

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

In the Matter of)
)
CenturyTel, Inc. Petition for Conversion to Price) WC Docket No. 08-191
Cap Regulation and Limited Waiver Relief)
)

ORDER

Adopted: April 17, 2009

Released: April 17, 2009

By the Acting Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant, to the extent described below, CenturyTel, Inc. (CenturyTel) a waiver to convert certain of its operations from rate-of-return regulation to price cap regulation on July 1, 2009, pursuant to the framework the Commission established in the *Windstream Order*.¹ As explained below, consistent with the relief granted in the *Windstream Order*, CenturyTel may convert its rate-of-return regulated study areas (excluding its average schedule companies) to price cap regulation by establishing initial price cap indexes (PCIs) for its price cap baskets. Consistent with the waivers we grant, CenturyTel shall begin targeting its average traffic-sensitive (ATS) rates to the appropriate target rate as described in section 61.3(qq) of the Commission’s rules.² We also grant CenturyTel a waiver to allow it to continue to receive interstate common line support (ICLS) for the converted study areas, subject to certain conditions. Consistent with the Commission’s requirements in the *Windstream Order*, CenturyTel’s per-line ICLS shall be calculated at its trued-up 2008 per-line disaggregated ICLS amounts, and frozen at those per-line levels going forward, and its aggregate annual ICLS support shall be capped

¹ CenturyTel originally had requested the ability to convert to price caps to be effective on January 1, 2009. CenturyTel, Inc. Petition for Conversion to Price Cap Regulation and Limited Waiver Relief, WC Docket No. 08-191 at 1 (filed Aug. 28, 2008) (CenturyTel Petition); *Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 07-171, Order, 23 FCC Rcd 5294 at para. 2 (2008) (*Windstream Order*) (granting Windstream requested waivers to convert rate-of-return regulated cost study areas to price cap regulation). Three other carriers also have been granted authority to convert from rate-of-return to price cap regulation consistent with the *Windstream Order* framework. See *Petition of Puerto Rico Telephone Company, Inc. for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules; Consolidated Communications Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief; Frontier Petition for Limited Waiver Relief upon Conversion of Global Valley Networks, Inc., to Price Cap Regulation*, WC Docket Nos. 07-292, 07-291, 08-18, Order, 23 FCC Rcd 7353 (2008) (*Combined Price Cap Order*).

² 47 C.F.R. § 61.3(qq).

at an amount equal to its overall 2008 ICLS (after application of any required true-ups). We find that these waivers will further the public interest by providing CenturyTel regulatory incentives to maintain and enhance efficient operations and requiring the reduction of some access rates. The waivers granted in this order are subject to any revisions addressing intercarrier compensation, price cap regulation, or universal service requirements that the Commission may adopt in the future.

II. BACKGROUND

2. *Windstream Order*. On March 18, 2008, the Commission released an order granting Windstream's request to convert rate-of-return regulated cost study areas to price cap regulation on July 1, 2008.³ In the *Windstream Order*, the Commission directed Windstream to establish initial PCIs for its price cap baskets using January 1, 2008, rates and 2007 base period demand.⁴ The Commission also required Windstream to target its ATS rate to \$0.0065 per ATS minute of use pursuant to section 61.3(qq) of the Commission's rules, using an X-factor of 6.5 percent.⁵ Finally, the Commission granted Windstream a waiver to allow it to continue to receive ICLS for the converted study areas.⁶ Specifically, Windstream's per-line ICLS was calculated at its trued-up 2007 per-line disaggregated ICLS amounts, and frozen at those per-line levels going forward.⁷ This waiver was subject to several conditions. Windstream's aggregate annual ICLS is capped at an amount equal to its overall 2007 ICLS (after application of any required true-ups).⁸ Windstream also must forego any recovery of a presubscribed interexchange carrier charge (PICC) or carrier common line (CCL) charge and forego assessing a \$7.00 non-primary residential line subscriber line charge (SLC) in conjunction with its receipt of frozen per-line ICLS.⁹ The *Windstream Order* also is subject to Commission modification in its intercarrier compensation, price cap, or universal service reform proceedings.¹⁰

3. *CenturyTel proposal*. CenturyTel's waiver request seeks to allow it to convert its non-average schedule study areas that are subject to rate-of-return regulation to price cap regulation.¹¹ This will involve 28 study areas for which it currently files its own traffic-sensitive tariffs and 35 study areas that participate in the interstate common line and access tariffs filed by the National Exchange Carrier

³ In the *Windstream Order*, the Commission described the rate-of-return and price cap regulations that variously apply to incumbent local exchange carriers' (LECs') provision of interstate access services. *Windstream Order* at paras. 2-4.

