

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO**

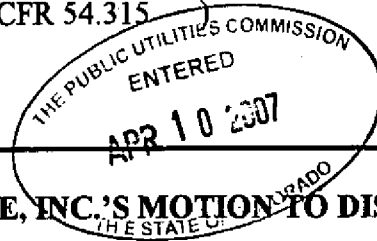
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IN THE MATTER OF THE PETITION OF SAN )  
ISABEL TELECOM, INC. FOR THE )  
MODIFICATION OF THE DISAGGREGATION )  
AND TARGETING SUPPORT OF CENTURY- )  
TEL OF EAGLE, INC. FOR STUDY AREA )  
CODE 462185 PURSUANT TO 47 CFR 54.315 )  
UNDER PATH 3. - )

DOCKET NO. 07M-063T



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**CENTURYTEL OF EAGLE, INC.'S MOTION TO DISMISS PETITION**

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CenturyTel of Eagle, Inc., d/b/a CenturyTel, through its undersigned attorney,  
herewith submits its Motion to Dismiss Petition and in support thereof states as follows:

1. CenturyTel of Eagle, Inc. (hereinafter "CenturyTel") files this Motion to Dismiss Petition on the ground that the San Isabel Telecom, Inc. ("San Isabel" or "Petitioner") Petition for Modification of the Disaggregation and Targeting of Support of CenturyTel fails to state a claim upon which relief can be granted. Additionally, the relief sought by the Petition is vague and unsupported by proposed alternatives, and ultimately seeks relief the grant of which is a matter of discretion with this Commission.
2. San Isabel's Petition rests upon three basic assertions. First, it claims that its per line support has been "frozen" and has not changed for four years. Petition, p. 2, paragraph 5. Second, it asserts that certain wireless competitors of both San Isabel and CenturyTel are receiving more per line support per month than is San Isabel (because these carriers serve in CenturyTel's Zone 2 exchanges and San Isabel does

not). Petition, p. 2, paragraph 6. Third, San Isabel claims that CenturyTel used the BCPM3 model to calculate access line costs per exchange in connection with its Path 3 filing and that the use of that model for that purpose was inappropriate because CenturyTel is predominately a rural carrier and the BCPM3 "...was developed for non rural LEC's." "San Isabel submits that the BCPM3 model does not represent the cost of the exchanges in the Century study area." Petition, p. 2-3, paragraphs 7-8. -

3. Whether taken singly or collectively, the San Isabel assertions simply do not contain the substance out of which a meaningful claim for relief can be made under either the rules of this Commission or those of the FCC.
4. What the San Isabel Petition does not say – and what is obviously both implied and central to the claims in its Petition – is that it is not satisfied with the current level of per line support that it receives from the federal high cost support mechanisms through the Universal Service Administration Company ("USAC"). Simply stated, San Isabel wants more per line support money. And it doesn't like the existing Path 3 approach chosen by CenturyTel for disaggregation purposes because it doesn't provide service in any of CenturyTel's Zone 2 high cost exchanges – only in the lower cost Zone 1 exchanges where the per line support is currently \$7.89 per line per month as opposed to \$52.85 per line per month in Zone 2. (The San Isabel Petition asserts at page 2, paragraph 5 that the "loop support per line" was initially established at \$7.06 for Zone 1 and \$43.19 for Zone 2 and further that: "No change in these loop support amounts has occurred since Century's self-certification in May of 2002." The San Isabel claim is incorrect. Public information available on the USAC website indicates that the current loop support per line per month is as cited above: \$7.89 for

Zone 1 and \$52.85 for Zone 2. Additionally, available USAC information indicates that current CETC supported lines in the CenturyTel of Eagle study area are: Northeast Colorado Cellular – 5,618; Western Wireless – 8,870; and San Isabel – 712.)

