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June 2, 2003

**HAND DELIVERY**

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Judge  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

**FILED<sup>3</sup>**

JUN 02 2003

Missouri Public  
Service Commission

**Re: In the Matter of the Application of Missouri RSA No. 7  
Limited Partnership d/b/a Mid Missouri Cellular for  
Designation as a Telecommunications Company Carrier  
Eligible for Federal Universal Service Support Pursuant to  
§254 of the Telecommunications Act of 1996**

Dear Mr. Roberts:

Enclosed for filing in the above case is an original and eight copies of  
**Application for Designation as an Eligible Telecommunications Carrier Pursuant to  
§254 of the Telecommunications Act of 1996.**

If you have any questions concerning this filing, please contact Paul DeFord in  
our Kansas City office.

Thank you for your attention to this matter.

Sincerely,

LATHROP & GAGE L.C.

By:   
Susan C. Kliethermes  
Paralegal

enclosures

cc: All counsel of record

JCDOCS 13721v1

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**BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI**

**FILED<sup>3</sup>**

JUN 02 2003

Missouri Public  
Service Commission

In the Matter of the Application of )  
Missouri RSA No. 7 Limited Partnership )  
d/b/a Mid-Missouri Cellular )  
for Designation as a Telecommunications )  
Company Carrier Eligible for Federal Universal )  
Service Support pursuant to § 254 of the )  
Telecommunications Act of 1996. )

Case No. \_\_\_\_\_

**APPLICATION FOR DESIGNATION AS AN  
ELIGIBLE TELECOMMUNICATIONS CARRIER  
PURSUANT TO § 254 OF THE TELECOMMUNICATIONS ACT OF 1996**

Comes Now MISSOURI RSA No. 7 LIMITED PARTNERSHIP d/b/a MID-MISSOURI CELLULAR ("MMC") and pursuant to § 214(e)(2) of the Telecommunications Act of 1996 ("the Act"), as well as the Federal Communications Commission ("FCC") regulations found at Section 54.201, *et seq.*, of the FCC's Rules, 47 C.F.R. § 54.201 *et seq.*, hereby requests that the Missouri Public Service Commission ("Commission") designate MMC as a telecommunications carrier eligible under the provisions of Section 54.201(d) to receive federal universal service support.

In support of this Application, MMC states as follows:

1. MMC is a telecommunications carrier authorized by the FCC to provide commercial mobile radio services (CMRS) in Missouri pursuant to two cellular radiotelephone licenses bearing Call Signs KNKN595 and KNKR207. MMC is not certificated by the Commission to provide basic local telecommunications services. Moreover, according to 386.020(53)(c) RSMo, the cellular service MMC provides in Missouri is outside the scope of

“telecommunications service,” as that term is defined in the Missouri Revised Statutes.<sup>1</sup> Based on its inquiries, MMC believes that, to date, no CMRS carrier has sought designation from this Commission as an Eligible Telecommunications Carrier (“ETC”). For that reason, the instant application represents a case of first impression for the Commission.

2. MMC’s street address and principal place of business is 1500 South Limit, Sedalia, MO 65301. MMC’s telephone number is (660) 620-1114, and it can be reached by facsimile at (660) 620-1116. MMC is a Missouri Limited Partnership, and a copy of MMC’s partnership agreement is marked Appendix A and attached hereto. A copy of MMC’s registration of fictitious name is marked Appendix B and attached hereto.

3. All correspondence, communications, pleadings, notices, orders and decisions relating to this Application should be addressed to:

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and

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<sup>1</sup> MMC, however, participated in Commission investigatory proceedings (*e.g.*, Case No. TO-96-1) and submitted its interconnection agreements for Commission approval as required by § 252(e) of the Act (*see* Case Nos. TO-2002-318, TO-2001-480, and TO-99-279).

