plan at all, and should be disregarded in the context of this proceeding.[40]

E. The Commission Should Not Require Carriers To Remove Their Study Areas From The NECA Pools.

The Commission tentatively concluded in the *MAG Order* that the opportunity to elect alternative regulation on a study area basis should be available only to holding company groups in which all non-average schedule companies file their own cost-based tariffs.[41] CenturyTel disagrees with the Commission's tentative conclusion. CenturyTel maintains that study areas subject to incentive regulation may be required to be removed from the NECA pools, but electing carriers should be allowed to leave their rate-of-return study areas in the pools, as NECA correctly points out.[42] NECA would not need to insulate the remaining pool members from the risk associated with a carrier's adoption of incentive regulation if electing study areas were to exit the pools.

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38 *ACS of Anchorage, Inc. v. FCC*, 290 F.3d 403 (D.C. Cir. 2002).

39 Comments of AT&T, filed in CC Docket No. 00-256 on Apr. 23, 2004 at 7-9.

40 AT&T has challenged the "deemed lawful" effect of Section 204(a)(3) in a separate petition for forbearance. AT&T Petition for Forbearance, filed in WC Docket No. 03-256 on Dec. 3, 2003.

41 *MAG Order* at ¶91.

42 *See* Comments of NECA, filed in CC Docket No. 00-256 on Apr. 23, 2004 at 3.

The Commission also expressed concerns about cost-shifting in this context. As the Wisconsin State Telecommunications Association ("WSTA") pointed out in its comments,[43] any abuses that the Commission might be concerned about are as easily detectable within the pools as they are outside of the pools because other safeguards already exist to prevent improper cost-shifting. It is unclear why the Commission's same accounting and regulatory processes that "should permit parties and the Commission to detect cost-shifting by the rate-of-return carriers" that file their own tariffs will not also protect against cost-shifting in the context of pool participation. As NECA stated in its comments, "allowing non-incentive plan companies to continue participating in the NECA pools provides additional assurance that companies are operating in compliance with the Commission's accounting and affiliate transactional rules."[44]

The Commission's proposal would have the effect of retaining the all-or-nothing rule, while denying electing carriers the benefits of optionality, two results that do not serve the public interest. For these reasons, CenturyTel urges the Commission to reject its tentative conclusion that alternative regulation should be available only to holding company groups in which all non-average schedule companies file their own cost-based tariffs.

F. The Commission Should Reject Outright The Proposal That Rate-Of-Return Carriers Be Required To Elect The Current Price Cap Model.

As the Commission itself has recognized, price cap regulation is not appropriate for all carriers, particularly small and mid-size carriers.[45] Contrary to AT&T's and MCI's

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43 Comments of Wisconsin State Telecommunications Association, filed in CC Docket No. 00-256 on Apr. 22, 2004 at 2-3.

44 Comments of NECA, filed in CC Docket No. 00-256 on Apr. 23, 2004 at 3.

45 *LEC Price Cap Carrier Order*, 5 FCC Rcd at 6818 ¶¶257-65.

characterizations,[46] there is clear evidence that price cap regulation has not been implemented entirely "successfully" by midsize companies such as Valor and Iowa Telecommunications.[47] Many CenturyTel affiliates would be interested in the CenturyTel Plan, but could not succeed under the current price cap rules. Like other smaller carriers, they do not enjoy the economies of scale of Sprint and the Bell Operating Companies ("BOCs"). Moreover, the Commission has tentatively concluded that the current price cap plan cannot admit any new carriers or study areas.[48] The interstate access support ("IAS") fund is capped at $650 million.[49] Without proper universal service support, rural exchanges would languish under price cap regulation as it currently exists.

AT&T and Sprint tout increased competition and more efficient pricing as benefits of price cap regulation.[50] The CenturyTel Plan is far superior to price cap regulation from a consumer perspective because it will achieve similar results without compromising electing carriers' ability to continue to invest in the rural markets they serve. Notably, the

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46 Comments of AT&T, filed in CC Docket No. 00-256 on Apr. 23, 2004 at 15; Comments of MCI, filed in CC Docket No. 00-256 on Apr. 23, 2004 at 3.

47 Petition for Waiver of Section 54.305 of Valor Telecommunications of Texas, L.P. (filed Apr. 11, 2003) (seeking waiver of Commission rules requiring an unaffiliated acquiring carrier to receive the same level of support as the seller); Emergency Petition for Forbearance of Iowa Telecommunications Services, Inc. (filed Nov. 26, 2001) (seeking forbearance from rule under *CALLS Order* requiring price cap carriers to elect within 60 days of the release of the order to choose the CALLS plan or to set interstate access rates at forward-looking cost levels).

48 *MAG Order* at ¶93.

