

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

In the matter of	)	
	)	
ALLTEL Corporation	)	CCB/CPD No. 01-28
Petition for Waiver of Section 61.41	)	
	)	
ALLTEL Corporation	)	CCB/CPD No. 99-01
Petition to Extend Interim Waiver of Section	)	
61.41 of the Commission's Rules	)	
	)	
CenturyTel, Inc. and CenturyTel of Alabama, LLC	)	CCB/CPD No. 01-36
Petition for Waiver of Sections 61.41(b) and	)	
(c) of the Commission's Rules	)	
	)	CCB/CPD No. 01-30
CenturyTel, Inc. and CenturyTel of Missouri, LLC	)	
Petition for Wavier of Sections 61.41(b) and	)	
(c) of the Commission's Rules	)	CCB/CPD No. 99-36
	)	
Puerto Rico Telephone Company Petition for	)	
Waiver of Section 61.41 of the Commission's	)	
Rules or, in the Alternative, Request for	)	
Waiver of Section 54.303(a) of the	)	
Commission's Rules	)	

**Memorandum Opinion and Order**

**Adopted: April 17, 2002**

**Released: April 18, 2002**

By the Chief, Wireline Competition Bureau:<sup>1</sup>

**I. INTRODUCTION**

1. In this order, we grant five petitions for waiver of the Commission's "all-or-nothing rule."<sup>2</sup> The first three petitions, filed by ALLTEL Corporation (ALLTEL);<sup>3</sup> CenturyTel,

<sup>1</sup> The Common Carrier Bureau recently changed its name to the "Wireline Competition Bureau," and the Competitive Pricing Division recently changed its name to the "Pricing Policy Division."

<sup>2</sup> See 47 C.F.R. § 61.41.

<sup>3</sup> ALLTEL Corporation Petition for Waiver of Section 61.41 (filed Dec. 3, 2001) (*ALLTEL Waiver Petition*).

Inc. (CenturyTel) and CenturyTel of Alabama, LLC (CenturyTel of Alabama);<sup>4</sup> and CenturyTel and CenturyTel of Missouri, LLC (CenturyTel of Missouri)<sup>5</sup> relate to pending purchases of exchanges from carriers subject to price cap regulation. By granting these petitions, we will allow the carriers to continue to operate their existing exchanges under rate-of-return regulation, following the acquisitions, until the Commission completes its review of the all-or-nothing rule.<sup>6</sup> These first three petitions also seek guidance on the operation of the Commission's interstate access universal service support mechanism, which we provide below. The last two petitions concern extensions of previously-granted waivers. Specifically, we grant a waiver petition filed by ALLTEL<sup>7</sup> and extend the deadline by which exchanges acquired from Aliant are required to convert to rate-of-return regulation until the Commission completes its review of the all-or-nothing rule.<sup>8</sup> We also grant a waiver petition filed by Puerto Rico Telephone Company, Inc. (Puerto Rico Telephone) and extend the deadline by which Puerto Rico Telephone is required to convert to price cap regulation, thus allowing Puerto Rico Telephone to remain under rate-of-return regulation until the Commission completes its review of the all-or-nothing rule.<sup>9</sup>

## II. BACKGROUND

2. *The All-or-Nothing Rule.* Section 61.41 of the Commission's rules is designed to ensure that all of a carrier's study areas and affiliates are subject to a single form of pricing regulation – either price cap regulation or rate-of-return regulation.<sup>10</sup> This rule is commonly referred to as the “all-or-nothing” rule. Specifically, section 61.41 provides that, if an individual rate-of-return carrier or study area converts to price cap regulation, all of its affiliates or study areas must also do so, except for those using average schedules.<sup>11</sup> This section also provides that if a price cap carrier enters into a merger, acquisition, or similar transaction, it must continue to operate under price cap regulation after the transaction.<sup>12</sup> In addition, when rate-of-return and price cap carriers merge or acquire one another, the rate-of-return carrier must convert to price cap regulation within one year.<sup>13</sup> These requirements address two concerns the Commission has

<sup>4</sup> CenturyTel, Inc., and CenturyTel of Alabama, LLC Petition for Waiver (filed Nov. 28, 2001) (*CenturyTel Alabama Waiver Petition*).

<sup>5</sup> CenturyTel, Inc., and CenturyTel of Missouri, LLC, Petition for Waiver (filed Dec. 13, 2001) (*CenturyTel Missouri Waiver Petition*).

<sup>6</sup> *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, Second Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19613 (2001) (*Rate-of-Return Access Charge Reform Further Notice*) (seeking comment on the all-or-nothing rule).

<sup>7</sup> ALLTEL merged with Aliant Communications, Inc. (Aliant) in 1999. See *ALLTEL Corporation Petition for Waiver of Section 61.41 of the Commission's Rules and Applications for Transfer of Control*, CCB/CPD No. 99-1, Memorandum Opinion and Order, 14 FCC Rcd 14191 (1999) (*ALLTEL/Aliant Merger Order*).

