Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
July 1, 2004 Annual Access Charge Tariff Filings	WCB/Pricing 04-18 DA 04-1049

OPPOSITION TO PETITION TO SUSPEND AND INVESTIGATE

CenturyTel of Midwest-Michigan/CenturyTel of Michigan ("CenturyTel of Midwest-Michigan"), CenturyTel of Ohio, CenturyTel of Wisconsin and Telephone Utilities Exchange Carrier Association ("TUECA") (collectively, in whole or in part, referred to herein as "CenturyTel"), through their attorneys, hereby oppose the Petition of AT&T Corp. ("AT&T") to suspend and investigate the above-referenced tariff filings. CenturyTel's transmittals comply fully with the Communications Act, the Commission's rules, and applicable court and Commission precedent, and raise no substantial question of lawfulness that would support a Commission investigation.

Specifically, contrary to the allegations of AT&T, CenturyTel has reasonably projected its demand and costs in its 2004 access charge tariffs, and is not required to tariff unreasonably low rates for the upcoming period to account for alleged over-earnings for the first year of the monitoring period. Further, CenturyTel did not underestimate demand to develop traffic sensitive rates and has properly calculated cash working capital in compliance with the Commission's rules.

I. AT&T'S ARGUMENT THAT CERTAIN CENTURYTEL TARIFFS SHOULD BE SUSPENDED BASED ON PAST ALLEGED OVER-EARNINGS IS VAGUE AND WITHOUT MERIT

AT&T claims that CenturyTel of Midwest-Michigan, CenturyTel of Ohio and CenturyTel of Wisconsin's interstate access tariffs should be suspended because unidentified "errors" have lead to "systematic over-earnings."[1] AT&T points to no particular "systematic errors" in these tariffs, past or present, on which AT&T bases its claims. Further, the tariff filings that AT&T seeks to suspend includes substantial rate reductions to target earnings of 11.25 percent. The new lower rates will result in a reduction in billings by the CenturyTel companies of $26.7 million,[2] and CenturyTel estimates it will yield AT&T approximately $7 to $8 million in reduced billings in 2004 compared to 2003. Thus, AT&T's reliance on past tariffs demonstrates nothing regarding CenturyTel's current tariff filings. Moreover, AT&T's Petition is impermissibly vague – it does not specify over what period of time CenturyTel was "systematically" over-earning. Indeed, AT&T's Exhibit B is, at best, inconclusive as a number of the data points show earnings at or below 11.25 percent,[3] or trending downward over time.[4] Although CenturyTel concedes that certain of the preliminary data generally reflects an increase for rate-of-return for certain CenturyTel LECs in 2003, as discussed further below, this provides no evidence of what the final 2003-2004 earnings report will show.

Effectively, AT&T is requesting that CenturyTel's tariffs be suspended because AT&T would like more time than the statute provides or simply would like to avoid the tariff gaining "deemed-lawful" status altogether. AT&T's request appears merely to be an attempt to

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1 AT&T Petition at 5-6.

2 *See* Exhibit 3, Transmittal Nos. 37, 182.

3 AT&T Petition at Exhibits B-6, B-7, B-8.

4 AT&T Petition at Exhibits B-4, B-6, B-8.

circumvent the statutory streamlined tariff filing process.[5] The Commission should not indulge AT&T's effort to circumvent Section 204(a)(3) to allow it to go on a fishing expedition regarding CenturyTel's tariffs.

II. CENTURYTEL CANNOT BE REQUIRED TO TARIFF RATES THAT ARE UNJUSTLY AND UNREASONABLY LOW

AT&T's assertion that CenturyTel of Midwest-Michigan, CenturyTel of Ohio and TUECA must make a "mid-course adjustment" for allegedly exceeding the Commission's prescribed rate of return in 2003 is equally unavailing.[6] *First*, it would be inappropriate for CenturyTel, AT&T, or the Commission to adjust CenturyTel's rates based on the information contained in preliminary Form 492 monitoring reports upon which AT&T bases its claim. CenturyTel has yet to file its final monitoring report for the 2003-2004 period, which will be due in September 2005. As the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") has explained, the preliminary monitoring report is not "a reliable indicator of whether the LEC has earned more than allowed."[7] Thus, AT&T's claim for damages would not accrue with the filing of the preliminary report because "the *raison d'etre* for the final report is to afford the LEC time to adjust the data submitted in its preliminary report."[8] The Commission,

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[5] *See ACS of Anchorage, Inc. v. F.C.C.*, 290 F.3d 403, 410-412 (D.C. Cir. 2002); Implementation Of Section 402(B)(1)(A) Of The Telecommunications Act Of 1996, CC Docket No. 96-187, 12 FCC Rcd 2170, ¶¶ 18-24 (1997) ("*Streamlined Tariff Order*").