Ms. Kathie Zentgraf  
President, CEO & General Manager  
Missouri RSA No. 7 Limited Partnership  
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3. Under § 214(e)(1) of the Act, a carrier may be designated as an ETC and thereby receive universal service support so long as the carrier, throughout its service areas: (a) offers the services that are supported by federal universal service support mechanisms under § 254(c) of the Act, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including services offered by another ETC); and (b) advertises the availability of and charges for such services using media of general distribution. Section 54.201(b) of the FCC's Rules states that the Commission shall, on its own motion or upon request, designate a common carrier an ETC so long as the carrier meets the requirements of Section 54.201(d), which restates the requirements found in § 214(e)(1) of the Act. Section 214(e)(2) of the Act and Section 54.201(c) of the FCC's Rules state that the Commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an ETC for a service area the Commission designates, provided each additional requesting carrier satisfies § 214(e)(1) of the Act and Section 54.201(d) of the FCC's Rules. Before designating an additional ETC for an area served by a rural telephone company, the Commission shall find that such designation is in the public interest.

4. Pursuant to Section 54.101(a) of the FCC's Rules, the following core services and functions are to be offered by an ETC and should be supported by federal universal support mechanisms:

- (a) Voice grade access to the public switched network;
- (b) Local usage;
- (c) Dual tone multi-frequency signaling or its functional equivalent;
- (d) Single-party service or its functional equivalent;
- (e) Access to emergency services;
- (f) Access to operator services;
- (g) Access to interexchange service;
- (h) Access to directory assistance; and
- (i) Toll limitation for qualifying low-income consumers.<sup>2</sup>

These services and functions are described in greater detail below:

(a) Voice-Grade Access to the Public Switched Network. The FCC concluded that voice-grade access means the ability to make and receive phone calls, within a bandwidth of approximately 2700 Hertz, within the 300 to 3000 Hertz frequency range.<sup>3</sup> As an existing cellular service provider in Missouri, MMC provides voice-grade access to the public switched network. Through interconnection agreements with incumbent local exchange carriers, MMC is able to originate and terminate telephone service for all of its subscribers. All customers of

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<sup>2</sup> On December 30, 1997, the FCC changed its definition of toll-limitation services in its Fourth Order on Reconsideration of the Universal Service Report and Order, CC Docket Nos. 96-45 et al. The FCC stated, "we define toll-limitation services as either toll blocking or toll control and require telecommunications carriers to offer only one, and not necessarily both, of those services at this time in order to be designated as eligible telecommunications carriers." *Id.* at 210.

<sup>3</sup> See Federal-State Board on Universal Service (First Report and Order in CC Docket No. 96-45) 12 FCC Rcd 8776, 8810-11 (1997) ("First Report and Order").

MMC are able to make and receive calls on the public switched network within the specified bandwidth.

(b) Local Usage. MMC's service includes local usage that allows customers to originate and terminate calls within the local calling area without incurring toll charges. The service allows for unlimited local calling for a flat-rated monthly charge. MMC currently offers several service options that include varying amounts of local usage in monthly service plans. To date, the FCC has not quantified any minimum amount of local usage required to be included in a universal service offering, but has initiated a separate proceeding to address this issue.<sup>4</sup> Any minimum local usage requirement established by the FCC as a result of the above-mentioned proceeding will be applicable to all designated ETCs. MMC will comply with any and all minimum local usage requirements adopted by the FCC. Thus, even though the FCC has yet to adopt any specific quantity of minimum local usage ETCs must provide for designation, MMC clearly satisfies the local usage criterion for ETC designation.

(c) Functional Equivalent of Touch-Tone ("DTMF") Signaling. DTMF is a method of signaling that facilitates the transportation of call set-up and call detail information. Consistent with the principles of competitive and technological neutrality, the FCC permits carriers to provide signaling that is functionally equivalent to DTMF in satisfaction of this service requirement.<sup>5</sup> MMC currently uses out-of-band digital signaling and in-band multi-frequency signaling that is functionally equivalent to DTMF signaling.<sup>6</sup> MMC, therefore, meets the requirements of providing DTMF signaling or its functional equivalent.

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<sup>4</sup> See, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252 (1998).