<sup>8</sup> ALLTEL Corporation Petition to Extend Interim Waiver of Section 61.41 of the Commission's Rules (filed Feb. 22, 2002) (*ALLTEL/Aliant Waiver Petition*).

<sup>9</sup> Puerto Rico Telephone Company Petition for Waiver of Section 61.41 or Section 54.303(a) of the Commission's Rules, CCB/CPD No. 99-36 (filed Feb. 4, 2002) (*Puerto Rico Telephone Waiver Petition*).

<sup>10</sup> 47 C.F.R. § 61.41.

<sup>11</sup> 47 C.F.R. § 61.41(b).

<sup>12</sup> 47 C.F.R. § 61.41(c)(1).

<sup>13</sup> 47 C.F.R. § 61.41(c)(2).

regarding mergers and acquisitions involving price cap and non-price cap companies. First, a carrier might attempt to shift costs from its price cap affiliates to its non-price cap affiliates.<sup>14</sup> This would allow a non-price cap affiliate to charge higher rates than otherwise possible to recover its higher revenue requirement while simultaneously increasing profits of a price cap affiliate resulting from its cost savings.<sup>15</sup> Second, a carrier might attempt to “game the system” by switching back and forth between rate-of-return regulation and price cap regulation.<sup>16</sup> A rate-of-return carrier could build a large rate base in order to raise rates, and then return to price cap regulation and reduce costs to an efficient level, thereby maximizing its profits at the expense of ratepayers.<sup>17</sup>

3. *Commission Review of the All-or-Nothing Rule.* The continued utility of the all-or-nothing rule is currently under consideration in the *Rate-of-Return Access Charge Reform Further Notice*.<sup>18</sup> In the *Notice*, the Commission noted that the all-or-nothing rule was created ten years ago, and stated that it wished to explore whether its regulatory policy of generally not permitting affiliated carriers to operate under different systems of regulation continues to serve any public interest.<sup>19</sup> It requested comment on why, if at all, the rule should be retained, repealed, or modified.<sup>20</sup> The Commission requested comment on whether the all-or-nothing restrictions unfairly limit affiliated companies from selecting regulatory options that would enable them to operate more efficiently, especially in light of the highly diverse service areas of some carriers.<sup>21</sup> The Commission also requested comment on whether and how circumstances have changed since the rule was adopted; whether competition would be better served with or without the rule; whether the rule is working effectively, especially in light of the rule waivers the Commission grants; what impact an increasingly competitive environment has on the rules; whether the rule is still necessary to prevent cost-shifting and gaming; and how rate-of-return carriers that are required to convert to price cap regulation will receive universal support.<sup>22</sup>

### III. DISCUSSION

4. Generally, the Commission's rules may be waived for good cause shown.<sup>23</sup> As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.<sup>24</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>25</sup> In addition, the Commission may take into

<sup>14</sup> *Rate-of-Return Access Charge Reform Further Notice*, 16 FCC Rcd at 19781, para. 261.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 19720-24, paras. 266-271.

<sup>19</sup> *Id.* at 19720, para. 266.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 19720, para. 267.

<sup>22</sup> *Id.* at 19720-24, paras. 267-71.

<sup>23</sup> 47 C.F.R. § 1.3.

<sup>24</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

<sup>25</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>26</sup> Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>27</sup>

#### A. Waiver Requests for Pending Transactions

5. *ALLTEL*. ALLTEL requests that the Commission waive section 61.41 of its rules<sup>28</sup> to allow ALLTEL to continue to be regulated as a rate-of-return incumbent local exchange carrier following its upcoming acquisition of 100 local exchanges from Verizon Communications Inc. (Verizon) in the state of Kentucky, while the local exchanges acquired from Verizon remain under price cap regulation.<sup>29</sup> A new, wholly-owned subsidiary of ALLTEL named Kentucky ALLTEL will hold the assets of the former Verizon exchanges, which is separate from the entity that holds the existing ALLTEL local telephone operations in Kentucky.<sup>30</sup> ALLTEL asserts that the public interest would be served if the higher-density Verizon properties were to remain subject to the efficiency-generating mechanisms of price cap regulation.<sup>31</sup> ALLTEL contends that this transaction does not raise cost-shifting concerns.<sup>32</sup> Additionally, ALLTEL asserts that the current level of universal service support under the *CALLS Order*,<sup>33</sup> which is capped, would be insufficient to cover the additional exchanges if all of ALLTEL's rate-of-return exchanges were converted to price cap regulation.<sup>34</sup> AT&T opposes the waiver petition.<sup>35</sup> AT&T asserts that ALLTEL has failed to demonstrate special circumstances necessary to justify a waiver, that grant of ALLTEL's waiver request would allow it to shift costs between its affiliates, and that ALLTEL has failed to prove that any public interest benefit would result from the grant of its request.<sup>36</sup>

6. *CenturyTel*. CenturyTel and CenturyTel of Missouri request that the Commission

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<sup>26</sup> *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular Telephone*, 897 F.2d at 1166.