49 47 C.F.R. § 54.801(A); *In The Matter Of Access Charge Reform; Price Cap Performance Review For Local Exchange Carriers; Low-Volume Long Distance Users; Federal-State Joint Board On Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 And 94-1; Report And Order in CC Docket No. 99-249; Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000).

50 Comments of AT&T, filed in CC Docket No. 00-256 on Apr. 23, 2004 at 14; Comments of Sprint, filed in CC Docket No. 00-256 on Apr. 23, 2004 at 2.

CenturyTel Plan seeks to achieve more than simply reducing access charges, as the IXCs apparently would have it when they propose price cap regulation without any regard for the negative impact on end-users. The CenturyTel Plan will encourage high-risk investment in rural areas. Electing carriers will enjoy the prospect of higher earnings, which will encourage investment, and the cost of acquiring new properties will be less costly and disruptive because the all-or-nothing rule will have been eliminated. In addition, a freeze on high-cost loop support will increase the predictability and stability of the high cost fund, a result that will encourage long-term capital planning and foster new investment in rural areas for the benefit of rural consumers.

G. A Low-End Adjustment Mechanism Is A Necessary Component Of The CenturyTel Plan.

The CenturyTel Plan proposes a low-end adjustment ("LEA") which would permit electing carriers that earn below 10.25% to increase their Price Cap Indices effective July 1 the following year to target an interstate earnings level of 10.25%. AT&T maintains that the proposed LEA is unnecessary because traffic-sensitive rates and support would be frozen under the CenturyTel Plan. AT&T further argues that to the extent the Commission allows a LEA, the proposed threshold is overly generous and should be determined at the tariff filing level rather than the study area level.[51] AT&T's ignores the benefits of a LEA, which the Commission has recognized since it adopted price cap regulation in the 1990s.

In fact, the LEA has always been an essential component of price cap regulation.[52] In 1990, the Commission adopted the mechanism "to ensure that the application of

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51 Comments of AT&T, filed in CC Docket No. 00-256 on Apr. 23, 2004 at 21-22.

52 *LEC Price Cap Carrier Order*, 5 FCC Rcd at 6802 ¶127; *In the Matter of Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long Distance Users; Federal-State Joint Board On Universal Service*, Sixth Report and

. . . price cap[s] . . . does not subject any individual LEC to such low earnings over a prolonged period that its opportunity to attract capital and ability to provide service are seriously impaired."[53] And, in 2000, the Commission decided to retain the low-end adjustment "to protect LECs from events beyond their control that would affect earnings to an extraordinary degree."[54] The low-end adjustment remains vital today for the same reasons that the Commission adopted it in 1990 and has retained it since.[55] The low-end adjustment was intended to account for variations in performance among LECs and unforeseen economic circumstances.[56] Without such an adjustment, the LEC could suffer unusually low earnings over a prolonged period of time, which would cause it to have difficulty raising capital to maintain and upgrade the network and provide new services that customers expect.[57] Indeed, at least one smaller carrier experimenting with price cap regulation today, Valor, has found it necessary to seek relief under the LEA.[58]

Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report And Order in CC Docket No. 96-45, 15 FCC Rcd 12962, 13038, ¶182 (2000) ("*CALLS Order*") (concluding that it reasonable to continue to include the low-end adjustment).

53 *LEC Price Cap Carrier Order*, 5 FCC Rcd at 6802 ¶127.

54 *CALLS Order*, 15 FCC Rcd at 13038, ¶ 182; *LEC Price Cap Order*, at 13024, ¶ 148.

55 *Cf. In the Matter of Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers; Petition of U S West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA*, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, 14307 ¶168 (1999) (retaining the low-end adjustment mechanism only for price caps that decline to exercise any Phase 1 or Phase II regulatory relief).

56 *LEC Price Cap Order*, 5 FCC Rcd at 6804, ¶ 147.

57 *Id.*

58 *Valor Telecommunications of Texas, L.P. Petition for Waiver of the 2003 X-Factor Reductions Under Section 61.45(b)(1)(i) of the Commission's Rules*, Order, 18 FCC Rcd 11523 (2003); *see also* Valor Telecommunications of Texas, L.P. Petition for Waiver of the 2003 X-Factor Reductions Under Section 61.45(b)(1)(i) of the Commission's Rules at 1, 9, 14 (filed Apr. 14, 2003).

Without the LEA mechanism, electing carriers could be subject to a downward economic spiral to the detriment of their customers. Any incentive plan that seeks to encourage rural carriers to maintain their current levels of service must include a LEA mechanism.

AT&T proposes that any additional revenue an electing LEC derives should be funded through the universal service fund rather than through an LEA.[59] As an initial matter, CenturyTel notes that LEAs under the Commission's current rules do not operate in the manner proposed by AT&T. Moreover, AT&T's proposal would permit CETCs to receive additional support regardless of their costs, their earnings, or their level of investment in the exchange. As a result, AT&T's proposal would place upward pressure on the universal service fund unnecessarily, without any clear benefit to consumers. The proposal is irresponsible and should be rejected.