<sup>5</sup> 47 C.F.R. § 54.101(a)(3).

<sup>6</sup> First Report and Order, 12 FCC Rcd at 8815, ¶ 71 (1997).

(d) Single Party Service. “Single-party service” means that only one party will be served by a subscriber loop or access line, in contrast to a multi-party line.<sup>7</sup> The FCC concluded that a wireless provider offers the equivalent of single-party service when it offers a dedicated message path for the length of a user’s particular transmission. MMC meets the requirement of single-party service by providing a dedicated message path for the length of all customer calls.<sup>8</sup>

(e) Access to Emergency Service. The ability to reach a public emergency service provider through dialing “911” is a required universal service offering. MMC customers can reach an emergency dispatch, or public safety answering point (“PSAP”), by dialing “911,” which will route the call to the appropriate PSAP. Enhanced 911 (“E911”), which includes the capability of providing both automatic numbering information (“ANI”) and automatic location information (“ALI”), is required only if a public emergency service provider makes arrangements with the local provider for delivery of such information. A wireless carrier such as MMC is not required to provide E911 services until a local emergency provider has made arrangements for delivery of ALI and ANI from carriers.<sup>9</sup> MMC has ordered all necessary software to timely meet Phase I of the FCC’s requirement for access to emergency services pursuant to applicable FCC rules. Accordingly, MMC provides its subscribers with access to emergency services by dialing “911.”<sup>10</sup>

(f) Access to Operator Services. Access to operator services is defined as any automatic or live assistance provided to a consumer to arrange for the billing or completion, or

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<sup>7</sup> See, 12 FCC Rcd at 8810.

<sup>8</sup> *Id.*

<sup>9</sup> See, 12 FCC Rcd at 8815-8817.

<sup>10</sup> The FCC has designated other wireless providers as ETCs notwithstanding their inability to provide E911. See, e.g., Guam Cellular and Paging, Inc., 17 FCC Rcd 1502, 1506-07, n.30 (2002) (designating Guam Cellular and Paging, Inc. (“Guamcell”) as an ETC, even though Guamcell provided no E911 service to its subscribers; at the time Guamcell filed its ETC Petition, no public emergency service provider had requested Phase I or Phase II E911.)

both, of a telephone call. MMC currently offers its subscribers access to operator services for the placement and billing of telephone calls, including collect calls, calling card calls, credit card calls, person-to-person calls, and third party calls, as well as obtaining related information. Moreover, MMC will make such services available throughout its designated service area. Therefore, MMC meets this requirement by providing all of its customers with access to operator services.

(g) Access to Interexchange Service. An ETC providing universal service must offer consumers access to interexchange service to make or receive toll or interexchange calls. Interexchange service access entails access to live or automatic operator assistance for the placement and billing of telephone calls, including collect calls, calling card calls, credit card calls, person-to-person calls, and third party calls, as well as obtaining related information. MMC has a direct interconnection agreement with an interexchange carrier (“IXC”). As a result, MMC meets the requirement to provide all of its customers with the ability to make and receive interexchange or toll calls through the interconnection arrangements it has with its IXC.

(h) Access to Directory Assistance. The ability to place a call to directory assistance is a required service offering of an ETC. MMC meets this requirement by providing all of its customers with access to information contained in directory listings by dialing “411” or “555-1212.”

(i) Toll Limitation for Qualifying Low-Income Customers (Lifeline and Link-Up Services). Under Section 54.101(a)(9) of the FCC’s Rules,<sup>11</sup> ETCs must offer “Toll Limitation,” a term that denotes *either* “Toll Control” *or* “Toll Blocking” for carriers incapable of providing

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<sup>11</sup> See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Fourth Order on Reconsideration, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, Report and Order, 13 FCC Rcd 5318 (1997).



both services<sup>12</sup> to qualifying Lifeline and Link-Up universal service customers at no charge. Toll Blocking allows customers to block the completion of outgoing toll calls. Toll Control allows the customer to limit the dollar amount of toll charges a subscriber can incur during a billing period. If enrolled in the Federal Lifeline or Link-Up programs, a customer can choose to have MMC block all attempted toll calls originating from the customer's phone. Currently, MMC provides Toll Blocking services for international calls and customer selected toll calls. MMC will utilize the same Toll Blocking technology to provide toll limitation for qualifying low-income customers, at no charge, as part of its universal service offerings.