<sup>27</sup> *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular Telephone*, 897 F.2d at 1166.

<sup>28</sup> Specifically, ALLTEL seeks a waiver of subsections (b) and (c)(2). 47 C.F.R. § 64.41(b) and (c)(2).

<sup>29</sup> *ALLTEL Waiver Petition* at 1. On February 13, 2002, the Public Service Commission of Kentucky approved the transfer of Verizon's Kentucky exchanges to ALLTEL, subject to certain conditions. *Petition by ALLTEL Corp. to Acquire the Kentucky Assets of Verizon South, Inc.*, Case No. 2001-00399, Order (Kentucky Public Service Commission 2002).

<sup>30</sup> *ALLTEL Waiver Petition* at 1-2.

<sup>31</sup> *Id.* at 7-8, 11.

<sup>32</sup> *Id.* at 9.

<sup>33</sup> *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), *aff'd in part, rev'd in part, and remanded in part, Texas Office of Public Util. Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001) (*CALLS Order*).

<sup>34</sup> *ALLTEL Waiver Petition* at 11. ALLTEL did not request the waiver for a specific period of time.

<sup>35</sup> AT&T Opposition to ALLTEL Waiver Request (filed Dec. 27, 2001) (*AT&T ALLTEL Opposition*).

<sup>36</sup> *Id.* at 1-8.

waive the all-or-nothing rule, specifically subsections (b) and (c)(2),<sup>37</sup> to allow CenturyTel to continue to be regulated as a rate-of-return incumbent local exchange carrier following the acquisition of 96 local exchanges from Verizon in Missouri, while the local exchanges acquired from Verizon remain under price cap regulation.<sup>38</sup> CenturyTel and CenturyTel of Alabama similarly request a waiver of the Commission's all-or-nothing rule regarding CenturyTel of Alabama's recent agreement to acquire 88 of Verizon's local exchanges in Alabama.<sup>39</sup> CenturyTel requests that the waivers last until July 1, 2005.<sup>40</sup>

7. CenturyTel asserts that the grant of its petitions would serve the public interest, raises no new issues of law, and is supported by Commission precedent.<sup>41</sup> CenturyTel asserts that the concerns behind the Commission's all-or-nothing rule are not at issue for its transactions because CenturyTel will not be able to shift costs among study areas without such actions appearing in state and federal tariffs.<sup>42</sup> CenturyTel contends that the vast majority of its exchanges are rural, and conversion to price cap regulation would be inappropriate.<sup>43</sup> CenturyTel asserts that if it were required to convert all of its exchanges to price cap regulation, universal service support under the *CALLS Order* would be insufficient.<sup>44</sup> AT&T opposes the waiver petition.<sup>45</sup> AT&T asserts that CenturyTel has failed to demonstrate special circumstances necessary to justify a waiver, that grant of CenturyTel's waiver requests would allow it to shift costs between its affiliates, and that CenturyTel has failed to prove that any public interest benefit would result from the grant of its request.<sup>46</sup>

8. *Waiver for ALLTEL and CenturyTel.* We find good cause to grant the requests by ALLTEL and CenturyTel for waiver of the Commission's all-or-nothing rule<sup>47</sup> and to allow them to retain their respective regulatory status until the Commission concludes its review of the all-or-nothing rule in the *Rate-of-Return Access Charge Reform Further Notice*. As part of the *Rate-of-Return Access Charge Reform Further Notice*, the Commission is currently considering

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<sup>37</sup> 47 C.F.R. § 64.41(b) and (c)(2).

<sup>38</sup> *CenturyTel Missouri Waiver Petition* at 1-12.

<sup>39</sup> *CenturyTel Alabama Waiver Petition* at 1-12.

<sup>40</sup> *CenturyTel Alabama Waiver Petition* at 11; *CenturyTel Missouri Waiver Petition* at 11-12.

<sup>41</sup> *CenturyTel Alabama Waiver Petition* at 1-2; *CenturyTel Missouri Waiver Petition* at 1-2.

<sup>42</sup> *CenturyTel Alabama Waiver Petition* at 5-6; *CenturyTel Missouri Waiver Petition* at 5-6.

<sup>43</sup> *CenturyTel Alabama Waiver Petition* at 6-8; *CenturyTel Missouri Waiver Petition* at 6-8.

<sup>44</sup> *CenturyTel Alabama Waiver Petition* at 12-13; *CenturyTel Missouri Waiver Petition* at 12-13.

<sup>45</sup> AT&T Opposition to CenturyTel Waiver Requests (filed Jan. 4, 2002) (*AT&T CenturyTel Opposition*).

<sup>46</sup> *Id.* at 1-8.