⁴ *Windstream Order* at paras. 11-14. For its two cost study areas that participate in the NECA interstate access tariffs, Windstream initialized the rates of these two companies to meet its authorized rate-of-return and then adapted those rates to the price cap rate structure in a manner similar to that used for its other study areas.

⁵ *Id.* at paras. 15-16.

⁶ *Id.* at paras. 19-22.

⁷ *Id.* at para. 21.

⁸ *Id.* at para. 22.

⁹ *Id.* at para. 20.

¹⁰ *Id.*

¹¹ CenturyTel Petition at 1. As noted above, CenturyTel originally had requested the ability to convert to price caps to be effective on January 1, 2009. *See supra* note 1.

Association (NECA).¹² Noting that it averages less than 12 switched access lines per square mile at the holding company level, CenturyTel seeks a waiver of section 61.3(qq)(2) of the Commission's rules to allow it to target its ATS rate to \$0.0095.¹³ CenturyTel commits that, in its initial price cap tariff filings, it will file separate tariffs for each of the study areas leaving the NECA traffic-sensitive access tariffs and will not consolidate study areas in tariffs it currently files.¹⁴ Finally, consistent with the *Windstream Order*, CenturyTel requests that the Commission grant the appropriate waivers to allow it to continue to receive ICLS as a price cap carrier.¹⁵ CenturyTel will forego any PICC or CCL charges that otherwise might be assessable under the *CALLS Order* and will forego any increase in the non-primary residential SLC cap from \$6.50 to \$7.00.¹⁶ CenturyTel states that conversion to price cap regulation is in the public interest because it will allow it to continue to optimize its cost structure, thereby maximizing efficiency, promoting competition, and creating ongoing incentives for CenturyTel's network investment.¹⁷

¹² CenturyTel Petition at 2-3; CenturyTel has 3 average schedule study areas and 6 study areas that are subject to price cap regulation. *Id.*

¹³ CenturyTel Petition at 15. A waiver is necessary because Century Tel did not own all the study areas on July 1, 2000, or have a binding and executed contract for purchase as of April 1, 2000, as required by section 61.3(qq)(2). *Id.* This waiver is the same as one granted to Frontier for its conversion of rate-of-return regulated properties to price cap regulation earlier this year. *See Combined Price Cap Order*, 23 FCC Rcd at 7360 para. 13.

¹⁴ Letter from Gregory J. Vogt, Esq., Counsel to CenturyTel, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 08-191 at 2 (filed Nov. 24, 2008) (CenturyTel November 24 *Ex Parte* Letter). *See also* Letter from Gregory J. Vogt, Esq., counsel to CenturyTel, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 08-191 (filed Nov. 26, 2008) (CenturyTel November 26 *Ex Parte* Letter). Initially, CenturyTel had planned to consolidate its rate-of-return study areas in one or more tariffs. CenturyTel Petition at 14.

¹⁵ CenturyTel November 24 *Ex Parte* Letter at 2.

¹⁶ CenturyTel November 24 *Ex Parte* Letter at 2; *see also 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, 12990-13013, paras. 75-128 (2000) (*CALLS Order*) (subsequent history omitted).

¹⁷ CenturyTel Petition at 10; CenturyTel November 24 *Ex Parte* Letter at 1. AT&T Inc. (AT&T), the Independent Telephone and Telecommunications Alliance, NECA, the United States Telecom Association, and Embarq Corporation filed comments or reply comments on the CenturyTel Petition. *See* CenturyTel, Inc. Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief, WC Docket No. 08-191, Comments of AT&T Inc (filed Oct. 9, 2008) (AT&T CenturyTel Comments); CenturyTel, Inc. Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief, WC Docket No. 08-191, Comments of the Independent Telephone and Telecommunications Alliance (filed Oct. 8, 2008); CenturyTel, Inc. Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief, WC Docket No. 08-191, Comments of NECA (filed Oct. 8, 2008) (NECA Comments); CenturyTel, Inc. Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief, WC Docket No. 08-191, Comments of the United States Telecom Association (filed Oct. 9, 2008); CenturyTel, Inc. Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief, WC Docket No. 08-191, Reply Comments of Embarq Corporation (filed Oct. 24, 2008). CenturyTel filed a reply. CenturyTel, Inc. Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief, WC Docket No. 08-191, Reply Comments (filed Oct. 24, 2008) (CenturyTel Reply).

