

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of an Investigation of the	)	
Actual Costs Incurred in Providing	)	
Exchange Access Service and the Access	)	<u>Case No. TR-2001-65</u>
Rates to be Charged by Competitive Local	)	
Exchange Telecommunications	)	
Companies in the State of Missouri.	)	

**INITIAL BRIEF OF  
CENTURYTEL**

CenturyTel of Missouri, LLC ("CenturyTel of Missouri") and Spectra Communications Group, LLC d/b/a CenturyTel ("Spectra")<sup>1</sup>(collectively referred to as "CenturyTel"), pursuant to the Missouri Public Service Commission's *Order Directing Filing*<sup>2</sup> entered in this matter on December 2, 2002, respectfully submits their Initial Brief in this matter:

**I. INTRODUCTION**

On August 30, 2002, CenturyTel of Missouri purchased the local exchange property of GTE Midwest Incorporated d/b/a Verizon Midwest, pursuant to the Commission's *Report & Order* in Case No. TM-2002-232 issued on May 21, 2002. On the first day of the hearings, CenturyTel of Missouri was granted the right to participate in the proceedings. (Tr.12). CenturyTel did not sponsor testimony in this proceeding and has taken a limited role in the hearings.

This Initial Brief will discuss CenturyTel's position on the issues, particularly those issues designed to give the Commission recommendations on how to proceed in the

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<sup>1</sup> On October 28, 2002, the Commission issued its Order Granting Leave To Withdraw which acknowledged that Spectra, which had previously been part of the Small Telephone Company Group ("STCG"), would no longer be considered a member of the STCG for the purpose of this proceeding.

<sup>2</sup> *OrderDirecting Filing*, Case No. TR-2001-65, December 2, 2002.

future. CenturyTel will also briefly discuss the issues identified by Regulatory Law Judge Thompson at the conclusion of the hearings. (Tr. 1241-43).

As discussed below, the primary public policy issue that should be decided by the Commission in this proceeding is whether the Commission's interim policy of capping the access rates of CLECs at the same level as the access rates of the ILEC in the exchange served by the CLEC is appropriate and in the public interest.<sup>3</sup> On this issue, there is a consensus among the parties, with the possible exception of Fidelity's CLECs, that the interim policy should be made permanent. (Tr. 32-32, 62, 1229-40)(*See also* Position Statements of Public Counsel, ALLTEL, Southwestern Bell, Sprint, MITG & STCG, WorldCom and AT&T). At the conclusion of the hearings, counsel for Fidelity's CLECs expressed some reservations about the Commission's interim policy of capping CLEC access rates, but conceded: " . . . we could probably live with the idea that if there was exceptional circumstance, we could bring in additional data." (Tr.1240).

Given the consensus among the parties on this public policy issue, CenturyTel recommends that the Commission make permanent its interim policy of capping CLEC access rates at the levels of the underlying ILEC's access rates.

Most of the remainder of the technical issues contained in the List of Issues may not need to be addressed by the Commission, particularly if the Commission decides that a "one-size-fits-all" approach for the development of company-specific access cost studies is not appropriate. Since it is not necessary to develop a cost study standard that would be utilized by all telecommunications companies in order to resolve the

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<sup>3</sup> In its *Order Adopting Procedural Schedule, Clarifying Scope Of This Proceeding, And Concerning Motion To Waive Service Requirement, and Motion To Compel Discovery*, issued on March 14, 2002, (hereinafter referred to as "March 14, 2002 Order"), the Commission specifically stated: "This case derives from an earlier case which established an interim cap on CLEC access rates. An express purpose of this case is to gather the information necessary to replace the interim rate cap with a permanent solution."

fundamental issue in this case related to the capping of CLEC access charges, CenturyTel believes that the Commission should decline to venture into the cost study morass at this time.

Although the Commission has also expressed some interest in reviewing "access rate" issues,<sup>4</sup> CenturyTel believes that this proceeding is not the appropriate case to delve into the full gamut of access rate-related issues. CenturyTel believes it is more appropriate to focus upon the narrow public policy issue related to CLEC access charges for which this case was originally established. Certainly, the testimony in this case has not attempted to fully explore broader access rate issues, and the Commission should not attempt to address tangential issues that are beyond the scope of this case. To the extent that the access cost information is relevant to future "access reform" proceedings, it may be reviewed at that time.