<sup>47</sup> See generally *Ateac, Inc., Alaska Telephone Co., Arctic Slope Telephone Ass'n Cooperative, Interior Telephone Co., Inc., Mukluk Telephone Co., and United-KUC, Inc. Petition for Waiver of Sections 61.41(c) and (d) of the Commission's Rules*, CCB/CPD No. 00-01, Memorandum Opinion and Order, 15 FCC Rcd 23511 (Common Carrier Bureau 2000); *All West Communications, Inc., Carbon/Emery Telecom, Inc., Central Utah Telephone, Inc., Hanksville Telecom, Inc., Manti Telephone Co., Skyline Telecom, UBET Telecom, Inc., and Qwest Corp. Joint Petition for Waiver of the Definition of "Study Area" Contained in the Party 36 Appendix-Glossary of the Commission's Rules, Petition for Waiver of Sections 61.41(c), 61.41(d), and 69.3(e)(11)*, CC Docket No. 96-45, Order, 16 FCC Rcd 4697 (Common Carrier Bureau 2001); *Saddleback Communications and Qwest Corporation*, CC Docket No. 96-45, Order, 16 FCC Rcd 21159 (Common Carrier Bureau 2001).

whether to modify or eliminate the all-or-nothing rule.<sup>48</sup> We expect that the Commission's review of the all-or-nothing rule will be resolved before ALLTEL and CenturyTel must make their annual access tariff filings for 2003. Under these special circumstances, we do not believe the public interest would be served by requiring ALLTEL and CenturyTel to undertake the burdens of converting their acquired exchanges to rate-of-return regulation based on a rule that may be modified or eliminated in the near future.

9. Moreover, when it adopted the all-or-nothing rule, the Commission noted that it would entertain requests for waiver of the rule because efficiencies created by the purchase and sale of exchanges may outweigh the threat of "gaming the system" and cost shifting.<sup>49</sup> In addition, the Commission has stated that, although it believes that incentive-based regulation is generally superior to rate-of-return regulation, it is sensitive to the needs of smaller carriers.<sup>50</sup> In prior waiver orders, the Bureau has observed that the public interest can be served by allowing smaller carriers to purchase exchanges from Bell Operating Companies and serve their customers.<sup>51</sup> Here, we believe that the efficiencies to be gained from the sale of exchanges to ALLTEL and CenturyTel outweigh the threat of "gaming the system" raised by AT&T. However, to safeguard against possible gaming that could result from attempts to elect price cap regulation while these rules are under review, we require ALLTEL and CenturyTel to seek prior Commission approval if either seeks to elect price cap regulation. At that time, we can make a determination if the transaction raises concerns that we seek to address in section 61.41. Under these conditions, and absent some showing of actual "gaming," we find that the public interest will be served by allowing ALLTEL and CenturyTel to maintain their respective regulatory status until the Commission completes its review of the all-or-nothing rule.<sup>52</sup>

10. We reject CenturyTel's request for a waiver of the all-or-nothing rule until July 2005.<sup>53</sup> As mentioned above, we expect the Commission to conclude its review of the rule well before the annual access tariff filing for 2005, and we find no basis to grant a three-year waiver before the Commission has finished its review.

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<sup>48</sup> See *Rate-of-Return Access Charge Reform Further Notice*, 16 FCC Rcd at 19720, paras. 266-67.

<sup>49</sup> See *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Order on Reconsideration, 6 FCC Rcd 2637, 2706, n.207 (1991) (subsequent history omitted) (*LEC Price Cap Reconsideration Order*).

<sup>50</sup> See *ALLTEL/Aliant Merger Order*, 14 FCC Rcd at 14202, para. 34.

<sup>51</sup> See *Citizens Telecommunications Company of Wyoming and Qwest Corp. Joint Petition for Waiver of the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules*, CC Docket No. 96-45, Order, 16 FCC Rcd 3563, 3567, para. 11 (Common Carrier Bureau 2001) (*Citizens Waiver Order*); *Valor Telecommunications of Texas and GTE Southwest Inc. Joint Petition for Waiver of the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules*, CC Docket No. 96-45, Order, 15 FCC Rcd 15816, 15821, para. 11 (Common Carrier Bureau 2000) (*Valor Waiver Order*). See generally *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, First Report and Order, 10 FCC Rcd 8961, 9102, para. 323 (1995); *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, Notice of Proposed Rulemaking, 9 FCC Rcd 1687, 1704, para. 88 (1994).

<sup>52</sup> In the event the Commission modifies the all-or-nothing rule, we anticipate that it will provide carriers with some period of time to evaluate any changes to the rule before carriers are required to elect a particular form of pricing regulation. In the event the Commission chooses not to modify the rule, we expect that it will specify the time period in which carriers with pending waivers must come into compliance with the rule.

<sup>53</sup> *CenturyTel Alabama Waiver Petition* at 11; *CenturyTel Missouri Waiver Petition* at 11-12.