III. DISCUSSION

A. The Public Interest

4. We find that good cause exists to grant, to the extent described below, CenturyTel a waiver to allow it to convert its rate-of-return study areas to price cap regulation on July 1, 2009.¹⁸ The Commission concluded in 1990 that incentive-based regulation is preferable to rate-of-return regulation.¹⁹ The Commission found that several benefits would flow from the adoption of price cap regulation, including incentives for carriers to become more productive, innovative, and efficient.²⁰ The Commission also found that price cap regulation is likely to benefit consumers directly or indirectly through lower access prices.²¹ In subsequent annual tariff filings, several of the larger incumbent LECs adopted price cap regulation.

5. CenturyTel seeks to take advantage of the opportunity provided by section 61.41(a)(3) of the Commission's rules and the *Windstream Order* to convert to price cap regulation.²² The question presented by this petition is whether the public interest will be better served by strict enforcement of the current rules, or by waiving certain rules to allow CenturyTel to convert to price cap regulation. Based on the information provided by CenturyTel and the commenters, we find that the public interest will be better served by granting CenturyTel a waiver. Consistent with the *Windstream Order*, we find that granting CenturyTel a waiver to convert to price cap regulation should result in the public interest benefits generally attributed to incentive regulation – specifically, providing incentives for the carriers to become more efficient, innovative, and productive.²³ Moreover, granting the waiver will directly lower some access rates over time and will likely reduce the ICLS that CenturyTel receives in the future. The relief granted in this order is subject to any revisions addressing intercarrier compensation, price cap regulation, or universal service requirements that the Commission may adopt in the future.

6. The waiver we grant CenturyTel is consistent with the relief granted in the *Windstream Order*, except for the need to waive the requirement in section 61.3(qq)(2) of the Commission's rules that it must have owned the exchanges converting to price caps on July 1, 2000, or had a binding contract to

¹⁸ Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

¹⁹ See *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6789, para. 21 (1990) (*LEC Price Cap Order*).

²⁰ *Id.* at 6791, para. 31.

²¹ *Id.* at 6791, para. 33.

²² See 47 C.F.R. § 61.41(a)(3) (which recognizes that local exchange carriers may elect "price cap regulation provided the carrier is otherwise eligible").

²³ See *LEC Price Cap Order*, 5 FCC Rcd at 6791, para. 31.

purchase the exchanges on April 1, 2000.²⁴ No party has challenged CenturyTel's request to waive this requirement, and consistent with the grant of a similar waiver to Frontier, we find no public interest reason to enforce this limitation in these circumstances.²⁵ Although the date limitation in this rule was not discussed in the *CALLS Order* when it was adopted, its effect was to prevent carriers at that time from buying or selling exchanges to realize unintended windfalls under the then new price cap regime at the expense of the other participating price cap carriers. The conversion of CenturyTel to price caps also will not affect any current price cap regulated carriers.

7. CenturyTel requested that it be allowed to target its ATS rate to \$0.0095 as described in section 61.3(qq) of the Commission's rules for a carrier with its line density.²⁶ After its petition was filed, CenturyTel sought Commission approval of its proposed merger with Embarq.²⁷ Sprint Nextel Corporation and AT&T filed comments asserting that after the merger, the combined CenturyTel would have more than 19 access lines per square mile at the holding company level and thus should be required to target its ATS rate to the \$0.0065 rate specified in section 61.3(qq)(3) of the Commission's rules, which applies to carriers with more than 19 access lines per square mile.²⁸ We agree. Therefore, if the Commission approves the CenturyTel merger with Embarq, CenturyTel must target its ATS rates to \$0.0065, as CenturyTel itself acknowledges.²⁹

8. In addition, although CenturyTel requested the waiver relief to be effective on January 1, 2009, we find that CenturyTel should include the conversion of its rate of return study areas with the imminent filing of its price cap annual access filing to be effective July 1, 2009. This is consistent with the use of the annual access tariff filing process we employed in the *Windstream Order* to implement the conversion and the order authorizing the conversion to price caps for Frontier, Consolidated, and Puerto Rico Telephone Company.³⁰ We find that use of the annual tariff filing process provides a consistent

²⁴ 47 C.F.R. § 61.3(qq)(2).