## **II. DISCUSSION OF THE LIST OF ISSUES**

This Brief will also briefly discuss CenturyTel's position on the List of Issues filed by the Commission Staff, on behalf of the parties of record on August 15, 2002. Pursuant to the Commission's March 14, 2002 *Order Adopting Procedural Schedule*, *supra* Footnote 3, "[t]he briefs to be submitted by the parties shall follow the same list of

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<sup>4</sup> In its March 14, 2002 Order, the Commission also stated: "The purpose of this proceeding is 'to investigate all of the issues affecting exchange access service, including particularly the actual costs incurred in providing such service, in order to establish a long-term solution which will result in just and reasonable rates for this service.' The Commission believes that this statement is clear. To the extent that access rates are an issue, this case includes that issue.

Note, however, that the Commission's intention is simply to *investigate* all issues. 'Investigate' implies the gathering, compilation and analysis of data, which is exactly what the Commission has directed its Staff to do. Questions as to the Commission's authority to modify the access rates of price-cap regulated ILECs and rate-of-return regulated ILECs are thus premature. The Commission has not, so far, announced any intention to do those things." CenturyTel believes that it would be premature to review access rate-related issues in the context of this case.

issues as filed in the case.” As requested by the Commission, the issues will be addressed in the same order as contained in the List of Issues.

1. What is the appropriate cost methodology (i.e. TSLRIC, LRIC, embedded, stand alone, etc.) to be used in determining the cost of switched access?

**CenturyTel Position:** It is CenturyTel's position that this issue does not need to be resolved in this proceeding. CenturyTel otherwise takes no position on this issue.

2. Should the cost methodology (i.e. TSLRIC, LRIC, embedded, stand alone, etc.) for determining switched access costs be uniform and consistent for all Missouri LECs?

**CenturyTel Position:** There is no necessity for the Commission to adopt a “one-size-fits-all” cost methodology for all Missouri LECs. CenturyTel believes it would be a mistake for the Commission to require all ILECs in Missouri to utilize the same methodology in the preparation of their company-specific access cost studies.

3. Should loop costs be included in the determination of the cost of switched access, and if so, at what level?

**CenturyTel Position:** It is CenturyTel's position that this issue does not need to be resolved in this proceeding. CenturyTel otherwise takes no position on this issue.

4. What are the appropriate assumptions and/or the appropriate values for the following inputs?
  - a. Cost of capital
  - b. Switch discounts
  - c. Depreciation
  - d. Maintenance factors
  - e. Common and shared costs
  - f. Fill factors
  - g. Other major assumptions and/or inputs.

**CenturyTel Position:** It is CenturyTel's position that this issue does not need to be resolved in this proceeding. CenturyTel otherwise takes no position on this issue.

5. Is the current capping mechanism for intrastate CLEC access rates appropriate and in the public interest?

**CenturyTel Position:** Yes. Based on the testimony presented in this proceeding, there appears to be general consensus that the current capping mechanism is appropriate and in the public interest. CenturyTel believes that this public policy issue is the primary issue that should be resolved by the Commission in this case. (Tr. 32-32, 62, 1229-40)(*See also* Position Statements of Public Counsel, ALLTEL, Southwestern Bell, Sprint, MITG & STCG, WorldCom and AT&T).

6. Are there circumstances where a CLEC should not be bound by the cap on switched access rates?

**CenturyTel Position:** There may be circumstances where a CLEC should not be bound by the cap on switched access rates, such as where a totally facilities-based CLEC can demonstrate that its costs of providing switched access are higher than the rates allowed under the cap.

7. What, if any, course of action can or should the Commission take with respect to switched access as a result of this case?

**CenturyTel Position:** The Commission should not take any action with respect to switched access as a result of this case. In the event that the Commission wants to review switched access rates in the future, this review should be done in the context of ILEC-specific proceedings or other generic proceedings, consistent with the statutory authority of the Commission, as discussed below.