11. Additionally, we find that the comments filed by Mr. Michael Van Wies regarding CenturyTel's service quality in Tennessee are appropriately addressed by the Tennessee Regulatory Authority and do not affect CenturyTel's request for waiver of the all-or-nothing rule in Missouri and Alabama.<sup>54</sup>

12. We also observe that section 61.45 of the Commission's rules grants the Commission discretion to require price cap carriers to make adjustments to their price cap indices to reflect cost changes resulting from rule waivers.<sup>55</sup> Consistent with our precedent and in accordance with section 61.45, we require Verizon to adjust its price cap indices to reflect the removal of the transferred access lines from its Alabama, Missouri and Kentucky study areas.<sup>56</sup>

## B. Petitions for Clarification

13. In addition to seeking waivers of the all-or-nothing rule, ALLTEL and CenturyTel both request a "clarification" of section 54.801(d) the Commission's rules.<sup>57</sup> Specifically, both carriers request a finding that they will receive the same level of universal service support for the price cap exchanges they acquire, as the sellers did prior to the transactions.<sup>58</sup> Although we find no ambiguity in the Commission's rules, we take this opportunity to confirm the carriers' understanding of section 54.801. As described in the Commission's *CALLS Order*, if a price cap carrier acquires exchanges from another price cap carrier, the acquiring carrier will become eligible to receive interstate access universal service support for the acquired exchanges.<sup>59</sup> Here, the acquiring carriers, Kentucky ALLTEL, CenturyTel of Alabama, and CenturyTel of Missouri, will be price cap carriers upon acquisition of the exchanges from Verizon. In accordance with section 54.801, the acquiring price cap carrier will receive interstate access universal service support at the same level that the selling price cap carrier formerly received, and both carriers will adjust their line counts accordingly beginning with the next quarterly report to the fund

<sup>54</sup> Comments of Mr. Michael Van Wies (filed Jan. 18, 2002).

<sup>55</sup> See 47 C.F.R. § 61.45(d). The Price Cap Indices, which are the upper bounds for rates that comply with price cap regulation, are calculated pursuant to a formula specified in the Commission's rules for price cap carriers. See also *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 99-1, First Report and Order, 10 FCC Rcd 8961 (1995).

<sup>56</sup> The Bureau has required carriers to make adjustments to their price cap indices in past study area waivers involving the sale of exchanges operated by carriers subject to price cap regulation. See, e.g., *CenturyTel of Northwest Arkansas, LLC Joint Petition for Waiver of Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules Petition for Waiver of Sections 61.41(c) and 69.3(g)(2) of the Commission's Rules*, CC Docket No. 96-45, Memorandum Opinion and Order, DA 00-1434 (Common Carrier Bureau 2000); *GTE North, Inc., and PTI Communications of Michigan, Inc. Petition for Waiver of Sections 61.41(c) and the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, AAD 97-57, Memorandum Opinion and Order, 12 FCC Rcd 13882, 13888 (Common Carrier Bureau 1997); *Golden Belt Telephone Association, Inc., and United Telephone Company of Kansas, Petition for Waiver of Sections 61.41(c)(2) and the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, AAD 97-72, Memorandum Opinion and Order, 12 FCC Rcd 16335, 16341 (Common Carrier Bureau 1997).

<sup>57</sup> *ALLTEL Waiver Petition* at 12; *CenturyTel Alabama Waiver Petition* at 13-14; *CenturyTel Missouri Waiver Petition* at 13-14.

<sup>58</sup> *ALLTEL Waiver Petition* at 12; *CenturyTel Alabama Waiver Petition* at 13-14; *CenturyTel Missouri Waiver Petition* at 13-14.

<sup>59</sup> *CALLS Order*, 15 FCC Rcd at 13060, para. 225. See also *Citizens Waiver Order*, 15 FCC Rcd at 3567, para. 9; *Valor Waiver Order*, 15 FCC Rcd at 15820, para. 9.

administrator.<sup>60</sup> Carriers are also required to report their adjusted average common line, marketing, and transport interconnection charge revenue per line, per month, for the affected study areas in accordance with the Commission's rules.<sup>61</sup> Per-line amounts of interstate access universal service support for the acquired exchanges may change as a result of the revised revenue filings.<sup>62</sup> Because the interstate access universal service support mechanism is capped at \$650 million, however, individual transactions will not increase its overall size.<sup>63</sup>

### C. Waiver Requests for Prior Transactions

14. *ALLTEL/Aliant*. ALLTEL requests an extension from July 1, 2002, until July 1, 2003, of the initial waiver of the all-or-nothing rule for exchanges it received when it merged with Aliant in 1999.<sup>64</sup> Before the merger, ALLTEL was subject to rate-of-return regulation, and Aliant was subject to price cap regulation.<sup>65</sup> As part of its approval of this merger, the Commission waived section 61.41 of its rules to allow the ALLTEL exchanges to remain subject to rate-of-return regulation and to permit the Aliant exchanges to convert from price cap to rate-of-return regulation after the merger.<sup>66</sup> In order to prevent ALLTEL from circumventing the purpose of the all-or-nothing rule, the Commission required the merged company to seek prior Commission approval if it ever decided to elect price cap regulation.<sup>67</sup> On June 16, 2000, the Bureau granted ALLTEL's petition for an interim waiver of section 61.41 to allow the merged company to continue to operate the former Aliant exchanges under price cap regulation pending the Commission's decision on ALLTEL's request to elect price cap regulation on a permanent basis for 13 of ALLTEL's study areas.<sup>68</sup> On June 21, 2000, ALLTEL withdrew its request to convert 13 of its study areas to price cap regulation after concluding that the conversion was not feasible in light of the Commission's *CALLS Order*.<sup>69</sup> On June 12, 2001, the Bureau granted ALLTEL's petition to extend the waiver of section 61.41 to permit it to file a price cap annual access tariff that would become effective July 1, 2001 for the Aliant exchanges, enabling them to operate under price cap regulation until July 3, 2002.<sup>70</sup>

