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FILED

Jan Sanders
Secretary of the Commission

5/30/00

ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION OF) CENTURYTEL OF CENTRAL ARKANSAS, LLC) FOR THE ISSUANCE OF A CERTIFICATE OF) PUBLIC CONVENIENCE AND NECESSITY) AUTHORIZING IT TO PROVIDE LOCAL) EXCHANGE TELECOMMUNICATIONS SERVICE)	DOCKET NO. 99-236-U ORDER NO. <u>10</u>
IN THE MATTER OF THE APPLICATION OF) CENTURYTEL OF NORTHWEST ARKANSAS, LLC) FOR THE ISSUANCE OF A CERTIFICATE OF) PUBLIC CONVENIENCE AND NECESSITY) AUTHORIZING IT TO PROVIDE LOCAL) EXCHANGE TELECOMMUNICATIONS SERVICE)	DOCKET NO. 99-237-U ORDER NO. <u>10</u>
IN THE MATTER OF THOSE ELEMENTS OF THE) INTRASTATE ACCESS CHARGE MAINTAINED AT) PARITY WITH INTERSTATE ACCESS)	DOCKET NO. 86-160-U ORDER NO. <u>273</u>

ORDER

On September 2, 1999, CenturyTel of Central Arkansas, LLC (CCA) filed an Application for a Certificate of Convenience and Necessity (CCN) to operate as a local exchange carrier of telecommunications services in Docket No. 99-236-U. On September 2, 1999, CenturyTel of Northwest Arkansas, LLC (CNA) filed an Application for a CCN to operate as a local exchange carrier of telecommunications services in Docket No. 99-237-U.

By Order No. 2 in Dockets No. 99-236-U and No. 99-237-U, entered on September 24, 1999, the Petitions to Intervene filed by the ALLTEL companies (ALLTEL), Southwestern Bell Telephone

Company (SWBT), AT&T Communications of the Southwest, Inc., (AT&T) and MCI WorldCom Communications, Inc. were granted. The Motion to Intervene filed by Sprint Communications L.P. (Sprint) was granted by Order No. 3 entered on October 12, 1999.

On April 21, 2000, CCA and CNA filed Motions to Consolidate stating that it had filed proposed tariffs in each of the CCN dockets, including intrastate access tariffs. The proposed tariffs were filed on April 5, 2000. On April 21, 2000, CCA and CNA filed identical switched access tariffs in Docket No. 86-160-U. In their Motions, CCA and CNA request that the tariff filings in Docket No. 86-160-U be consolidated with Dockets No. 99-236-U and No. 99-237-U for consideration. The Motions to Consolidate were granted by Order No. 5 in Docket No. 99-236-U, Order No. 5 in Docket No. 99-237-U and Order No. 268 in Docket No. 86-160-U and the tariff filings of CCA and CNA in Docket No. 86-160-U were consolidated with the CCN proceedings for the purpose of hearing.

A public hearing on the three dockets was held on May 19, 2000. Ms. Susan W. Smith, CenturyTel Service Group, Inc. Director-Government Relations and Mr. Nolan A. Moullé, Jr., CenturyTel Service Group, LLC Vice President of Separations/Access testified on behalf of CCA and CNA. Mr. Jack Redfern, Staff Manager-State Government Affairs, testified on behalf of ALLTEL Communications, Inc. Mr. John P. Bethel Manager-Telecommunications Section testified on behalf of the General Staff of the Arkansas Public Service Commission (Staff).

Dockets No. 99-236-U and No. 99-237-U are companion dockets to Docket No. 99-220-U wherein GTE Southwest Incorporated, GTE Arkansas Incorporated and GTE Midwest Incorporated

(collectively "GTE") and CCA and CNA, subsidiaries of CenturyTel, Inc. (CenturyTel), jointly applied for approval of CCA's and CNA's acquisition of the assets of GTE. GTE and CCA and CNA entered into an agreement for GTE to sell its operating facilities and equipment in certain of its Arkansas exchanges to CCA and CNA. CCA and CNA will take title to the facilities of GTE upon closing the sale and operate the facilities as local exchange carriers (LEC). CCA and CNA will acquire approximately 213,000 access lines in the state covering 103 different exchanges. CenturyTel will pay GTE approximately \$843.3 million for the facilities of GTE.