[6] AT&T Petition at 6.

[7] *MCI Telecommunications Corp. v. FCC*, 59 F.3d 1407, 1417 (D.C. Cir. 1995)

[8] *Id.* Indeed, the D.C. Circuit noted that, in five of the cases at issue in *MCI*, the preliminary report did not accurately indicate whether the LEC had over-earned. *Id.*

also recently reiterated that the preliminary monitoring report does not contain binding representations as to a carrier's earnings.[9]

Second, the Act does not permit the Commission to require that "LECs . . . make downward adjustments to their rates for the 2004 period to bring . . . *overall returns for the 2003-2004 period* within the range of 11.25%."[10] CenturyTel's rates in effect during 2003 were "deemed lawful" under the provisions of Section 204(a)(3) of the Act, 47 U.S.C. § 204(a)(3). As the D.C. Circuit has recently confirmed, the Commission's rate-of-return prescription is not an end in itself; rather it is a proxy for determining whether a carrier's underlying rates are just and reasonable.[11] Where, as here, the rates in question are deemed lawful under Section 204(a)(3), no such proxy is needed (or even relevant) because the Commission's ability to order retrospective refunds has been extinguished.[12]

While the Commission may prescribe rates going forward that are reasonably calculated to yield a carrier's authorized rate of return, it may not order a mid-course correction calculated to produce unreasonably low earnings below that level. Such action would be indistinguishable from a Commission-ordered refund, and the Commission may not circumvent Section 204(a)(3) or the D.C. Circuit's clear holdings in such a manner. Under Section 204(a)(3), "the inquiry ends"[13] with respect to the lawfulness of deemed-lawful rates for 2003 because, as

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[9] *General Communication, Inc. v. ACS Holdings, Inc.*, 16 FCC Rcd 2834 (2001), *aff'd in part, rev'd in part, and remanded sub nom. ACS of Anchorage, Inc. v. FCC*, 290 F.3d 403 (D.C. Cir. 2002).

[10] AT&T Petition at 6 [emphasis added].

[11] *ACS of Anchorage*, 290 F.3d at 412.

[12] *Id*.

[13] *Id.*

the Commission itself has recognized, the tariff "is conclusively presumed to be reasonable,"[14] regardless of the earnings the tariff produced. Thus, under Section 204(a)(3), the Commission has been stripped of the legal basis that formerly may have supported the ordering of such a mid-course correction, and the Commission may not order the "sharing" of past earnings on a going-forward basis with access customers.

Third, even in the event that the 2003 rates were not deemed lawful, CenturyTel is not required in 2004 filing to under-earn by an amount calculated to bring its overall earnings into a projection of 11.25 percent or less. As noted above, earnings reports are a tool designed to help the Commission determine whether a carrier's rates were reasonable – they are not an end in themselves. CenturyTel's rates are designed to achieve 11.25 percent for the period in which they are in effect, and AT&T has offered no evidence to the contrary. If AT&T had its way, a carrier that allegedly over-earned in part of the two-year monitoring period would have to grossly under-earn in the subsequent part to ensure it targeted no more than 11.25 percent earnings for the total monitoring period. Such a "make-up" requirement would be completely unworkable, considering that the 2003-2004 earnings period will end in six months, but the tariffs for which AT&T seeks suspension will be in effect for one or two years. Under AT&T's reasoning, CenturyTel would have to drastically cut rates for a six-month period, such that it would then have to revise its rates in six months in order to avoid 18 more months of severe under-earnings. CenturyTel *has* made a substantial adjustment to its 2004 tariff filings, which will yield a substantial drop in CenturyTel's rates in 2004 compared to 2003. CenturyTel's rates under its tariffs are targeted to achieve the authorized 11.25 percent earnings. Therefore, the tariffs are lawful.

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[14] *Streamlined Tariff Order*, 12 FCC Rcd 2170, para. 19 (1997), *appeal docketed sub nom. AT&T Corp. v. FCC*, No. 02-1137 (D.C. Cir. 2002).