²⁵ See *supra* note 15.

²⁶ CenturyTel Petition at 6, 15-16.

²⁷ See *Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, WC Docket No. 08-238, Public Notice, DA 08-268 (rel. Dec. 9, 2008).

²⁸ See Letter from Charles W. McKee, Director, Regulatory Affairs, Sprint Nextel Corporation, to Marlene H. Dortch, Secretary, FCC, dated Dec. 23, 2008; see Letter from Robert Sutherland, General Attorney, AT&T, to Marlene H. Dortch, Secretary, FCC, dated Feb. 2, 2009 (indicating that the access lines per square mile would exceed 27). CenturyTel does not dispute this analysis. See Letter from Gregory J. Vogt, Esq., Counsel to CenturyTel, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 08-191 (filed Mar. 19, 2009) (CenturyTel March 19 *Ex Parte* Letter).

²⁹ See CenturyTel March 19 *Ex Parte* Letter at 2.

³⁰ *Combined Price Cap Order*, 23 FCC Rcd 7353. As modified by the CenturyTel November 24 *Ex Parte* Letter, CenturyTel proposed to establish initial common line, switched access, and special access rates and PCIs for the study areas for which it currently files traffic-sensitive interstate access tariffs using January 1, 2008, tariffed rates times 2007 base period demand. CenturyTel November 24 *Ex Parte* Letter at 2. CenturyTel had proposed to establish initial common line, switched access, and special access rates and PCIs for the study areas that currently participate in both of NECA's interstate access tariffs using 2007 revenue requirements and 2007 demand data. *Id.*; CenturyTel Petition at 5-6 n.12. Because CenturyTel will be converting to price caps as part of the annual access tariff filing process, consistent with the *Windstream Order* and *Combined Price Cap Order*, the rates and data to be used are discussed below. See *infra* paras. 9-13.

period over which cost and demand data can be analyzed and evaluated, thereby allowing more meaningful comparisons, and avoids the potential for a carrier to game the process by choosing the most advantageous data period. Furthermore, given that annual tariff filings will be filed in less than three months, using the annual filing will minimize the number of filings that CenturyTel and NECA would have to make, and that would have to be reviewed by Commission staff and interested parties.³¹ Finally, using the more recent 2008 data that is now available will help ensure that CenturyTel's initial PCIs are established using the most up-to-date rates and data.

B. Price Cap Baskets

9. Part 69 of the Commission's rules establishes interstate access rate elements that are designed to recover the costs of various parts of the local network. Under price cap regulation, these rate elements are grouped together into five price cap baskets: the common line, marketing and transport interconnection charge (CMT) basket; the traffic sensitive switched interstate access basket (traffic sensitive basket); the trunking basket; the special access basket; and the interexchange basket.³² Each basket is subject to its own price cap.³³ The interstate access rates associated with these baskets may be assessed on either end-user customers or carriers.

1. CMT Basket

10. To recover costs associated with the local loop, or common line, rate-of-return LECs assess certain interstate access charges on end-user customers. Price cap LECs generally assess the same types of common line-related charges on their end-user customers, although the levels of such charges are determined differently. The common-line related end-user charges assessed by both rate-of-return and price cap LECs include SLCs, Line Port Costs in Excess Of Analog, and Special Access Surcharges.³⁴ Price cap LECs may also assess PICCs and CCL charges on interexchange carriers in certain instances.³⁵ A price cap LEC's common line rates are limited by a CMT basket PCI and by its average price cap CMT revenues per-line month,³⁶ in addition to the SLC caps imposed by Part 69 of the Commission's rules. We describe in some detail how CenturyTel shall convert its common line rates to the price cap common line structure in the following paragraphs.

³¹ Because CenturyTel is withdrawing 35 study areas from the NECA interstate access tariffs, NECA would need to make the necessary tariff changes to remove those exchanges from the tariffs, as well as considering whether it would need to make changes to its tariffed rates to reflect the fact that CenturyTel is a net contributor to the traffic-sensitive pool.