Order No. 15 entered on March 29, 2000, in Docket No. 99-220-U found the acquisition to be in the public interest and approved the Joint Application of GTE and CenturyTel. In Docket No. 99-220-U, CCA and CNA committed to maintaining rates and charges for local and toll service which are identical to the rates and charges of GTE. The only rates which CCA and CNA propose to change are the intrastate traffic sensitive switched access rates. CCA and CNA contend that the intrastate traffic sensitive switched access rates will be amended to maintain parity with the interstate switched access rates of the other CenturyTel LECs operating in Arkansas. In Order No. 15 it was found that:

The assets of the CenturyTel holding company appear to be sufficient to support the purchase. The business and residential customers of GTE will not experience local or toll rate increases or changes in calling scopes due to the acquisition. These customers will experience some improvements in customer service and may experience some upgrades in service. The employees of GTE will have the opportunity for continued employment. Based upon the evidence herein, the proposed acquisition of GTE by CenturyTel is consistent with the public interest as required in Ark. Code Ann. §23-3-102(b)(2) and should be approved.

In support of the CCN Applications of CCA and CNA, Ms. Smith testified that they are

limited liability companies formed under the laws of the state of Louisiana and the only member is CenturyTel. CCA and CNA received certificates from the Office of the Secretary of State on July 15, 1999, authorizing them to do business in the state of Arkansas. T. 26-7 and Corrected T. 3-4. Ms. Smith testified that CCA proposes to serve the territory and exchanges that currently comprise the GTE Southwest and GTE Midwest territories, with the exception of the GTE Southwest territory not included in the sale and CCA has included in its proposed tariffs, maps and descriptions that are the same as those previously filed and approved for the same GTE territories. Corrected T. 4-5. For CNA, she testified that it proposes to serve the territory and exchanges that currently comprise the GTE Arkansas service territory and CNA included in its proposed tariffs, maps and descriptions that are the same as those previously approved for GTE Arkansas. T. 4-5.

According to Ms. Smith, CCA and CNA will provide local and toll services and switched access services in the territories they propose to serve and the services are described in the proposed tariffs of CCA and CNA. The proposed tariffs of CCA and CNA reflect identical calling scopes and local and toll rates for all business and residential customers of GTE. Ms. Smith described the minor differences between the proposed tariffs and the GTE tariffs including the name changes and the changes in trade names for certain services. T. 28, 30 and Corrected T. 5-7. Ms. Smith also testified that CCA and CNA will not attempt to invalidate any interconnection agreement applicable to the GTE exchanges that exists at the time the sale is closed.

The CCA and CNA witness testified that CenturyTel, the sole member of each of the limited liability companies, has the financial, managerial and technical capability to operate the facilities it

proposes to acquire from GTE. CenturyTel and its subsidiaries and affiliates have over thirty (30) years experience operating local exchange telecommunications carriers in the State of Arkansas according to Ms. Smith. T. 33 and Corrected T. 10.

CCA and CNA witness Moullé testified that CCA and CNA will be rate of return regulated LECs and will not elect “alternative regulation” pursuant to Act 77 of 1997, Ark. Code Ann. §§23-17-401-412. Therefore, the intrastate traffic sensitive switched access rates for CCA and CNA will be set at parity with the interstate switched access rates of the two companies through a parity filing in Docket No. 86-160-U. For the purpose of setting interstate traffic sensitive switched access charges for CCA and CNA, Mr. Moullé stated that CenturyTel intends to participate in the National Exchange Carrier Association (NECA) traffic sensitive pool. However, in order for CCA and CNA to participate in the NECA pool, CenturyTel must secure a price cap waiver from the FCC and to date its petition for a waiver has not been granted. Mr. Moullé testified that if a waiver is granted, CCA and CNA will mirror their interstate traffic sensitive access rates for intrastate traffic sensitive access through parity filings in Docket No. 86-160-U.

The witness for CCA and CNA testified that the companies have filed to recover their intrastate carrier common line (CCL) revenue requirement pursuant to the tariff filed by the Administrator of the Arkansas Intrastate Carrier Common Line Pool (AICCLP). According to Mr. Moullé, CCA and CNA will undertake all obligations associated with the investments supporting CCL functions in the GTE properties that CCA and CNA are acquiring. “Therefore CenturyTel of Northwest Arkansas, LLC will be entitled to the intrastate CCL revenue requirement previously

listed for GTE of Arkansas and GTE Systems of Arkansas in the Intrastate Flat Rate Carrier Common Line Service Tariff. Likewise, CenturyTel of Central Arkansas, LLC will be entitled to the intrastate CCL revenue requirement previously listed for GTE Southwest, Inc.” T.54.