15. ALLTEL now seeks another one-year extension so that it may file a price cap annual access tariff for the Aliant exchanges to be effective July 1, 2002, and continue to operate

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<sup>60</sup> 47 C.F.R. § 54.801(d).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *ALLTEL Waiver Petition* at 3.

<sup>65</sup> *ALLTEL/Aliant Merger Order*, 14 FCC Rcd at 14191, para. 1, 14201, paras. 25-26.

<sup>66</sup> *Id.* at 14201, paras. 25-26.

<sup>67</sup> *Id.* at 14202, para. 29.

<sup>68</sup> *ALLTEL Corporation Petition for Waiver of Section 61.41 of the Commission's Rules*, CCB/CPD No. 99-01, Order, 15 FCC Rcd 23227 (Common Carrier Bureau 2000) (*ALLTEL/Aliant 2000 Waiver Order*).

<sup>69</sup> ALLTEL Motion for Leave to Withdraw Request for Approval to Elect Price Cap Regulation and Petition for Waiver (filed June 21, 2000).

<sup>70</sup> *ALLTEL Corporation Petition for Waiver of Section 61.41 of the Commission's Rules*, CCB/CPD No. 99-01, Order, 16 FCC Rcd 12407 (Common Carrier Bureau 2001) (*ALLTEL/Aliant 2001 Waiver Order*).

those exchanges under price caps until July 1, 2003.<sup>71</sup> ALLTEL states that the ALLTEL rate-of-return study areas have a permanent waiver to continue to operate under rate-of-return regulation, and that the only issue before the Commission is whether to extend the waiver of the all-or-nothing rule and allow the Aliant exchanges to continue under price cap regulation for another year.<sup>72</sup> ALLTEL asserts that price cap regulation has yielded benefits for Aliant's relevant customers.<sup>73</sup> ALLTEL also contends that approval of its waiver request will not result in any of the harms that the all-or-nothing rule addresses because competition has developed in the access service market and cost-shifting would encourage uneconomic entry into ALLTEL's rate-of-return study areas.<sup>74</sup> Additionally, in the three years since the merger, ALLTEL asserts that no evidence has surfaced regarding cost shifting.<sup>75</sup> No oppositions were filed in response to ALLTEL's petition.

16. We find that good cause exists for us to grant the waiver request by ALLTEL due to the special circumstances presented here. The Commission previously found that it was in the public interest to allow the former Aliant exchanges to remain under price cap regulation and allow the ALLTEL exchanges to be regulated under rate-of-return regulation while the Commission considered ALLTEL's request to elect price cap status on a permanent basis.<sup>76</sup> Additionally, in 2001, the Bureau found good cause to allow ALLTEL/Aliant to maintain the status quo, and noted that the Aliant exchanges had reformed their access charges and emerged with a more cost-causative interstate rate structure which benefited Aliant's customers.<sup>77</sup> The Bureau also noted that similar reforms for companies operating under rate-of-return regulation were under consideration in the proceeding that resulted in the *Rate-of-Return Access Charge Reform Further Notice*.<sup>78</sup> As noted above, issues raised in the *Rate-of-Return Access Charge Reform Further Notice* could affect this petition, and we anticipate that questions surrounding the all-or-nothing rule will be resolved before the former Aliant exchanges must file their 2003 annual access tariffs. We therefore extend the waiver of the Commission's rules to allow ALLTEL to file a price cap annual access tariff for the Aliant exchanges to become effective July 3, 2002, so these exchanges can remain under price cap regulation until the Commission completes its review of the all-or-nothing rule. In doing so, we extend the deadline by which ALLTEL is required to convert the exchanges it acquired from Aliant to rate-of-return regulation until the Commission completes its review of the all-or-nothing rule.

17. *Puerto Rico Telephone*. Puerto Rico Telephone requests that the Commission waive the all-or-nothing rule to allow it to continue to be regulated as a rate-of-return incumbent local exchange carrier following its transfer of control to GTE Holdings (Puerto Rico) LLC (GTE Puerto Rico) in 1999.<sup>79</sup> In the alternative, if it is required to convert to price cap

<sup>71</sup> *ALLTEL Waiver Petition* at 1-6.

<sup>72</sup> *Id.* at 4.

<sup>73</sup> *Id.* at 5.