III. CENTURYTEL DID NOT UNDERESTIMATE PROJECTED DEMAND USED TO DEVELOP TRAFFIC SENSITIVE RATES

AT&T is incorrect when it alleges that CenturyTel of Midwest-Michigan has underestimated traffic sensitive demand used to develop its 2004 tariff. CenturyTel of Midwest-Michigan developed demand based on actual billing for January 2003 through May 2004, *i.e.*, the most recent 17 months of actual demand prior to developing the new rates. AT&T's comparison of demand for the period 2000 through 2003 data to the projections used in the 2004 tariff[15] is out-dated and therefore irrelevant. Actual demand data covering the most recent 17 months reflects the actual shifts in calling patterns stemming from PIU changes, increasing mobile phone usage, and other market forces. By comparison, AT&T's linear regression using data for the period 2000 through 2003 (Exhibit E-1) fails to account for specific and known changes that have occurred over the past year. Conversely, CenturyTel utilized data that is most representative of the calling patterns and demand expected for the period in which the tariff will be in effect.

Moreover, a linear regression of the actual data for 2000 through 2003 is not an appropriate methodology to utilize in forecasting the Local Switching Demand for CenturyTel of Midwest-Michigan. The data for this period includes anomalies such as PIU shifts which, in turn, skew the forecasts unless these anomalies are accounted for (which it appears AT&T did not do). One of the known fallacies of a linear regression model is that data points with anomalies must be corrected or the resulting projections are biased. AT&T's data therefore is not valid and its allegations regarding CenturyTel of Midwest-Michigan's demand projections should be rejected.

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[15] AT&T Petition at 11.

IV. CENTURYTEL PROPERLY ESTIMATED ITS CASH WORKING CAPITAL REQUIREMENT

AT&T's allegations regarding excessive cash working capital ("CWC") requirements for CenturyTel of Mid-West Michigan and TUECA are misleading on the facts and wrong on the law. As an initial matter, AT&T attempts to gain critical mass for its negligible claim by listing the alleged effect on interstate revenue requirements $689,000, but this dollar figure covers 17 different operating companies, including eleven of the TUECA companies.[16] Looking only at CenturyTel Midwest-Michigan, the alleged effect on its revenue requirements would be $36,545 and, for the eleven TUECA companies, the alleged effect on their collective revenue requirements would be approximately $290,000. If AT&T were correct, then the impact on the traffic sensitive rate would amount to approximately $0.000022 for CenturyTel of Midwest-Michigan and $0.000021 for TUECA. This figure is *de minimis* and would have no meaningful effect on CenturyTel's ratepayers such as AT&T. Further diminishing the integrity of AT&T's claims, the CWC data presented in the Petition are overstated because AT&T has failed to include any federal income tax expense in its calculation of cash working capital shown.[17] AT&T's allegations regarding CenturyTel's CWC are unfounded.

Furthermore, AT&T is incorrect in its claim that the Commission required CenturyTel to conduct a "lead-lag study." None of the CenturyTel companies is even mentioned in the order cited by AT&T.[18] The Commission's rules specifically permit carriers to compute CWC without conducting a lead-lag study.[19] CenturyTel has utilized the Commission-approved

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[16] TUECA actually includes 15 companies, four of which are not named in the Petition.

[17] AT&T Petition at Exhibit F-1.

[18] AT&T Petition at 13 (citing *1997 Annual Access Tariff Filings*, 13 FCC Rcd 3815, ¶¶ 221-224 (1997)).

[19] *1997 Annual Access Tariff Filings* at ¶ 208; *see* 47 C.F.R. §§ 65.820(d)-(e).

Standard Allowance Method of computing CWC for each of its study areas included in the 2004 CenturyTel of Mid-West Michigan and TUECA filings. AT&T erroneously states that CenturyTel failed to provide supporting documentation.[20] In truth, copies of its Part 36/Part 69 cost studies for both historical and projected time periods were supplied to AT&T upon their request. One of the Part 36 schedules, CWC-1, includes the calculation of cash working capital. Under the Standard Allowance Method, an interstate net lead/lag factor of .041096 (15 days/365 days) is applied to the interstate cash operating expense base. This methodology is consistent with the procedures set forth in the NECA Cost Issue 7.2 and the Commission's rules. Thus, the allegations regarding CenturyTel's CWC requirements should be rejected.

V. CONCLUSION

For the foregoing reasons, the Petition of AT&T to suspend and investigate the 2004 annual access tariff filing of CenturyTel should be denied.

Respectfully submitted,

CENTURYTEL OF MIDWEST-MICHIGAN, CENTURYTEL OF MICHIGAN, CENTURYTEL OF OHIO, CENTURYTEL OF WISCONSIN AND TELEPHONE UTILITIES EXCHANGE CARRIER ASSOCIATION

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[20] AT&T Petition at 12-13.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Opposition of CenturyTel, was served this 30th day of June, 2004, upon the following:

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