The Staff witness testified that after the acquisition of GTE, CCA will serve all the Arkansas exchanges served by GTE Southwest except the Texarkana exchange and all of the GTE Arkansas exchanges will be served by CNA. In addition, he testified that CNA would serve the Oklahoma exchanges of Colcord and Watts, the Seligman, Missouri exchange and a small group of customers in Jacket, Missouri served out of the Pea Ridge exchange. The Mammoth Springs exchange presently served by GTE Midwest would be served by CNA. T.140. Mr. Bethel testified that CCA and CNA will be the successors and assigns to the GTE companies as described in Ark. Code Ann. §23-17-403(16) and that CCA and CNA will be non-electing incumbent local exchange carriers (ILEC).

Mr. Bethel testified that there is no specific provision in Section 7 of the Commission's *Rules of Practice and Procedure* that lists filing requirements for CCNs for ILECs. Therefore, the Staff witness stated that he relied upon the requirements in Rule 7.05F and Rule 7.06 to analyze the CCN Applications of CCA and CNA. According to the Staff witness, the Articles of Organization and the Arkansas Certificates of Registration for CCA and CNA were included as exhibits to the Applications of each of the company. He also stated that Ms. Smith included the 1999 financial statements for CenturyTel, Inc. which wholly-owns CCA and CNA in her testimony. Mr. Bethel testified that based upon the Applications of CCA and CNA and the testimony of Ms. Smith, it

appears that CCA and CNA possess the technical, managerial, and financial capability to provide local exchange service in Arkansas. T. 141.

Staff witness Bethel also testified that CCA and CNA filed tariffs on April 5, 2000, including maps and descriptions, for local exchange service and interexchange service and that with limited exceptions, the tariffs of CCA mirror the tariffs of GTE Southwest and the tariffs of CNA mirror the tariffs of GTE Arkansas. CCA filed Section 41 of its Arkansas General Exchange tariff on April 21, 2000, in Docket No. 86-160-U which states that CCA concurs in NECA's Federal Communications Commission (FCC) Tariff No. 5 and that it will maintain parity with its interstate tariff for switched access services. Mr. Bethel stated that on April 24, 2000, CCA filed revised Section 41 of its Arkansas General Exchange Tariff and CNA filed a revised Section 2, Sheet 6.1 and Section 8. T. 142.

The witness for the Staff testified that the tariffs for local exchange and interexchange service filed by CCA and CNA include the same rates for local exchange and interexchange service as presently charged by GTE. Mr. Bethel recommended that CCA and CNA be granted CCNs to provide local exchange and interexchange service effective upon the close of the sale approved by Order No. 15 in Docket No. 99-220-U and that the tariffs filed by CCA and CNA be approved. He also recommended that CCA and CNA be designated the successors and assigns of GTE and therefore, ILECs pursuant to Ark. Code Ann. §23-403(16). T. 146-7.

ALLTEL witness Redfern did not address the qualifications of CCA and CNA to operate as local exchange carriers in his testimony. However, he conceded that he had no information which

would lead him to believe that CCA and CNA were not capable of operating as local exchange carriers in Arkansas. Mr. Redfern testified that the traffic sensitive switched access rates of CCA and CNA if approved as filed would not be just and reasonable. He testified that if the proposed intrastate traffic sensitive switched access rates are approved, CCA and CNA both would be in a significant overearnings situation. T. 110. He stated that ALLTEL objects to the use of parity for intrastate switched access rates for CCA and CNA on the basis that these rates are not cost based rates. He recommended that CCA and CNA be required to adopt all of GTE rates, including the rates for intrastate access rates until CCA and CNA justify a change in rates. At the conclusion of the hearing, ALLTEL revised its position and joined in AT&T's Motion requesting that all of the rates filed by CCA and CNA be dismissed.

None of the intervenors in this Docket actually addressed the qualifications of the applicants to operate as local exchange carriers. Neither AT&T nor SWBT had witnesses testify in these dockets but each requested that notice be taken of the testimony of their witnesses in Docket No. 99-220-U. The witnesses for AT&T and SWBT in Docket No. 99-220-U addressed the issue of CenturyTel's intention to file intrastate traffic sensitive switched access rates at parity.