**III.            ADDITIONAL ISSUES REQUESTED TO BE BRIEFED  
BY JUDGE THOMPSON**

At the conclusion of the hearings, Judge Thompson requested that the parties discuss the following ten (10) questions, posed by AT&T earlier in the proceeding, which were also contained in the *Order Adopting Procedural Schedule, Clarifying Scope Of This Proceeding, And Concerning Motion To Waive Service Requirement, and Motion To Compel Discovery*, issued on March 14, 2002 (Tr. 1241-42):

1.    Whether the Commission has the jurisdiction to direct an ILEC regulated under “price-cap regulation” pursuant to Section 392.245, RSMo 2000, to reduce its switched access rates?
2.    Whether the Commission has the jurisdiction to direct an ILEC regulated under “price-cap regulation” pursuant to Section 392.245, RSMo 2000, to restructure its switched access rates?
3.    Whether an ILEC regulated under “price-cap regulation” pursuant to Section 392.245, RSMo 2000, may voluntarily reduce its switched access rates?
4.    Whether an ILEC regulated under “price-cap regulation” pursuant to Section 392.245, RSMo 2000, may voluntarily restructure its switched access rates?
5.    Whether the Commission has the jurisdiction to direct an ILEC that is regulated under rate of return regulation to reduce its switched access rates without conducting a full rate case?
6.    Whether the Commission has the jurisdiction to direct an ILEC that is regulated under rate of return regulation to restructure its switched access rates without conducting a full rate case?
7.    Whether an ILEC that is regulated under rate of return regulation may voluntarily reduce its switched access rates without filing a full rate case?

8. Whether an ILEC that is regulated under rate of return regulation may voluntarily restructure its switched access rates without filing a full rate case?
9. Whether the Commission has jurisdiction to direct a CLEC to reduce its switched access rates?
10. Whether the Commission has jurisdiction to direct a CLEC to restructure its switched access rates?

In addition, Judge Thompson requested that the parties "address the Commission's authority with respect to enlarging calling scopes." (Tr. 1242). Finally, Judge Thompson mentioned that the issue of the modification of the protective order was still pending before the Commission. (Tr. 1243).

**A. Issues 1-4 Related to Price-Cap Regulated ILECs**

1. Whether the Commission has the jurisdiction to direct an ILEC regulated under "price-cap regulation" pursuant to Section 392.245, RSMo 2000, to reduce its switched access rates?
2. Whether the Commission has the jurisdiction to direct an ILEC regulated under "price-cap regulation" pursuant to Section 392.245, RSMo 2000, to restructure its switched access rates?
3. Whether an ILEC regulated under "price-cap regulation" pursuant to Section 392.245, RSMo 2000, may voluntarily reduce its switched access rates?
4. Whether an ILEC regulated under "price-cap regulation" pursuant to Section 392.245, RSMo 2000, may voluntarily restructure its switched access rates?

**CenturyTel Position:** As discussed below, CenturyTel believes that the Commission lacks the statutory authority to direct a price-cap regulated company to reduce or restructure its switched access rates, unless the provisions of Section 392.245 RSMo. 2000 are followed. However, CenturyTel believes that a price-cap regulated

company may voluntarily reduce or restructure its switched access rates, provided that the switched access rates remain below the maximum allowable prices.

Section 392.245 RSMo. 2000 contains the exclusive statutory authority of the Commission to regulate price-cap regulated companies, including regulation of switched access rates. According to Section 392.245(1), price cap regulation "shall mean establishment of maximum allowable prices for telecommunications services offered by an incumbent local exchange telecommunications company, which maximum allowable prices shall not be subject to increase except as otherwise provided in this section." (*emphasis added*).