³² See 47 C.F.R. § 61.42. The interexchange basket is established only by price cap LECs that offer interstate interexchange services that are not classified as access services for the purposes of Part 69 of the Commission's rules. 47 C.F.R. § 61.42(d)(4). CenturyTel does not indicate whether it offers such services. To the extent that it does, it must establish a price cap interexchange basket consistent with the Commission's rules. *Id.*

³³ 47 C.F.R. § 61.42.

³⁴ 47 C.F.R. §§ 69.104, 69.130 (rate-of-return carrier SLC and line port surcharge in excess of analog rules); 47 C.F.R. §§ 69.152, 69.157 (price cap carrier SLC and line port surcharge in excess of analog rules); 47 C.F.R. § 69.115 (special access surcharge rules applicable to both rate-of-return and price cap carriers).

³⁵ 47 C.F.R. §§ 69.153, 69.154.

³⁶ Price cap CMT revenues are a carrier's common line, marketing, and transport interconnection charge revenues. 47 C.F.R. §§ 61.3(cc), 61.42(d)(1).

11. We begin with the calculation of CenturyTel's initial average price cap CMT revenues per-line month. Price cap CMT revenue is the maximum total revenue a filing entity would be permitted to receive from SLCs, PICCs, CCL charges, and marketing expenses, using base period lines. Price cap CMT revenue does not include price cap LEC universal service contributions.³⁷ Thus, for purposes of the conversion, CenturyTel's CMT revenues will include its 2008 SLC revenues plus the marketing expenses shifted to the CMT basket from the traffic-sensitive and trunking baskets pursuant to section 69.156 of the Commission's rules.³⁸ CenturyTel's average price cap CMT revenues per-line month will then be its CMT revenues divided by its 2008 base period demand.³⁹ The average price cap CMT revenues per-line month, in conjunction with the \$6.50 per-line cap on residential and single line business lines and the \$9.20 per-line cap on multiline business lines, will create the ceiling on the SLC charges that CenturyTel may assess end users.⁴⁰

12. The other control on the CMT basket is the common line PCI. To create its common line PCI, CenturyTel shall multiply its January 1, 2009 end user rates by 2008 base period demand.⁴¹ To this result, it shall add the marketing expenses shifted to the CMT basket pursuant to section 69.156 of the Commission's rules.⁴² One final adjustment will be necessary for CenturyTel to establish its initial CMT basket PCI. CenturyTel has committed, in conjunction with its receipt of universal service at a level equal to its ICLS receipts frozen on a per-line basis, to forego the recovery of any PICC or CCL charge.⁴³ To reflect this commitment, and to avoid any headroom that may be created by foregoing this recovery, CenturyTel must reduce its CMT basket PCI by an amount equal to the PICC and CCL revenues it is foregoing.

2. Traffic Sensitive and Trunking Baskets

13. Rate-of-return and price cap LECs assess local switching and transport charges on interexchange carriers. Price cap LECs reflect the appropriate switched access rates and demands in PCIs for the traffic-sensitive and trunking baskets. CenturyTel shall establish initial switched access rates and PCIs for the study areas for which it currently files traffic-sensitive interstate access tariffs using January 1, 2009 tariffed rates times 2008 base period demand.⁴⁴ CenturyTel shall establish initial switched access

³⁷ 47 C.F.R. § 61.3(cc).

³⁸ 47 C.F.R. § 69.156. The use of the \$6.50 SLC from 2007 in calculating the price cap CMT revenues will reflect CenturyTel's commitment to not assess a \$7.00 SLC on non-primary residential lines, as would otherwise be permitted for price cap carriers, as part of its receipt of frozen per-line ICLS.

³⁹ 47 C.F.R. § 61.3(d).

⁴⁰ See generally 47 C.F.R. § 69.152.

⁴¹ For the study areas leaving the NECA tariffs, the January 1 rate shall be the rate determined by dividing 2008 revenues by the appropriate 2008 demand.

⁴² 47 C.F.R. § 69.156.

⁴³ CenturyTel November 24 *Ex Parte* Letter at 2. Although interstate access support (IAS) for price cap carriers is included in the common line PCI and adjusted annually as projected IAS receipts change, the ICLS amount here will be frozen. CenturyTel should, therefore, exclude its ICLS receipts from the PCI calculations since these receipts will have no effect on the PCI. This will also simplify the ICLS true-up process.