H. The Commission Should Not Impose An X-Factor Of 6.05% As A Component Of The CenturyTel Plan.

The CenturyTel Plan proposes setting the X-factor equal to GDP-PI. The Commission established the X-factor in the *CALLS Order* in an attempt "to reduce local switching and switched transport rates to specified target rate levels, and to reduce special access rates over a set period of time,"[60] without regard for specific productivity gains achievable by the price cap ILECs. Unlike the CALLS Plan, the X-factor established in the CenturyTel Plan is directly tied to the specific access rates prescribed in the plan, and is *not* designed to reduce access rates *gradually* over a period of time. Rather, the CenturyTel Plan establishes a new cap on access rates at the outset, and maintains those low rates over the term of the plan by setting the X-factor equal to GDP-PI, effectively stabilizing rates at that level. Thus, there would be no

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59 Comments of AT&T, filed in CC Docket No. 00-256 on Apr. 23, 2004 at 21.

60 *CALLS Order*, 15 FCC Rcd at 13020 ¶140.

need to apply further downward pressure on the access rates under the CenturyTel Plan and, hence, no need for an X-factor set at any other level.

The Commission should reject AT&T's proposal of a 6.05% X-factor.[61] As an initial matter, CenturyTel observes that, after a decade of struggling unsuccessfully to measure ILEC productivity growth under price caps, the Commission ultimately (and wisely) abandoned that approach. Instead, it established the X-factor as a transitional mechanism to lower access charges that would "not be tied to price cap LEC productivity."[62] The Commission should not revisit that conclusion now. Further, in a competitive environment where customers enjoy multiple choices for communications services, an X-factor of 6.05% is not necessary because competition itself ensures efficiency and competitive pricing. In any event, adoption of AT&T's proposal and continual, indefinite application of such a steep X-factor would be detrimental to the carriers electing incentive regulation and the customers they serve because it ultimately could drive rates below cost, an untenable result.

LEC customers will enjoy the benefits of the CenturyTel Plan only if their carriers elect to participate in it. Thus, any X-factor that the Commission adopts must encourage LECs that could succeed under the CenturyTel Plan to adopt this new form of alternative regulation. Because AT&T's proposal would likely discourage carriers from participating in the plan, the Commission should reject the proposed X-factor.

I. The Commission Should Adopt Incentive Regulation Without Any Further Delay.

The Commission should not further delay consideration of the CenturyTel Plan and the Rate-of-Return Tariff Option Proposal. Rate-of-return carriers have been requesting alternatives to price cap regulation for years. As the Independent Telephone &

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61 Comments of AT&T, filed in CC Docket No. 00-256 on Apr. 23, 2004 at 26. and App. B.

62 *CALLS Order* at 13028 ¶160.

Telecommunications Alliance pointed out in its comments,[63] the Commission has initiated a number of proceedings related to the merits of incentive regulation for rate-of-return carriers;[64] however, none of those proceedings resulted in any tangible benefits to the rate-of-return carrier community.

As noted above in Section II.A., competition in the local markets is flourishing, and rate-of-return carriers should not continue to be hamstrung by inflexible and outmoded regulatory structures. These carriers need more flexibility in the dynamic marketplace in which they operate. A one-size-fits-all regulatory approach -- either rate-of-return or price caps -- simply does not work in the current economic environment. Further, there is no reason why the Commission should delay consideration of the all-or-nothing rules and the incentive plan proposals until it concludes the intercarrier compensation proceeding, as Sprint suggests.[65] Nothing in the intercarrier compensation proceeding will address the application of the all-or-nothing rules. All-or-nothing reform is desperately needed so that interested rate-of-return carriers may take advantage of opportunities to acquire price cap exchanges without having to convert all of their properties to price cap regulation at the holding company level. Moreover, the CenturyTel Plan can provide a logical transition to any rules that are adopted in the intercarrier compensation docket.

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63 Comments of Independent Telephone & Telecommunications Alliance, filed in CC Docket No. 00-256 on Apr. 23, 2004 at 3-5.

64 In fact, the Commission first initiated consideration of alternative regulation in this proceeding over three years ago. *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in 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).

65 Comments of Sprint, filed in CC Docket No. 00-256 on Apr. 23, 2004 at 2.

The time has come for the Commission to move beyond decades-old squabbles between IXCs and ILECs over access rates. The Commission has an opportunity to make a decision that will put to rest many of those issues by significantly reducing access rates for IXCs while allowing ILECs to position themselves for the future.

III. CONCLUSION

For the reasons articulated above, CenturyTel urges the Commission to adopt the CenturyTel Plan and the Rate-of-Return Carrier Tariff Option Proposal without any further delay and without any of the modifications proposed by the IXCs.

Respectfully submitted,
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