Pursuant to Section 392.245(3), the maximum allowable prices for a price-cap regulated company "shall be those in effect on December thirty-first of the year preceding the year in which the company is first subject to regulation under this section." This provision would include a price-cap regulated company's access rates. Pursuant to Section 392.245(4), the maximum allowable prices for exchange access and basic local telecommunications services of a price-cap regulated company shall be annually changed by one of the following methods:

- (a) By the change in the telephone service component of the Consumer Price Index (CPI-TS), as published by the United States Department of Commerce or its successor agency for the preceding twelve months; or
- (b) Upon request by the company and approval by the commission, by the change in the Gross Domestic Product Price Index (GDP-PI), as published by the United States Department of Commerce or its successor agency for the preceding twelve months, minus the productivity offset established for telecommunications service by the Federal Communication Commission and adjusted for exogenous factors;

Based upon the provisions of Section 392.245(4), the Commission may direct that the access rates of a price-cap regulated company be reduced, if the CPI-TS is negative



for the preceding twelve-month period, or if the alternative GDI-PI approach results in a negative adjustment. In fact, the Commission has ordered (or permitted) Southwestern Bell, Verizon and Sprint to lower access rates in previous years when the CPI-TS was negative, as requested by these price-cap regulated companies.<sup>5</sup> On the other hand, when the CPI-TS index has been positive, the Commission has permitted price-cap regulated companies to increase their maximum allowable access rates, pursuant to the formula contained in Section 392.245(4).<sup>6</sup>

In addition, Sections 392.245(8)<sup>7</sup> & (9)<sup>8</sup> provided for rate re-balancing of access rates and basic local exchange rates, under certain conditions specified in the statute.

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<sup>5</sup>See e.g., PSC Press Release, *Southwestern Bell To Lower Basic Monthly Rates Under Filing Approved by PSC*, (November 6, 2001); *Order Regarding Tariff and Motion to Suspend, Re GTE Midwest d/b/a Verizon Midwest*, Case No. TR-2002-250 (December 20, 2001); *Order Regarding Tariff and Motion to Suspend, Re Sprint*, Case No. TR-2002-251 (December 6, 2001).

<sup>6</sup> See e.g., *Order Regarding Tariff*, Case No. IT-2003-170 (December 10, 2002); PSC Press Release, *Southwestern Bell To Change Monthly Telephone Rates Under Price Cap Filing* (November 25, 2002)

<sup>7</sup> Subsection 8 provides:

An incumbent local exchange telecommunications company regulated under this section may reduce intrastate access rates, including carrier common line charges, subject to the provisions of subsection 9 of this section, to a level not to exceed one hundred fifty percent of the company's interstate rates for similar access services in effect as of December thirty-first of the year preceding the year in which the company is first subject to regulation under this section. Absent commission action under subsection 10 of this section, an incumbent local exchange telecommunications company regulated under this section shall have four years from the date the company becomes subject to regulation under this section to make the adjustments authorized under this subsection and subsection 9 of this section. Nothing in this subsection shall preclude an incumbent local exchange telecommunications company from establishing its intrastate access rates at a level lower than one hundred fifty percent of the company's interstate rates for similar access services in effect as of December thirty-first of the year preceding the year in which the company is first subject to regulation under this section.

<sup>8</sup> Subsection 9 provides:

Other provisions of this section to the contrary notwithstanding and no earlier than January 1, 1997, the commission shall allow an incumbent local exchange telecommunications company regulated under this section which reduces its intrastate access service rates pursuant to subsection 8 of this section to offset the revenue loss resulting from the first year's access service rate reduction by increasing its monthly maximum allowable prices applicable to basic local exchange telecommunications services by an amount not to exceed one dollar fifty cents. A large incumbent local exchange telecommunications company shall not increase its monthly rates applicable to basic local telecommunications service under this subsection unless it also reduces its rates for intraLATA interexchange telecommunications services by at least ten percent. No later than one year after the date the incumbent local exchange telecommunications company becomes subject to regulation under this section, the commission shall complete an investigation of the cost justification for the reduction of intrastate access rates and the increase of maximum allowable prices for basic local telecommunications service. If the commission determines that the company's monthly maximum allowable average statewide prices for basic local telecommunications service after adjustment

Access rates may be lowered to a level not to exceed one hundred fifty percent of the company's interstate rates for similar access services in effect as of December thirty-first of the year preceding the year in which the company is first subject to price cap regulation. The revenues lost from the access charge reductions may be offset by increases in basic local exchange rates (up to \$1.50 per month per access line). This rate re-balancing process may be accomplished over a four-year period.