⁴⁴ See CenturyTel November 24 *Ex Parte* Letter at 2.

rates and PCIs for the study areas that currently participate in both of NECA's interstate access tariffs using 2008 revenue requirements and 2008 demand data.⁴⁵ The PCIs must be reduced to eliminate any marketing expenses that were recovered through switched access rates in 2008.⁴⁶ CenturyTel shall begin reducing its ATS rates as described in paragraph 7 through the use of a 6.5 percent X-factor in its tariffs to become effective July 1, 2009, consistent with the requirements of section 61.45(i) of the Commission's rules.⁴⁷ The revised tariffed rates will further the public interest by ensuring that carrier customers receive reduced local switching and transport rates. Consistent with the Commission's price cap rules, CenturyTel must establish actual price indexes (APIs), service categories, and service band indexes (SBIs) for the traffic sensitive and trunking baskets.⁴⁸ CenturyTel shall include the cost studies used to develop the switched access rates in the supporting materials filed with its initial price cap tariff(s).

3. Special Access Basket

14. CenturyTel shall establish initial special access rates and PCIs for the study areas for which it currently files traffic-sensitive interstate access tariffs using January 1, 2009 tariffed rates times 2008 base period demand. CenturyTel shall establish initial special access rates and PCIs for the study areas that currently participate in both of NECA's interstate access tariffs using 2008 revenue requirements and 2008 demand data. This approach to setting initial PCIs for the special access basket is consistent with the manner in which special access rates were initialized in previous price cap conversions.⁴⁹ Under the rules adopted in the *CALLS Order*, there is no requirement for further reductions in the special access PCIs.⁵⁰ Consistent with the Commission's price cap rules, CenturyTel must establish APIs, service categories, and SBIs for the special access basket.⁵¹ CenturyTel shall include the cost studies used to develop the special access rates in the supporting materials filed with its initial price cap tariff(s).

C. Universal Service

15. CenturyTel proposes to continue to receive high-cost universal service support to recover explicitly a portion of its common line costs after it converts its rate-of-return cost study areas to price cap regulation.⁵² The high-cost support mechanisms available to allow eligible telecommunications carriers (ETCs) to recover common line costs through explicit universal service support, rather than implicitly through a portion of access charge rates, are ICLS for rate-of-return carriers, and IAS for price cap carriers.⁵³ The Commission's rules do not make ICLS available to price cap carriers,⁵⁴ and the

⁴⁵ CenturyTel November 24 *Ex Parte* Letter at 2. CenturyTel Petition at 5-6 n.12.

⁴⁶ See 47 C.F.R. § 69.156.

⁴⁷ 47 C.F.R. § 61.45(i).

⁴⁸ 47 C.F.R. §§ 61.46; 61.42(e)(1) and (2); 61.47.

⁴⁹ See *Windstream Order*, 23 FCC Rcd at 5302, para. 18; *Combined Price Cap Order*, 23 FCC Rcd at 7363, para. 21.

⁵⁰ 47 C.F.R. § 61.45(b)(1)(iv).

⁵¹ 47 C.F.R. §§ 61.46; 61.42(e)(3); 61.47.

⁵² See CenturyTel Petition at 7.

⁵³ 47 C.F.R. §§ 54.901; 54.801.

Commission tentatively has concluded that carriers converting from rate-of-return regulation to price cap regulation are ineligible for IAS established in the *CALLS Order*.⁵⁵ Accordingly, absent Commission intervention, the requested conversion to price cap regulation could result in the loss of explicit support by CenturyTel to offset the interstate portion of its loop costs that are not recovered through interstate access charges.