MMC will provide the foregoing services using its existing network infrastructure, which includes the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used to provide Commercial Mobile Service to its existing subscribers.

5. MMC advertises the availability of and charges for its services using media of general distribution within its service area.

6. MMC is not a "rural telephone company" as the term is defined by § 153(37) of the Act. Accordingly, MMC is required to describe the geographic area in which it requests designation as an ETC.<sup>13</sup> MMC requests designation for its entire FCC-licensed service area in Missouri, subject to the limitations and exclusions described in this Paragraph 6. A map of MMC's proposed ETC service areas is attached hereto as Appendix D.

Under Section 54.207(a) of the FCC's Rules, a "service area" is a "geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms." For non-rural service areas, there are no restrictions on how a state

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<sup>12</sup> 47 C.F.R. § 54.400(d). For ETCs capable of providing both services, the term "Toll Limitation" includes "Toll Blocking" and "Toll Control."

<sup>13</sup> See 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(a).

commission defines the “service area” for purposes of designating a competitive ETC. Therefore, the Commission may designate MMC as an ETC in all the non-rural wire centers set forth at Appendix E. To the extent MMC serves only a portion of the wire center listed at Appendix E, MMC requests ETC designation in that portion of the wire center where it provides service.<sup>14</sup>

In an area served by a rural telephone company, FCC rules define “service area” to mean the LEC study area unless a different service area definition is established for such company.<sup>15</sup> As shown in Appendix D, MMC serves the entire rural LEC study areas of Alma Telephone Company (“Alma”) and Citizens Telephone Company (“Citizens”). The Commission may designate MMC as an ETC in those areas upon finding that such designation will be in the public interest (*see* Paragraph 7 below).<sup>16</sup>

MMC is licensed by the FCC to serve only a portion of the “study areas” of five rural telephone companies that provide service in Missouri. MMC, however, is voluntarily excluding from the area in which it seeks ETC designation the partial study areas of four of those rural telephone companies—namely, Alltel, Cass Telephone Company (“Cass”), Chariton Valley Telephone Company (“Chariton Valley”), and Green Hills Telephone Company (“Green Hills”)—even though these partial areas are within MMC’s FCC licensed service area, as

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<sup>14</sup> Those wire centers that MMC partially serves are indicated on Appendix E with the word “partial.”

<sup>15</sup> *See* 47 C.F.R. § 54.207(b); *See also* Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth Report and Order, Twenty Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, 16 FCC Rcd 11244, 11299-309 (2001) (“*Fourteenth Report and Order*”). The Commission has defined “study area” as the geographical area that typically corresponds to a carrier’s entire service area within a state or territory. *See, e.g.,* Micronesian Telecommunications Corp. Request for a Declaratory Ruling, 9 FCC Rcd 2032 (Com. Car. Bur. 1994); Petitions for Waivers filed by Golden Belt Telephone Association, Inc., 11 FCC Rcd 10165 (Accg. & Aud. Div. 1996).

<sup>16</sup> 47 U.S.C. § 214(e)(2).

depicted in Appendix D hereto. Accordingly, MMC's instant application raises no statutory or regulatory compliance issues with respect to these partial study areas.<sup>17</sup>

The fifth rural telephone company where MMC's FCC license covers only a portion of the company's study area is Mid-Missouri Telephone Company ("MMTC"). MMC and MMTC, however, are affiliates.<sup>18</sup> MMC respectfully requests ETC designation in the nine MMTC exchanges that are wholly within MMC's FCC-licensed service area. For the three MMTC exchanges that fall outside MMC's licensed service area, however, MMC cannot and does not seek ETC designation..<sup>19</sup>

