

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of the Petition of)
)
The United States Telecom Association)
) RM-11293
For a Rulemaking to Amend Pole Attachment)
Rate Regulation and Complaint Procedures)
)

COMMENTS OF CENTURYTEL, INC.

I. INTRODUCTION AND SUMMARY

On behalf of its operating subsidiaries, CenturyTel, Inc. (“CenturyTel”) hereby offers its Comments in support of the above-captioned rulemaking petition of United States Telecom Association (“USTelecom”).¹ Through its operating subsidiaries, CenturyTel provides local exchange, long-distance, dial-up and dedicated broadband Internet access, and other telecommunications and information services predominantly to rural customers in 22 states. In certain service areas, CenturyTel has experienced the type of unreasonable discrimination by owners of utility poles that USTelecom cites in its Petition. CenturyTel fully supports USTelecom’s Petition and agrees with all of the arguments presented therein. CenturyTel urges the Commission to institute a rulemaking proceeding to consider adoption of USTelecom’s proposed amendments to Commission rule Sections 1.1401, 1.1402, 1.1404, and 1.1409.² Such amendments would ensure that all providers of telecommunications services, including incumbent local exchange carriers (“ILECs”), have access to just and reasonable pole attachment

¹ *Petition of The United States Telecom Association for a Rulemaking to Amend Pole Attachment Rate Regulation and Complaint Procedures*, RM-11293, Public Notice, Report No. 2737 (rel. Nov. 2, 2005) (“Petition”).

² 47 C.F.R. §§ 1.1401, 1.1402, 1.1404, 1.1409.

rates, terms, and conditions, as Congress intended in Section 224(b)(1) of the Communications Act of 1934, as amended (the “Act”).³

II. CENTURYTEL’S EXPERIENCES NEGOTIATING WITH UTILITY COMPANIES SUPPORT AMENDING THE RULES TO ENSURE THAT ILECS ARE ENTITLED TO JUST AND REASONABLE POLE ATTACHMENT RATES, TERMS AND CONDITIONS

CenturyTel has experienced the type of unreasonably discriminatory treatment by utility companies cited by USTelecom in its Petition,⁴ which has resulted in time-consuming negotiations and costly litigation. CenturyTel’s negotiations with certain power utilities have lasted as long as six years and have resulted in pole attachment rates that are fifty percent higher than competitive local exchange carrier (“CLEC”) rates based on the default formula in Section 1.1409(e)(2) of the Commission’s rules.⁵ In one case, CenturyTel spent two years in discussions with a state public utility commission (“PUC”) and costly state court litigation in an attempt to resolve discriminatory rates proposed by a particular utility pole owner. The Act requires the Commission to regulate rates. However, CenturyTel has been unable to obtain relief from pole owners’ discriminatory practices because the Commission’s rules do not afford protection to ILECs in this area.

The ILECs’ carrier-of-last-resort obligations, in addition to the exclusion of ILECs from the current pole attachment rules, further skews the negotiating position of ILECs vis-à-vis utility pole owners. As noted in the Petition, ILECs “have no choice but to request access to poles from large energy utilities in order to fulfill their own regulatory obligations,” especially where local governments do not allow construction of duplicative pole plant.⁶

³ See 47 U.S.C. §224(b)(1) (2002).

⁴ See Petition at 11, 12.

⁵ See 47 C.F.R. § 1.1409(e)(2).

⁶ See Petition at 11, 12.

Because ILECs are excluded from the Commission's rules regarding pole attachment rates, large utilities are unimpeded in charging unreasonably high rates, and ILECs often have no choice but to accept such unreasonable terms because the poles are often bottleneck facilities. CenturyTel has negotiated with power companies that have proposed rate increases on the order of eight to ten times the original rate. Although the rates negotiated ultimately were lower than the power utilities' proposals, the rates CenturyTel has been left with are still significantly higher than the rates charged to CLECs pursuant to the Commission's rules. This puts CenturyTel at a competitive disadvantage and harms CenturyTel customers. Further, as discussed above, CenturyTel was only able to settle these rates with the power utilities after years of intensive negotiations, and in at least one case, involvement by the state PUC and state court.