In Docket No. 99-220-U, ALLTEL, AT&T and SWBT all opposed the acquisition of GTE by CenturyTel on the basis that CenturyTel intended to have CCA and CNA operate as non-electing local exchange carriers, with intrastate traffic sensitive access rates at parity with their interstate access rates in Docket No. 86-160-U. Their primary objection to CenturyTel's plan to maintain parity rates in accordance with Commission orders is that CenturyTel has requested a price cap

waiver from the FCC for CCA and CNA. A price cap waiver would allow CCA and CNA to use NECA interstate traffic sensitive switched access rates. CCA and CNA would mirror the NECA rates for intrastate traffic sensitive switched access rates pursuant to Commission orders in Docket No. 83-042-U and Docket No. 86-160-U. The NECA rates are higher than the interstate and intrastate traffic sensitive switched access rates which GTE is allowed to charge as an FCC price cap company. However, as Mr. Bethel testified even with the proposed increase CCA and CNA will have traffic sensitive switched access rates which with the exception of SWBT will be the lowest in the state. T. 145.

On April 28, 2000, AT&T filed in Dockets No. 99-236-U, No. 99-237-U and No. 86-160-U a Motion to Declare Inapplicable or to Set Aside Access Parity Requirement and Rescind Applicable Orders. The Motion is almost identical to the Motion filed by AT&T in Docket No. 99-220-U on December 1, 1999. AT&T's Motion was denied in Order No. 15 in Docket No. 99-220-U. AT&T's Motion filed herein on April 28, 2000, is denied for the reasons set forth in Order No. 15 in Docket No. 99-220-U. The mere fact that AT&T or any of the intervenors does not like the outcome of parity in this instance does not mean that parity is no longer in the public interest or that the rationale for parity between interstate and intrastate traffic sensitive switched access rates is no longer valid.

In AT&T's Motion filed April 28, 2000, it does raise one argument for not allowing CCA and CNA to file parity rates in Docket No. 86-160-U which it did not specifically raise in connection with the parity issue in Docket No. 99-220-U. AT&T contends that "[u]pon such sale, however, there will be no jurisdictional company that remains subject to the parity requirement. The

CenturyTel LLCs are not "successors and assigns" of GTE (see, Ark. Code Ann. §23-17-403(16))." Act 77 of 1997 provides for only two types of local exchange carriers. A local exchange carrier is either an ILEC which is defined as "a local exchange carrier, including successors and assigns, that is certified by the commission and was providing basic local exchange service on February 8, 1996," or a competing local exchange carrier (CLEC) which is defined as any "local exchange carrier that is not an incumbent local exchange carrier." Ark. Code Ann. §23-17-403(16), (8). According to AT&T, CCA and CNA will not be ILECs under Act 77's definition since AT&T contends that they are not the successors and assigns of GTE. If as AT&T contends, CCA and CNA will not be ILECs they will be CLECs pursuant to Ark. Code Ann. §23-17-403(8) and AT&T would be correct in its statement that CCA and CNA would not be subject to the parity requirement. As CLECs, the rates of CCA and CNA would not be subject to review or regulation by the Commission and CCA and CNA could charge any traffic sensitive switched access rates they desired. Ark. Code Ann. §23-17-409(a). In addition as CLECs, CCA and CNA would not be subject to the interconnection requirements of 47 U.S.C. 251(c) as those requirements only apply to ILECs.

The issue of whether or not CCA and CNA will be ILECs was addressed in Docket No. 99-220-U with regard to CCL charges and participation in the AICCLP. In that docket, it was found that CCA and CNA would be the successors and assigns of GTE and ILECs as defined in Ark. Code Ann. §23-17-403(16) with the right to participate in the AICCLP. Ark. Code Ann. §23-17-403(4). In order to obtain CCNs, CCA and CNA must be willing to succeed to all the obligations and duties of GTE in serving the customers in the service territories now served by GTE. In their testimony and

Applications, CCA and CNA have committed to assuming these obligations and filed tariffs and area service maps demonstrating their willingness to fulfill these obligations. CCA and CNA will be ILECs as defined in Ark. Code Ann. §23-17-403(16) with the duties and obligations of ILECs.

During the hearing, AT&T made a motion which was joined by the other intervenors that the request for approval of all rates filed by CCA in Docket No. 99-236-U and all rates filed by CNA in Docket No. 99-237-U be dismissed. AT&T contends that CCA and CNA failed to meet the burden of proof that the proposed rates are just and reasonable and therefore, the rates cannot be approved. The rates for local and toll service filed by CCA and CNA reflect the rates now charged by GTE. In Docket No. 99-220-U, CenturyTel committed that the rates which it would charge would be identical to the rates and charges of GTE for local and toll service. The commitment to maintain rates and charges identical to GTE's rates and charges provided support for finding that the acquisition was in the public interest. In Docket No. 99-220-U, AT&T, SWBT, ALLTEL and Sprint never challenged CenturyTel's plan to maintain the same rates and charges for local exchange and toll service as GTE as not being in the public interest or not being just and reasonable.