It may be argued that MMC must obtain a determination from the FCC pursuant to Section 54.207 of the FCC's Rules authorizing MMC to be designated an ETC in an area that deviates from MMTC's study area. MMC respectfully submits, however, that the requisite determination may be made by this Commission pursuant to § 214(e)(2) of the Act, which states:

Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of *an area* served by a rural telephone company . . . designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for *an area* served by a rural telephone company, the State commission shall find that the designation is in the public interest.<sup>20</sup>

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<sup>17</sup> MMC's FCC-licensed service area also includes portions of Cass County, which was an unserved area of the Kansas City MSA. MMC is voluntarily excluding its service area in Cass County from the area in which it seeks ETC designation.

<sup>18</sup> MMTC's ultimate owners also own MMC's sole corporate general partner and MMC's several corporate limited partners. In addition, several senior executive officers with MMC's corporate general partner have the same and/or similar executive positions with MMTC.

<sup>19</sup> The twelve exchanges that comprise MMTC's study area are depicted on the map included herewith as Appendix D. In addition, the exchanges are listed in Appendix F hereto.

<sup>20</sup> § 214(e)(2) of the Act, 47 U.S.C. § 214(e)(2) (emphasis added).

Under this interpretation, the Commission may designate MMC as an ETC in “an area” served by a rural telephone company provided that designation is consistent with the public interest, convenience and necessity and upon an express finding that the designation is in the public interest. With regard to the nine MMTC exchanges for which MMC seeks ETC designation, the requisite public interest determination can be readily made in accordance with FCC standards under Section 54.207 of that agency’s Rules.

A petition under Section 54.207(c) requesting to define a rural telephone company service area in a manner that departs from the company’s study area must contain “an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company.”<sup>21</sup> In the Recommended Decision in CC Docket No. 96-45,<sup>22</sup> which provided the conceptual basis for the *First Report and Order*, the Federal-State Joint Board (“Joint Board”) referred to three issues that might have decisional significance in cases where ETC designation was requested for a geographical area whose contours diverged from an underlying rural LEC’s entire study area.<sup>23</sup>

First, the Joint Board noted that retaining “study areas” as the service area for rural telephone companies will minimize “cream skimming” by potential competitors. In the Joint Board’s own words, “[c]ompetitors would thus not be eligible for universal service support if they sought to serve only the lowest cost portions of a rural telephone company’s study area...”<sup>24</sup> In sharp contrast to a potential “cream skimmer,” MMC seeks ETC designation only in that

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<sup>21</sup> See Section 54.207(c)(1)(ii) of the FCC’s Rules, 47 C.F.R. § 54.207(c)(1)(ii).

<sup>22</sup> See Federal-State Board on Universal Service (Recommended Decision in CC Docket No. 96-45) 12 FCC Rcd 87 (1996) (“*Recommended Decision*”).

<sup>23</sup> *Id.*, 12 FCC Rcd at 180 (1996).

<sup>24</sup> *Id.*

territory where the FCC has licensed MMC to provide CMRS—except where its FCC license partially covers rural telephone company exchanges, in which case MMC is voluntarily declining ETC designation.<sup>25</sup> Indeed, MMC is refusing designation in these partially covered areas expressly to pre-empt claims, however inaccurate and unsubstantiated, that its objective is to “serve only the lowest cost portions of a rural telephone company’s study area.” Rather than attempting to arrogate authority for the lowest-cost exchanges, MMC’s proposed ETC area coincides with its FCC-licensed Cellular Geographic Service Area (“CGSA”), with the exceptions just noted.<sup>26</sup> Moreover, the study areas of two rural telephone companies, Alma and Citizens, are wholly within MMC’s CGSA; thus, no claim of “cream-skimming” can arise with respect to these portions of its proposed ETC-designated area.