However, Section 392.245(8) also specifically provides that: "Nothing in this subsection shall preclude an incumbent local exchange telecommunications company from establishing its intrastate access rates at a level lower than one hundred fifty percent of the company's interstate rates. . . "

Based upon these statutory provisions, CenturyTel believes that the Commission may direct that a price-cap regulated company's access rates be reduced, if required by the application of the formulas in Section 392.245(4). However, the Commission lacks statutory authority to direct a price-cap regulated company to lower or restructure its access rates in a manner that is not consistent with the provisions of Section 392.245.

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pursuant to this subsection will be equal to or less than the long run incremental cost, as defined in section 386.020, RSMo, of providing basic local telecommunications service and that the company's intrastate access rates after adjustment pursuant to this subsection will exceed the long run incremental cost, as defined in section 386.020, RSMo, of providing intrastate access services, the commission shall allow the company to offset the revenue loss resulting from the remaining three- quarters of the total needed to bring that company's intrastate access rates to one hundred fifty percent of the interstate level by increasing the company's monthly maximum allowable prices applicable to basic local telecommunications service by an amount not to exceed one dollar fifty cents on each of the next three anniversary dates thereafter; otherwise, the commission shall order the reduction of intrastate access rates and the increase of monthly maximum allowable prices for basic local telecommunications services to be terminated at the levels the commission determines to be cost-justified. The total revenue increase due to the increase to the monthly maximum allowable prices for basic local telecommunications service shall not exceed the total revenue loss resulting from the reduction to intrastate access service rates.

**B. Issues 5-8 Related to Rate of Return Regulated ILECs**

5. Whether the Commission has the jurisdiction to direct an ILEC that is regulated under rate of return regulation to reduce its switched access rates without conducting a full rate case?

**CenturyTel Position:** As discussed below, CenturyTel believes that the Commission lacks the statutory authority to direct a rate of return regulated company to reduce its access rates, without conducting a hearing, pursuant to Section 392.230 RSMo. 2000. Since the Commission is required to take "all relevant factors" into consideration, CenturyTel believes that it would be unlawful for the Commission to order that access rates be reduced for a rate of return regulated company without conducting a rate case.

A Commission order to reduce access rates outside the context of a rate case would result in a change to the company's tariffs and rates in a way that would reduce the company's existing revenues, income and achieved returns without taking into account all relevant factors. Missouri statutes provide that "[a]ll rates, tolls, charges, schedules and joint rates fixed by the commission shall be in force and shall be *prima facie lawful*, and all regulations, practices and services prescribed by the commission shall be in force and shall be *prima facie lawful and reasonable* until found otherwise in a suit *brought for that purpose* pursuant to the provisions of this chapter." Section 386.270, RSMo 2000 (*emphasis added*). A party challenging those rates, charges and schedules bears the burden of showing the Commission previous findings are not reasonable or lawful. Section 386.430 RSMo 2000; *State ex rel. Gulf Transp. v. Missouri Public Service Commission*, 658 S.W.2d 448, 452[5] (Mo. App. 1983).

Before the Commission may order a change in a rate of return regulated utility's rates, including switched access rates, the Commission must give due regard to a reasonable average return upon the value of the property used in the public service. Sections 392.240(1); 393.270.4, RSMo 2000. This requires the Commission to consider "all relevant factors" before it may order a change in any such rate to generate a different level of revenues. *State ex rel. Utility Consumers' Council of Missouri v. Missouri Public Service Commission*, 585 S.W.2d 41, 49 [10] (Mo.banc 1979); *State ex rel. Missouri Water Co. v. Missouri Public Service Commission*, 308 S.W.2d 704, 718-19[8] (Mo. 1951).

The Commission clarified this position in its Order Rejecting Tariff, issued on April 3, 2001, in *In the Matter of UtiliCorp United Inc.'s Tariff Filed to Update the Rules and Regulations for Gas*, MoPSC Case No. GT-2001-484. In that case, UtiliCorp had filed new tariffs seeking to change interest paid on customer deposits, late payment charges, reconnection fees and charges for returned checks. The purpose of the tariff changes was to make the charges consistent between UtiliCorp's Missouri Public Service division and its newly acquired St. Joseph Light & Power division. Although the changes were sought for "various fixed charges," would not have affected "the rates charged for gas" and would have resulted in a revenue change of only "about \$11,000 per year," the Commission found as follows:

The law is quite clear that when the Commission determines the appropriateness of a rate or charge that a utility seeks to impose on its customers, it is obligated to review and consider all relevant factors, rather than just a single factor.