III. THE COMMISSION SHOULD PROVIDE A MECHANISM TO ENSURE THAT ILECs HAVE ACCESS TO UTILITY POLES AT NON-DISCRIMINATORY RATES

CenturyTel urges the Commission to propose in a rulemaking proceeding that the formula set forth in Section 1.1409(e)(2) of its rules should apply to ILECs as well as CLECs. The default formula establishes a clear standard for "just and reasonable" pole attachment rates and has been shown to be effective through its application to CLECs. CenturyTel agrees with USTelecom that a single formula applicable to ILECs and CLECs alike promotes the interests of fairness, consistency and competition.⁷ Additionally, the Commission should propose that the complaint procedures for claims of unreasonable pole attachment rates, terms and conditions that are currently applicable to CLECs should also be available to ILECs.⁸

CenturyTel's experiences negotiating pole attachment agreements with large power utilities illustrates that an enforcement mechanism applicable to ILECs is much needed.

⁷ See *id.* at 18.

⁸ See *id.* at 14-15.

The current lack of such a mechanism for ILECs has resulted in systematic discrimination against ILECs by the utility pole industry. The loophole in the Commission's rules, which allows utility pole owners to discriminate unreasonably against ILECs, is widely recognized, and utility pole owners routinely take advantage of this loophole to charge ILECs rates that are significantly higher than the Commission's default rates for CLECs and cable providers.

CenturyTel has attempted to bring an enforcement action before the Commission for discriminatory pole attachment pricing; however, despite the Act giving broad authority to the FCC to regulate rates, the rules as currently written do not provide ILECs with any such remedy. Further, in at least one case, CenturyTel's attempt to bring such claims before a state PUC has been rejected because the PUC in question chose not to exercise authority over pole attachments and instead deferred to the Commission. Thus, CenturyTel and other ILECs are often left without a forum to address claims of discrimination by utility pole owners and without options for an efficient resolution of disputes in such pole attachment negotiations. In the absence of an enforcement mechanism ensuring that ILECs are not subjected to unreasonable pole attachment rates, terms, and conditions, utilities would be allowed to continue exploiting this loophole in the Commission's rules. CenturyTel believes all businesses should have avenues to address claim of discrimination in their business dealings.

IV. CONCLUSION

CenturyTel respectfully requests that the Commission institute a rulemaking proceeding to consider all of the issues raised in USTelecom's Petition. Pole attachment rates, terms and conditions should be just, reasonable and non-discriminatory for all attaching providers of telecommunications services, including ILECs. CenturyTel agrees that the Commission should provide ILECs with a clear right of action against utility pole owners that discriminate against ILECs. The Commission should adopt USTelecom's proposed rule amendments, so that the current rules regarding rates and complaint procedures for CLECs also apply to ILECs.

Respectfully submitted,

CENTURYTEL, INC.

/s/ Karen Brinkmann

John F. Jones
Carrick Inabnett
CENTURYTEL, INC.
100 CenturyTel Park Drive
Monroe, LA 71203
Phone: 318.388.9000

Karen Brinkmann
Elizabeth R. Park
LATHAM & WATKINS LLP
555 Eleventh Street, N.W.
Suite 1000
Washington, D.C. 20004-1304
Phone: 202.637.1056

December 2, 2005

CERTIFICATE OF SERVICE

I, Elizabeth Park, do hereby certify that on this 2nd day of December 2005, I caused to be served a true and correct copy of the foregoing Comments of CenturyTel, Inc. via U.S. mail to the following:

James W. Olson
607 14th Street, NW
Suite 400
Washington, DC 20005

/s/ Elizabeth R. Park
Elizabeth R. Park