Second, the Joint Board also noted that the Telecommunications Act of 1996 placed rural telephone companies “on a different competitive footing from other local exchange companies.”<sup>27</sup> For example, the Telecommunications Act gave special consideration to rural companies with respect to their interconnection, unbundling, and resale obligations. Designating MMC an ETC in the rural telephone company areas proposed here in no way detracts from those companies’ unique competitive status. Of the three rural telephone companies in whose service areas MMC seeks ETC designation, two (Alma and Citizens) have study areas that are wholly

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<sup>25</sup> As mentioned above, although MMC’s FCC-licensed service area also includes portions of Cass County, MMC is voluntarily excluding that segment of its FCC-authorized CGSA from the area in which it seeks ETC designation.

<sup>26</sup> Moreover, as of May 2002, rural incumbent LECs have been required to select among the three paths adopted in the *Fourteenth Report and Order* for the disaggregation and targeting of high-cost support below the study area level. See Section 54.315 of the FCC’s Rules. When support is no longer averaged across an incumbent LEC’s study area, a competitor will have neither the incentive nor the ability to enter into incumbent LEC service territories in an uneconomic manner. See *Fourteenth Report and Order*, *supra*, 16 FCC Rcd at 11302.

<sup>27</sup> See *Recommended Decision*, 12 FCC Rcd at 180. For example, by enacting 47 U.S.C. § 214(e)(2), Congress required this Commission to make an explicit public interest finding before exercising its discretion to designate an “additional” ETC for an area served by a rural telephone company.

within MMC's CGSA and, as a result, have been accustomed to the inter-carrier rivalry posed by MMC's presence in their respective markets. The ETC designation MMC requests herein has no implications for the rural companies' special statutory treatment with respect to their interconnection, unbundling and resale obligations. Therefore, grant of MMC's ETC designation will in no way subvert Alma's and Citizens' special "competitive footing."

In the case of MMTC, MMC is seeking ETC designation for each MMTC exchange where such designation is physically possible, *i.e.*, each exchange within MMC's FCC-licensed CGSA. Of MMTC's twelve exchanges in Missouri, nine are wholly within MMC's CGSA. Differentiating MMTC's study area on the position of individual exchanges in relation to MMC's CGSA boundary entails an objective determination. For that reason, any claim that MMC is attempting to weaken MMTC's unique competitive status is unfounded. Notably, MMC and MMTC have common owners; as a result, assuming *arguendo* that MMTC is competitively harmed because MMC becomes an ETC in nine MMTC exchanges (which harm MMC emphatically doubts will occur), such harm will have been knowingly and willingly incurred.

Finally, the Joint Board recommended considering the administrative burden a rural telephone company will endure if forced to compute costs on a basis other than its entire study area. Here, however, the minor adjustment to MMTC's study area boundaries is made solely for ETC designation purposes. Defining MMC's service area in this manner will have no effect on MMTC's cost calculations, and will impose no additional burdens on it or any other rural telephone company in Missouri. Accordingly, MMC respectfully requests that the Commission designate it as an ETC throughout the proposed ETC service area as shown on the map attached as Appendix D hereto.

7. Because MMC is seeking ETC designation in areas served by rural telephone companies, the Commission is obligated under § 214(e)(6) of the Act to consider whether granting MMC's request will serve the public interest. The FCC has long-recognized that promoting competition in specific telecommunications service markets has multiple public interest benefits (*e.g.*, cost-based pricing, higher quality and more innovative services, increase consumer choice and a decreased need for regulatory oversight). As a result, stimulating competition, whenever possible, is a paramount FCC policy objective.<sup>28</sup> This Commission has similarly recognized that fostering additional competition promotes the public interest.

The FCC has ruled that designating competitive ETCs in areas served by rural telephone companies is consistent with its pro-competitive policies and has numerous public interest benefits.<sup>29</sup> The marketplace rivalry that follows designation of a competitive ETC "will result not only in the deployment of new facilities and technologies, but will also provide an incentive to the incumbent rural telephone companies to improve their existing network[s] to remain competitive. . . ."<sup>30</sup> Those opposing designation of competitive ETCs claim that rural telephone companies are incapable of competing with CMRS providers in the universal service market, and that the advent of additional ETCs in rural LEC areas will induce the incumbent to reduce investment, raise service rates or reduce service quality. The FCC, however, flatly rejected these assertions holding that, to the contrary, competition may prod existing carriers to increase operating efficiency, lower prices and offer better service.<sup>31</sup>

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<sup>28</sup> See *e.g.*, Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band (First Report And Order, Eighth Report And Order, and Second Further Notice Of Proposed Rule Making)1 CR 1017, 11 FCC Rcd 1463 (1995).