The Commission has also rejected, as single-issue ratemaking, a small telephone company tariff that would have introduced a \$5.00 late-payment charge. *In the Matter of*

*the Chapter 33 Tariff Filing of Miller Telephone Company, Report and Order*, Case No. TT-2001-257 (December 12, 2000).

The access rates of a rate of return regulated company, as well as the other rates and fundamental terms and conditions of service, enjoy a legal presumption of reasonableness and lawfulness. Rather, a party challenging them bears the burden of showing that circumstances have changed such that they are no longer reasonable. The Commission may not order a change in those rates outside the context of a rate case, unless the Commission also allows a revenue neutral adjustment in other rates to make up for the losses of revenue associated with the access charge rate reduction.

The Missouri courts have found that such revenue neutrality is required if the Commission issues an order reducing a company's rates, without reviewing all relevant factors. A fairly recent example of a Commission attempt to change this process is discussed in *State ex rel. Alma Telephone Company, et al. v. Public Service Commission*, 40 S.W.3d 381 (Mo.App. 2001) ("PTC" Plan). The Circuit Court of Cole County has also previously found similar principles required revenue neutrality in striking down the Commission's Community Optional Service orders. *See State ex re. Contel of Missouri, et al. v. Public Service Commission*, Cases Nos. CV190-190CC, CV190-191CC and CV190-193CC and *State ex rel. Choctaw Telephone Company v. Public Service Commission*, Case No. CV193-66CC.

6. Whether the Commission has the jurisdiction to direct an ILEC that is regulated under rate of return regulation to restructure its switched access rates without conducting a full rate case?

**CenturyTel Position:** CenturyTel believes that it would be lawful for the Commission to review a rate of return regulated company's access rates in the context of

a rate design proceeding (not a full blown rate case), provided that the Commission maintained the overall level of the Company's revenues.

For many years, the Commission has conducted revenue-neutral rate design proceedings to restructure the rate designs of rate of return regulated electric and gas companies.<sup>9</sup> In these cases, the Commission did not review the public utility's earnings levels, but instead re-balanced its various rates on a revenue-neutral basis without reviewing the revenue requirement. Of course, such rate design proceedings have occurred in the context of a contested case in which a hearing was conducted or a settlement among the parties was approved.

7. Whether an ILEC that is regulated under rate of return regulation may voluntarily reduce its switched access rates without filing a full rate case?
8. Whether an ILEC that is regulated under rate of return regulation may voluntarily restructure its switched access rates without filing a full rate case?

**CenturyTel Position:** CenturyTel believes that a rate of return regulated company may voluntarily reduce or restructure its switched access rates with the approval of the Commission, pursuant to the "file and suspend" method of changing its rates. *See* Section 392.230(3). *See e.g., Re United Telephone Company of Missouri for authority to decrease rates for Billing and Collection Service in its Missouri Intrastate Access Tariff*, Case No. TR-88-180, 29 Mo.P.S.C. (N.S.) 498 (September 27, 1988).

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<sup>9</sup>*See e.g., Re Union Electric Company d/b/a AmerenUE*, Case No. EO-96-15, 8 Mo. P.S.C. 3d 407 (Nov. 18, 1999); *Re Laclede Gas PGA Rate Design*, Case No. GR-94-328, 4 Mo.P.S.C. 3d 32 (Aug. 22, 1995); *Re Union Electric*, Case No. EO-87-175, 30 Mo.P.S.C. (N.S.) 406 (Nov. 6, 1990); *Re Kansas City Power & Light Company*, Case No. EO-78-161, 25 Mo.P.S.C. (N.S.) 605 (Feb. 28, 1983).

**C. Issues 9-10 Related to CLECs**

9. Whether the Commission has jurisdiction to direct a CLEC to reduce its switched access rates?
10. Whether the Commission has jurisdiction to direct a CLEC to restructure its switched access rates?