16. CenturyTel argues that realization of all of the public interest benefits of its conversion to price cap regulation depends upon its continued receipt of some high-cost universal service support for its loop costs.⁵⁶ CenturyTel requests that the Commission grant a partial waiver of applicable rules so it could receive ICLS set at a frozen per-line amount consistent with the approach in the *Windstream Order*.⁵⁷ Under this approach, as discussed above, CenturyTel agrees to forego any PICC or CCL charges that might otherwise be assessable under the price cap rules, and will forego an increase in the non-primary residential SLC cap from \$6.50 to \$7.00.⁵⁸ The Commission has previously expressed a preference for explicit support, through universal service support mechanisms, as opposed to implicit support, through access charges.⁵⁹ We find that CenturyTel should continue to receive high-cost support for loop costs via ICLS. We find good cause to grant a partial waiver so CenturyTel may continue to receive ICLS at 2008 per-line disaggregated ICLS amounts, and frozen at those per-line levels going forward. Furthermore, as the Commission did with *Windstream*, we cap CenturyTel's future overall annual ICLS at an amount equal to its overall 2008 ICLS, after application of any required true-ups. This waiver is conditioned upon CenturyTel's adherence to the commitments discussed above and subject to Commission modification in its access charge or universal service reform proceedings.⁶⁰

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⁵⁴ See 47 C.F.R. § 54.901(a) (providing ICLS for rate-of-return carriers).

⁵⁵ See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service*, CC Docket Nos. 00-256, 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122, 4163, para. 93.

⁵⁶ See CenturyTel Petition at 21-22.

⁵⁷ Originally, CenturyTel proposed receiving frozen per-line ICLS based on 2008 ICLS receipts. See CenturyTel Petition at 7. In the CenturyTel November 24 *Ex Parte* Letter, CenturyTel proposed receiving frozen per-line ICLS based on 2007 ICLS receipts, consistent with its proposed use of 2007 data for purposes of calculating rates and PCIs. CenturyTel November 24 *Ex Parte* Letter at 2. Because CenturyTel will be using 2008 data for purposes of calculating rates and PCIs, consistent with the *Windstream Order* and the *Combined Price Cap Order*, its frozen per-line ICLS amount will be based on the amount of per-line ICLS CenturyTel received in 2008, after the application of any true-ups based on actual cost and revenue data for 2008. See *infra* para. 16.

⁵⁸ See CenturyTel November 24 *Ex Parte* Letter at 2.

⁵⁹ *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613, 19621-22, 19642-46, paras. 15, 62-68 (2001) (*MAG Order*); *CALLS Order*, 15 FCC Rcd at 13006, para. 111.

⁶⁰ 47 C.F.R. § 1.3; see also *WAIT Radio* 418 F.2d at 1159; see also *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its* (continued....)

17. For each study area, the frozen per-line ICLS amount will be based on the amount of per-line ICLS CenturyTel received in 2008, after the application of any true-ups based on actual cost and revenue data for 2008.⁶¹ The monthly frozen per-line ICLS amount will be calculated by dividing the final annual 2008 ICLS amount by twelve times the average of the carrier's line counts as of December 31, 2007, and December 31, 2008.⁶² Because this final frozen per-line ICLS cannot be determined until after the carrier files its 2008 cost and revenue data, CenturyTel will receive an interim per-line ICLS amount until the final amount can be determined. This interim amount will be calculated by dividing the amount of ICLS disbursed to each study area in December 2008, not including any prior period true-ups, by the number of lines served in each respective study area as of December 31, 2008. When CenturyTel's final frozen per-line ICLS amount is determined, any support distributed pursuant to the interim per-line ICLS amount will be trued up to the final per-line level.⁶³

18. We partially waive section 54.901(a) of the Commission's rules, which makes ICLS available only to rate-of-return carriers, so that CenturyTel may convert its rate-of-return study areas to price cap regulation but continue to receive ICLS for those study areas.⁶⁴ Because CenturyTel will be receiving ICLS on a frozen per-line basis, the amount of ICLS it receives will decline if its number of lines declines. Further, we partially waive the ICLS reporting and support calculation provisions of sections 54.901 and 54.903 of the Commission's rules so that CenturyTel's ICLS may be set at 2008 per-line disaggregated ICLS amounts and frozen at those per-line levels going forward.⁶⁵ Finally, we waive any portions of sections 54.802 through 54.806 of the Commission's rules that would preclude CenturyTel from receiving ICLS at the 2008 per-line disaggregated ICLS amounts.⁶⁶ To ensure that these waivers do not result in CenturyTel receiving increased ICLS in the future due to any increases in its line

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Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area, WC Docket No. 06-109, Memorandum Opinion and Order, 22 FCC Rcd 16304, 16337 n.211 (2007) (finding that, "because a condition of the forbearance granted by this order requires ACS to receive ICLS at the existing per-line rate, rather than based on the rate-of-return regulated carrier requirements in section 54.901(a), there is good cause to waive these rules").