The Staff witness testified that there is Commission precedent for allowing a LEC that acquires another LEC to adopt the rates and charges of the carrier being acquired. According to Mr. Bethel, the same approach for setting initial rates which is proposed herein was approved when GTE acquired the Contel properties, when ALLTEL acquired Perco Telephone Company and when TDS acquired the carriers now known as Cleveland County Telephone Company and Decatur Telephone Company. In addition to the Commission precedent cited by Mr. Bethel, counsel for CCA and CNA

pointed out there is a practical reason for allowing the acquiring LEC to adopt the rates of the LEC being acquired. To justify the reasonableness of a proposed new rate schedule,

a utility may utilize either an historical test period of twelve (12) consecutive calendar months or a forward-looking test period of twelve (12) consecutive calendar months consisting of six (6) months of actual historical data derived from the books and records of the utility and six (6) months of projected data which together shall be the period or test year upon which fair and reasonable rates shall be determined by the Arkansas Public Service Commission. Ark. Code Ann. §23-4-406.

The statute requires that the utility justify a proposed rate schedule with at least six months of actual historical data. It is impossible for two new companies such as CCA and CNA to justify rates with historical data which does not exist. CCA and CNA cannot operate without rates and they cannot obtain the actual data necessary to file a rate case and justify rates without operating.

The evidence reflects that the local and toll rates filed by CCA and CNA are identical to the rates and charges of GTE in accordance with the commitment of CenturyTel in Docket No. 99-220-U and that the local exchange and toll customers of GTE will not experience any changes in their local and toll rates and charges after the acquisition. The proposal to adopt the rates and charges of GTE is consistent with Commission precedent and it avoids creating a legally impossible situation. AT&T proposes that CCA and CNA be placed in a "catch 22" situation of not being able to operate because they have no approved rates, but not being able to obtain the data necessary to justify rates because they cannot operate without rates. This situation is easily avoided by allowing CCA and CNA to adopt the rates and charges of GTE while acquiring the data necessary to justify rates pursuant to Ark. Code Ann. §23-4-406. With the exception of the proposed rates for intrastate traffic sensitive switched access, AT&T's Motion is denied.

The intrastate traffic sensitive switched access rates filed by CCA and CNA in Docket No. 86-160-U were represented as being in parity with FCC approved interstate traffic sensitive switched access rates for CCA and CNA. The rates filed by CCA and CNA in Docket No. 86-160-U are in parity with FCC approved NECA rates. However, CCA and CNA are not eligible to charge NECA access rates until such time as the FCC grants CenturyTel a price cap waiver. As Mr. Moullé testified, the FCC has not granted a price cap waiver to CenturyTel. The proposed parity rates filed by CCA and CNA in Docket No. 86-160-U assume that the FCC has granted a price cap waiver to CenturyTel and that CCA and CNA are FCC rate of return carriers eligible to charge NECA interstate traffic sensitive switched access rates. The waiver has not been granted. Therefore, CCA and CNA are not FCC rate of return carriers eligible to charge NECA interstate access rates and the rates filed in Docket No. 86-160-U are not at parity with the interstate rates. Unless and until CenturyTel receives a price cap waiver, the rates which CCA and CNA filed in Docket No. 86-160-U are not at parity with their interstate traffic sensitive switched access rates. Therefore, the intrastate traffic sensitive switched access rates filed by CCA and CNA in Docket No. 86-160-U are not approved.

Only CCA, CNA and the Staff presented evidence on the qualifications of CCA and CNA to operate as local exchange and interexchange telecommunications carriers and that evidence supports granting CCNs to CCA and CNA. Based upon the testimony and evidence herein, CCA and CNA and their sole owner CenturyTel have the technical, managerial and financial capability to provide local exchange service, and CCA and CNA should be and hereby are granted CCNs to

provide local exchange and interexchange service effective upon the close of the sale approved in Docket No. 99-220-U. CCA is hereby directed to file notice of the closing of the sale in Docket No. 99-236-U and CNA is hereby directed to file notice of the closing of the sale in Docket No. 99-237-U. With the exception of the rates filed by CCA and CNA in Docket No. 86-160-U for intrastate traffic sensitive switched access service, the rates filed by CCA and CNA are hereby approved.

BY ORDER OF THE ADMINISTRATIVE LAW JUDGE PURSUANT TO DELEGATION.

This _____ day of May, 2000.

Sarah M. Bradshaw
Administrative Law Judge

Jan Sanders
Secretary of the Commission