5. There are additional important matters that could potentially serve as the basis for a real claim for relief that the San Isabel Petition does not address. First, the Petition alleges no harm to San Isabel. A close examination of the content of the Petition will reveal no suggestion that San Isabel is being adversely affected by the existing Path 3 disaggregation method for providing federal support in the affected exchanges. Petitioner simply doesn't like the fact that wireless carriers are receiving more support per line than it is because they provide service in Zone 2 exchanges. As to the claim that the San Isabel per line support has been "frozen" for four years – some explanation is required. As is noted above, the San Isabel claim that its per line support has remained the same for the referenced four year time period is incorrect. USAC has updated the support per line amounts for the provision of service within Zone 1 of the CenturyTel exchanges and San Isabel receives the same current Zone 1 per line support amount as does CenturyTel. Similarly, every other competitive provider including those wireless carriers that have been certified by this Commission as ETCs and that provide competitive basic universal service in those Zone 1 locations receive the same amount of monthly per line support. The per line support amounts received by all CETCs providing competitive basic exchange service in CenturyTel exchanges is the same in each zone. Thus San Isabel's support per line is the same as that of all competitive carriers providing service in Zone 1, and that

amount has been changed and indeed increased since CenturyTel's initial filing in May of 2002.

6. Second, San Isabel makes no claim that the application of the Path 3 approach results in anti-competitive impacts to San Isabel or causes discrimination to the company in its operative effect. (The complaint that wireless carriers get more per line support than does San Isabel because those competitors serve in Zone 2 and San Isabel does not is obviously unavailing to a claim of discriminatory or anti-competitive treatment.) As to the matter of the use of the BCPM3, CenturyTel was not alone in Colorado in taking such an approach. TDS, in its Delta County exchanges, also filed a Path 3 disaggregation plan in Colorado in reliance upon the BCPM3. (Attachment One to this Motion is an Excel spreadsheet from the USAC Website listing the disaggregation Plan choices by path of the Colorado ILECs.) Other companies around the country may well have utilized that model as well. (The choice by mid-size rural companies that use accounting systems which track costs at the study area level rather than the exchange or wire center level to elect to use a model in connection with a Path 3 Plan is an imminently rational approach to the disaggregation and targeting of support.)
7. To summarize, the San Isabel Petition contains nothing beyond the bald affirmative statement that CenturyTel's use of the BCPM3 was inappropriate. The Petition contains no citation to any FCC or state regulatory or court decision to the effect that use of the BCPM3 is inappropriate for a mid-size rural carrier such as CenturyTel. Nor is there even a reference in the Petition to the opinion of any third party expert that use of that particular model for the purpose was inappropriate. And finally – the

complaint concerning use of the BCPM3 comes nearly five years after the Path 3 filing was made by CenturyTel and after the plan became effective by operation of law under the Commission's rules.

8. Third, the San Isabel petition is deficient in that its claim for relief is extremely vague. "WHEREFORE ... San Isabel respectfully petitions the Commission for modification of the disaggregation and targeting of support selected by CenturyTel ..." Nowhere does the San Isabel Petition propose an alternative or option to the existing Path 3 CenturyTel plan. It does not offer or suggest the use of an alternative model to the BCPM3. It proposes no specific disaggregation methodology of its own. It does not propose that CenturyTel utilize a single zone, two zones or multiple zones in any "remedial" filing. Reduced to its essence, the complaint simply is that after almost 5 years time (the CenturyTel Path 3 disaggregation filing was made on May 22, 2002) San Isabel doesn't like the status quo anymore and it wants to make more money. (If, standing alone, a dislike for the status quo and an interest in making more money could serve as the basis for stating claims for relief, court dockets would be overwhelmed and regulatory agencies inundated by the claims of hopeful litigants.) The San Isabel Petition is deficient in that it fails to state a claim for relief and it should be dismissed.
9. The rules concerning disaggregation and the targeting of support by rural ILECs are contained in this Commission's Rule 2190 (4 CCR 723-2-2190). The Federal analog to these state rules is found at 47 CFR Section 54.315. The state and federal rules contain similar language and similar requirements. Rule 2190 outlines in sections (a), (b) and (c) the Path 1, Path 2 and Path 3 choices for disaggregation and targeting of