**CenturyTel Position:** CenturyTel believes that the Commission has the statutory authority to adopt its interim policy of capping CLEC access rates at the level of the ILEC access rates on permanent basis. CenturyTel takes no position on whether the Commission has the jurisdiction to direct a CLEC to reduce its switched access rates, or restructure its switched access rates, if they are otherwise below the Commission-mandated rate cap.

**D. Commission Authority to Enlarge Calling Scopes**

**CenturyTel Position:** Issues related to the enlargement of calling scopes are far beyond the scope of this proceeding, and should not be addressed by the Commission herein. However, since Judge Thompson has requested that this matter be discussed, CenturyTel will respectfully state its tentative position on this matter. It is CenturyTel's position that the Commission has the statutory authority, pursuant to Section 392.200(9), to approve the alteration of local exchange boundaries, provided that the ILECs serving each exchange provide notice to the Commission that they approve the alteration of the exchange boundaries. The Commission's statutory authority to alter local exchange boundaries is addressed in Section 392.200(9), which states:

This act [Senate Bill No. 507, 1996] shall not be construed to prohibit the commission, upon determining that it is in the public interest, from altering local exchange boundaries, provided that the incumbent local exchange telecommunications company or companies serving each exchange for which the boundaries are altered provide notice to the

commission that the companies approve the alteration of exchange boundaries. (*emphasis added*).

However, to the extent that the Commission is considering enlarging calling scopes without modifying exchange boundaries, then the case law cited herein in Section B above should also be considered. CenturyTel believes that the Commission lacks the statutory authority to order ILECs to file tariffs enlarging the local, flat-rate calling scopes if it would have the effect of reducing the ILEC's revenues, without making offsetting adjustments to maintain revenue neutrality. *See State ex re. Contel of Missouri, et al. v. Public Service Commission*, Cases Nos. CV190-190CC, CV190-191CC and CV190-193CC and *State ex rel. Choctaw Telephone Company v. Public Service Commission*, Case No. CV193-66CC.

Beyond the questions of statutory authority to enlarge calling scopes, CenturyTel would urge the Commission to carefully investigate the public policy issues surrounding enlarging calling scopes. The Commission has had a long and tortured history of dealing with this issue,<sup>10</sup> and it is clearly a very difficult one to resolve.

#### **E. Protective Order Issues**

CenturyTel has not taken a position on whether the standard protective order should be modified to permit in-house experts to review the cost information of other companies. However, CenturyTel believes that the protective order should be modified to the extent it is being used to keep in-house experts from viewing cost data related to

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<sup>10</sup> In the past, the Commission adopted various forms of an Extended Area Service (EAS) rule (**4 CSR 240-30-30.030**) which was later abandoned as unworkable (rescinded Sept. 24, 1987)). *See Re Extended Area Service*, Case No. TO-86-8, 29 Mo.P.S.C. (N.S.) 75, 103 (March 20, 1987). The Commission also attempted to develop an Extended Measured Service to resolve rural calling scope issues, which was also abandoned. *Re Extended Measured Service*, Case No. TO-87-131. More recently, the Commission approved a Community Optional Service (COS) which was also rescinded. *Re Investigation into the Provision of Community Optional Calling Services*, Case No. TW-97-333, 6 MPSC 3d 531 (Oct. 16, 1997).



their own company. Since CenturyTel does not believe that the Commission needs to conduct further proceedings in this case, it is largely a moot issue unless the Commission chooses to reject this position and proceed to another phase of this case.

### **CONCLUSION**

In summary, the primary public policy issue that should be decided by the Commission in this proceeding is whether the Commission's interim policy of capping the access rates of CLECs at the same level as the access rates of the ILEC in the exchange served by the CLEC is appropriate and in the public interest. CenturyTel recommends that the Commission make permanent its interim policy of capping CLEC access rates at the levels of the underlying ILEC's access rates. Since it is not necessary to develop a cost standard that would be utilized by all telecommunications companies to resolve the fundamental issue in this case related to CLEC access charges, CenturyTel believes that the Commission should decline to resolve the other technical "cost study" issues at this time. Similarly, the Commission should leave "access reform" issues for another time and proceeding.

Respectfully submitted,

**/s/ James M. Fischer**

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**Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or e-mailed to all counsel of record this 13th day of December, 2002.

/s/ **James M. Fischer**

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