⁶¹ The actual cost and revenue data required to true-up CenturyTel's 2008 ICLS must be filed by December 31, 2009. See 47 C.F.R. § 54.903(a)(4).

⁶² For example, if a study area had a final 2008 ICLS of \$4,800, and its line counts as of the end of 2007 and 2008 were, respectively, 110 and 90, that study area would have a frozen ICLS per-line of \$4 per month – $\$4,800/((110+90)/2)*12$.

⁶³ We also note that CenturyTel will be subject to regular ICLS true-ups for the period up until its conversion to price cap status. Accordingly, CenturyTel will be required to file actual cost and revenue data for 2009 pursuant to section 54.903(a)(4). See 47 C.F.R. § 54.903(a)(4). Pursuant to section 54.307 of the Commission's rules, competitive ETCs serving the affected study areas will receive the same per-line support amounts and be subject to the same true-ups as CenturyTel, subject to the interim cap on competitive ETC support. 47 C.F.R. § 54.307; *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834 (2008).

⁶⁴ 47 C.F.R. § 54.901.

⁶⁵ See 47 C.F.R. §§ 54.901, 54.903. We note that CenturyTel must comply with those reporting requirements for all true-ups and calculations necessary to determine the ultimate frozen per-line ICLS amount, as described in paras. 16-17 *supra*.

⁶⁶ See 47 C.F.R. §§ 54.802 - 54.806.

counts, as a condition of these waivers, we cap CenturyTel's future overall annual ICLS at an amount equal to its overall 2008 ICLS, after application of any required true-ups.⁶⁷

D. Other Waivers

19. Incumbent LECs that plan to leave one or both of the NECA tariffs are required by section 69.3(i)(1) of the Commission's rules to notify NECA of their intent by March 1 of the tariff filing year in which they plan to leave the tariff(s).⁶⁸ CenturyTel requests a waiver of section 69.3(i)(1) to allow it to notify NECA of its intent to leave the common line tariff once the Commission has reached a decision on its waiver request.⁶⁹

20. As noted above, the Commission may waive its rules for good cause shown.⁷⁰ We find good cause exists to waive section 69.3(i)(1) of the Commission's rules to permit CenturyTel to notify NECA of its intent to withdraw study areas from the NECA common line tariff within fifteen (15) days of the release of this order. Absent a waiver, the relief we grant CenturyTel in this order would be nullified because of this procedural limitation. We find that grant of this waiver will not impose an undue hardship on NECA because it has been aware of CenturyTel's request for the waivers necessary to make this conversion to price cap regulation.⁷¹

⁶⁷ See CenturyTel November 24 *Ex Parte* Letter at 2; *Windstream Order*, 23 FCC Rcd at 5304, para. 22. The annual ICLS cap would apply only to those converting study areas that are the subject of this order.

⁶⁸ 47 C.F.R. § 69.3(i)(1).

⁶⁹ CenturyTel Petition at 20.

⁷⁰ See *supra* note 20; 47 C.F.R. § 1.3.

⁷¹ See NECA Comments. CenturyTel also requested a waiver of section 36.3(b) of the Commission's rules, which provides that price cap LECs must freeze allocation factors and category relationships used in the separations process based on annual 2000 data. CenturyTel Petition at 13 n.37; 47 C.F.R. § 36.3(b). Such a waiver is unnecessary. All LECs subject to the Part 36 rules were required to freeze allocation factors for separations purposes, so CenturyTel should already be in compliance with this requirement. 47 C.F.R. § 36.3(a). Because CenturyTel is electing price cap regulation after the date the category relationship freeze rule was adopted, CenturyTel will use 2008 data, consistent with the data used to develop its PCIs, to establish the necessary category relationships to the extent that they were not frozen earlier.

IV. ORDERING CLAUSES

21. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 201-203, and 254(g) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 201-203, and 254(g), and pursuant to the authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the CenturyTel, Inc., petition for waiver IS GRANTED to the extent described herein.

22. IT IS FURTHER ORDERED, pursuant to section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, and pursuant to the authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that section 69.3(i)(1) of the Commission's rules IS WAIVED to the extent indicated herein.

23. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), and pursuant to the authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Acting Chief, Wireline Competition Bureau