<sup>74</sup> *Id.* at 5-6.

<sup>75</sup> *Id.*

<sup>76</sup> *ALLTEL/Aliant 2000 Waiver Order*, 15 FCC Rcd at 23227-28, paras. 1-7.

<sup>77</sup> *ALLTEL/Aliant 2001 Order*, 16 FCC Rcd at 12409, paras. 6-7.

<sup>78</sup> *Id.*

<sup>79</sup> *Puerto Rico Telephone Waiver Petition* at 1.

regulation, Puerto Rico Telephone requests an extension of the effective date of its initial price cap tariff to July 1, 2003.<sup>80</sup>

18. In February 1999, the Commission approved an application to transfer control of Puerto Rico Telephone to GTE Puerto Rico, a wholly owned subsidiary of GTE International Telecommunications Incorporated (GTE).<sup>81</sup> As a result of the transfer of control to GTE, Puerto Rico is required under section 61.41(c)(2) of the Commission's rules to convert to price cap regulation,<sup>82</sup> which would result in Puerto Rico Telephone's loss of any Long-Term Support it receives pursuant to section 54.303 of the Commission's rules.<sup>83</sup> In December 1999, Puerto Rico Telephone filed a petition for waiver of section 61.41 of the Commission's rules, as well as any other provisions that would prevent it from remaining subject to rate-of-return regulation and in the NECA Common Line Pool, which enables it to receive Long-Term Support.<sup>84</sup> Puerto Rico Telephone alternatively requested a limited waiver of section 54.303(a) of the Commission's rules in order to allow it to continue to receive Long-Term Support for a transitional period.<sup>85</sup> In response, and in light of the Commission's *CALLS Order*, the Commission postponed Puerto Rico Telephone's initial price cap filing to July 1, 2001, but did not rule on the merits of Puerto Rico Telephone's petition.<sup>86</sup> Based on issues pending in the proceeding that led to the Commission's *Rate-of-Return Access Charge Reform Further Notice*, the Bureau further extended Puerto Rico Telephone's conversion deadline to July 1, 2002.<sup>87</sup>

19. Puerto Rico Telephone maintains that its current petition for waiver of section 61.41(c) would serve the public interest and is consistent with prior Commission decisions granting waivers of section 61.41.<sup>88</sup> Puerto Rico Telephone asserts that the Commission is considering both the distribution of universal service support upon a carrier's conversion to price cap regulation, and the potential elimination of the all-or-nothing rule, in the context of the *Rate-of-Return Access Charge Reform Further Notice*.<sup>89</sup> Puerto Rico Telephone asserts that the final determination of these issues will have a great impact on it, but that it is unlikely that either issue will be resolved before Puerto Rico Telephone must file its 2002 annual access tariff.<sup>90</sup> Puerto

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<sup>80</sup> *Id.*

<sup>81</sup> *Puerto Rico Telephone Authority, Transferor, and GTE Holdings LLC, Transferee, for Consent to Transfer Control of Licenses and Authorization Held by Puerto Rico Telephone Company and Celulares Telefonica, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 3122 (1999) (*Puerto Rico Telephone Merger Order*).

<sup>82</sup> See 47 C.F.R. § 61.41(c)(2). See also *Puerto Rico Telephone Merger Order*, 14 FCC Rcd at 3132, para. 22 ("PRTC will be required within 12 months of our approval of this transfer of control to file interstate access tariffs for Puerto Rico using the price cap methodology.").

<sup>83</sup> See 47 C.F.R. § 54.303(a). See also 47 C.F.R. § 61.41(a)(3).

<sup>84</sup> *Puerto Rico Telephone Company Petition for Waiver of Section 61.41 or Section 54.303(a) of the Commission's Rules*, CCB/CPD No. 99-36, Order, 15 FCC Rcd 9680 (2000) (*Puerto Rico Telephone 2000 Waiver Request Order*).

<sup>85</sup> *Id.* at 9680-3, paras. 1-3.

<sup>86</sup> *Id.* at 9682-83, paras. 5-6.

<sup>87</sup> *Puerto Rico Tel. Company Petition for Waiver of Section 61.41 or Section 54.303(a) of the Commission's Rules*, CCB/CPD No. 99-36, Order, 16 FCC Rcd 12343 (Common Carrier Bureau 2001) (*Puerto Rico 2001 Waiver Order*).

<sup>88</sup> *Puerto Rico Telephone Waiver Petition* at 5.

<sup>89</sup> *Id.* at 1.

<sup>90</sup> *Id.* at 6-7.

