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BEFORE THE PUBLIC UTILITIES CO:MMJSSION . , . OF THE STATE OF COLORADo".e~l i}t, IO f•.i I \0, 09. Fa..-1~

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DISMISS PETITION

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

I. CenturyTel ofEagle, 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 ofthe 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 reliefthe grant ofwhich is a matter ofdiscretion 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. PetitioIL p. 2, paragraph 5 Second, it asserts that certain wireless competitors ofboth 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

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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 ofthat model for that purpose was inappropriate because CenturyTel is predominately a rural carrier and the BCPMJ " ... was developed for
non rural LEC's." "San Isabel submits that the BCPM3 model does not represent the cost ofthe 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 ofwhich a meaningful claim for relief can be made under either the rules ofthis Commission or those ofthe 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 ofCenturyTel'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 l 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 of2002." 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

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Zone 1 and $52.85 for Zone 2. Additionally, available USAC information indicates that current CETC supported lines in the CenturyTel ofEagle 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 reliefthat the San Isabel Petition does not address. First, the Petition alleges no harm to San Isabel. A close examination ofthe content ofthe 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 ofservice within Zone 1 ofthe 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 ofall competitive carriers providing service in Zone 1, and that

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amount has been changed and indeed increased since CenturyTel's initial filing in May of2002.
6. Second, San Isabel makes no claim that the application ofthe 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 ofdiscriminatory or anti-competitive
treatment.) As to the matter ofthe use ofthe BCPM3, CenturyTel was not alone in Colorado in taking such an approach. ms. 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 ofthe 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 affrrmative statement that CenturyTel's use ofthe BCPM3 was inappropriate. The Petition contains no citation to any FCC or state regulatory or court decision to the effect that use ofthe 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 ofthat particular model for the purpose was inappropriate. And finally- the

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complaint concerning use ofthe 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 ofthe 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 ofits 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 ofhopeful 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 ofsupport 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

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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 ofa 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 ofsupport 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 ofharm 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 ofApril, 2007.
Eagle, Inc., d/b/a Century~

Barry L. , Reg. No.
Guillory & Hjort PLLC
2111 West Boulevard
Rapid City, SD 57701
303.550.4772

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rollsroyal@aol.com

CERTIFICATE OF SERVICE

I hereby certify that an original and 8 copies ofthe 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
1560 Broadway, Suite 250
Denver, CO 80202

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:

Paul Gomez, Esq.
Assistant Attorney General
Office ofthe Attom~ General
1525 Sherman St., 5 Floor
Denver, CO 80203

Mark A. Davidson, Esq.
Dufford & Brown, P .C.
1700 Broadway, Suite 2100
Denver, CO 80290-2101

James Greenwood
Director
Office of Consumer Counsel
1580 Logan St., Suite 740
Denver, CO 80203

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co 462182 BLANCA TEL CO C 1
co 462185 CENTURYTELOFEAGLE 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

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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
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co 462201 RICO TEL CO C 1
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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
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