support that were and are available to rural ILECs. In brief – Path 1 is an election of no disaggregation; Path 2 is a choice which is based upon the filing of a disaggregation and targeting plan which is approved both by this Commission and the FCC; and Path 3 is the selection of a self-certified disaggregation plan wherein support is disaggregated into no more than two cost zones per wire center. The rule identifies the circumstances under which a Path 3 plan may be modified. In 2190(c)(V) it is noted that: “On its own motion, upon petition by an interested party, or upon petition by the rural ILEC, the Commission may modify the disaggregation and targeting of support selected under this path.” (Emphasis supplied)

10. Rule 2190 makes clear that the Commission has discretion whether to modify, or to consider modifying, an existing Path 3 plan choice. CenturyTel submits that under the circumstances here – in the absence of a claim of harm by Petitioner and in the absence of any alternative proposal by Petitioner to replace the CenturyTel Path 3 plan – the Commission’s discretion should not be moved under the circumstances and it should deny the San Isabel Petition for failure to state a claim.

WHEREFORE, for the foregoing reasons, CenturyTel respectfully requests that its Motion to Dismiss Petition be granted.

Respectfully submitted this 9th day of April, 2007.

CenturyTel of Eagle, Inc., d/b/a CenturyTel

By: 

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**CERTIFICATE OF SERVICE**

I hereby certify that an original and 8 copies of the above and foregoing CenturyTel of Eagle, Inc.'s Motion to Dismiss Petition was hand delivered to the following on this 9th day of April, 2007:

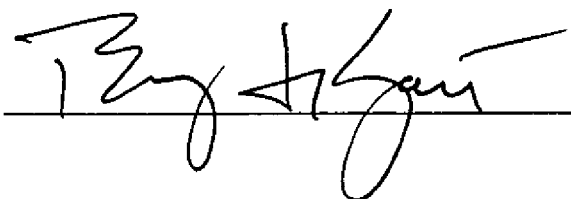
Mr. Doug Dean  
Executive Secretary  
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and that on the same date true and correct copies were served by placement in the United States mail, first class postage prepaid, addressed to the following:

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A handwritten signature in black ink, appearing to read "Paul Gomez", is written over a horizontal line.

CO

State	SA#	Study/Area Name	Type	Disaggregation	5/16/2002
CO	462178	AGATE TEL CO	C		1
CO	462192	BIG SANDY TELECOM	C		1
CO	462181	BIJOU TEL COOP ASSOC	C		1
CO	462182	BLANCA TEL CO	C		1
CO	462185	CENTURYTEL OF EAGLE	C		3
CO	462208	CENTURYTEL-COLORADO	C		1
CO	462204	COLUMBINE ACQ CORP	C		1
CO	462184	DELTA COUNTY TEL CO	C		3
CO	462186	EASTERN SLOPE RURAL	C		1
CO	462187	EL PASO COUNTY TEL	C		1
CO	462188	FARMERS TEL CO - CO	C		1
CO	462190	HAXTUN TEL CO	C		1
CO	462193	NUCLA-NATURITA TEL	C		1
CO	462194	NUNN TEL CO	C		1
CO	462196	PEETZ COOP TEL CO	C		1
CO	462197	PHILLIPS COUNTY TEL	C		1
CO	462198	PINE DRIVE TEL CO	A		1
CO	462199	PLAINS COOP TEL ASSN	C		1
CO	462201	RICO TEL CO	C		1
CO	462202	ROGGEN TEL COOP CO	C		1
CO	462203	RYE TELEPHONE CO	C		1
CO	462195	SOUTH PARK TEL. CO.	C		1
CO	462206	STONEHAM COOP TEL CO	A		1
CO	462207	STRASBURG TEL CO	C		1
CO	461835	SUNFLOWER TEL - CO	C		1
CO	462209	WIGGINS TEL ASSOC	C		2
CO	462210	WILLARD TEL CO	A		1