Rico Telephone argues that if it is required to convert to price cap regulation, granting an extension of time to file the annual price cap tariff, to be effective July 1, 2003, will provide administrative ease and synchronization of Puerto Rico Telephone's price cap filings.<sup>91</sup> AT&T and WorldCom oppose Puerto Rico Telephone's waiver petition,<sup>92</sup> and NECA supports a grant of the waiver petition.<sup>93</sup>

20. We find that good cause exists to grant Puerto Rico Telephone's waiver request. The Commission has previously found that it was in the public interest to grant Puerto Rico's waiver request and found that its original waiver request raised "serious and complex issues regarding the changes in universal service support facing [Puerto Rico Telephone] if it is required to convert to price cap regulation."<sup>94</sup> The Commission found that an analysis of Puerto Rico Telephone's waiver request must involve consideration of the potential impact on local competition, universal service support in Puerto Rico, the operation of the NECA Common Line Pool, and the impact of the *CALLS* proceeding.<sup>95</sup> In extending the initial waiver, the Bureau noted that the *CALLS Order* did not explicitly address how entry of new carriers into price caps affects the distribution of interstate access universal service support.<sup>96</sup>

21. Here, we note that issues in the *Rate-of-Return Access Charge Reform Further Notice* affect Puerto Rico Telephone's waiver request. In the *Rate-of-Return Access Charge Reform Further Notice*, the Commission will consider how rate-of-return carriers that are required to, or choose to, convert to price cap regulation will receive universal service support.<sup>97</sup> The *Rate-of-Return Access Charge Reform Further Notice* specifically noted that a primary concern with Puerto Rico Telephone's conversion to price cap regulation is the loss of Long-Term Support, which has no counterpart under *CALLS*.<sup>98</sup> Additionally, in the *Rate-of-Return Access Charge Reform Further Notice*, the Commission is considering whether to modify or eliminate the all-or-nothing rule, which would also affect Puerto Rico Telephone's waiver request. We anticipate that these issues will be resolved before Puerto Rico Telephone must file its annual access filing for 2003. Under these special circumstances, we find that the public interest will be served by allowing Puerto Rico Telephone to remain under rate-of-return regulation until the Commission completes its review of the all-or-nothing rule.

22. We recognize that AT&T and WorldCom object to Puerto Rico Telephone's waiver petition, but we believe their concerns would be better addressed in the pending *Rate-of-*

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<sup>91</sup> *Id.* at 5.

<sup>92</sup> AT&T Opposition to Puerto Rico Telephone Company's Request for Grant of Petition for Waiver or, in the Alternative, Request for Extension (filed March 7, 2002) (*AT&T Opposition to Puerto Rico Telephone Waiver Petition*); WorldCom Opposition (filed March 7, 2002) (*WorldCom Opposition to Puerto Rico Telephone Waiver Petition*).

<sup>93</sup> *Puerto Rico Telephone Petition for Waiver of Section 61.41(c) or Section 54.303(a) of the Commission's Rules*, Comments of National Exchange Carrier Association, Inc. (filed March 7, 2002).

<sup>94</sup> *Puerto Rico Telephone 2000 Waiver Request Order*, 15 FCC Rcd at 9682-83, para. 5.

<sup>95</sup> *Id.*

<sup>96</sup> *Puerto Rico 2001 Waiver Order*, 16 FCC Rcd at 12346, para.7.

<sup>97</sup> *Rate-of-Return Access Charge Reform Further Notice*, 16 FCC Rcd at 19724, para. 271.

<sup>98</sup> *Id.*

*Return Access Charge Reform Further Notice*.<sup>99</sup> We again find, as the Commission and Bureau have found previously, that Puerto Rico Telephone's current petition raises difficult issues regarding universal service support if Puerto Rico Telephone is required to convert to price cap regulation.<sup>100</sup> We do not wish to make a final determination on the merits of Puerto Rico Telephone's permanent waiver request until the Commission completes the *Rate-of-Return Access Charge Reform Further Notice*'s inquiry into the continued utility of the all-or-nothing rule. In light of these various considerations, we again find that is appropriate to extend the deadline for Puerto Rico Telephone's conversion to price cap regulation until the Commission completes its review of the all-or-nothing rule, without ruling on the substantive merits of Puerto Rico Telephone's petition.<sup>101</sup> This waiver will allow further review of the merits of Puerto Rico Telephone's petition in light of all the information filed in this proceeding, and in light of other related proceedings.

#### IV. ORDERING CLAUSES

23. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, and 202, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the petitions for waiver of the Commission's rules, 47 C.F.R. § 61.41, filed by: ALLTEL Corporation on December 3, 2001, and February 22, 2002; CenturyTel, Inc., and CenturyTel of Alabama, LLC on November 28, 2001; CenturyTel, Inc., and CenturyTel of Missouri, LLC on December 13, 2001; and Puerto Rico Telephone Company, Inc., on February 4, 2002, ARE GRANTED, to the extent described herein.

FEDERAL COMMUNICATIONS COMMISSION

Dorothy T. Attwood  
Chief, Wireline Competition Bureau

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<sup>99</sup> *AT&T Opposition to Puerto Rico Telephone Waiver Petition; WorldCom Opposition to Puerto Rico Telephone Waiver Petition*.

<sup>100</sup> *See supra* para. 20.

<sup>101</sup> *Puerto Rico 2001 Waiver Order*, 16 FCC Rcd at 12343, para. 7.