<sup>29</sup> Western Wireless Corporation, 16 FCC Rcd 48, 55 (2000).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*, 16 FCC Rcd at 57.

Based on the foregoing considerations, the FCC designated Western Wireless Corporation an ETC in the State of Wyoming. More recently, the FCC designated Guam Cellular and Paging, Inc. (Guamcell”) as an ETC in a service area also served by the Guam Telephone Authority (“GTA”), the rural telephone company in Guam.<sup>32</sup> According to the FCC, Guamcell’s ETC operations in GTA’s service area will promote “competition and the provision of new technologies to consumers in high-cost and rural areas of Guam.”<sup>33</sup>

Granting MMC ETC status in the service area depicted in Appendix D is fully consistent with FCC decisional precedent that holds that such designation meets the public interest criterion set forth in § 214(e)(2) of the Act. That statutory provision is concerned with maximizing consumer welfare, rather than protecting incumbent rural LECs from the rigors attending a competitive market. Designating MMC as an ETC will enhance consumer welfare by bringing service choices, innovation, quality differentiation and rate competition to the local market. In a competitive market, rural consumers will be able to select the carrier that provides the optimal service package based on cost, quality, customer service, *etc.* Without competition, by contrast, the consumer has no alternative from which to select, and the incumbent monopoly provider has little or no incentive to innovate with respect to any component of its service offering.

Upon designation, MMC will make available several service offerings and rate plans that will compete with those of the incumbent rural telephone company. Moreover, MMC ‘s designated local calling area will equal or exceed in size the calling areas of the three rural telephone companies—Alma, Citizens and MMTC—whose telephone exchanges are within the

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<sup>32</sup> Guam Cellular and Paging, Inc., 17 FCC Rcd at 1502-03.

<sup>33</sup> *Id.*



area for which MMC is seeking ETC designation.<sup>34</sup> As a result, MMC subscribers should be able to avoid certain intra-LATA toll charges typically associated with wireline service. Additionally, MMC will implement number portability and E-911 services in compliance with state and federal requirements, which will improve service to Missouri citizens.

MMC will use available federal high-cost support to finance construction, maintenance and upgrading of facilities serving rural areas for which that support is intended. High cost support is necessary if MMC is to establish the infrastructure required to bring its wireless service to many remote and difficult-to-reach locales within its FCC-licensed service area. MMC anticipates that infrastructure investment will be required if MMC is to compete with the incumbent LECs in its proposed ETC area. Provision of high-cost support to MMC will allow it to compete in providing primary telephone service in remote areas of Missouri.

8. MMC acknowledges that Section 54.405 of the FCC's Rules requires all ETCs to make Lifeline services (as defined in Section 54.401 of the FCC's Rules) available to qualifying low-income consumers. Lifeline services are available to qualifying low-income consumers in its service areas.

9. MMC does not have any pending action, of final unsatisfied judgment or decisions against it from any state or federal agency or court which involve customer service or rates, which action, judgment or decision has occurred within three (3) years of the date of the application.

10. MMC does not have any annual reports or assessment fees that are overdue.

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<sup>34</sup> Regarding its affiliate MMTC, MMC (as indicated earlier) is seeking ETC designation for each MMTC exchange where such designation is physically possible, *i.e.*, each exchange within MMC's FCC-licensed CGSA. Of MMTC's twelve exchanges in Missouri, nine are wholly within MMC's CGSA.

**WHEREFORE**, on the basis of the foregoing, MMC respectfully requests that the Commission: (a) designate MMC as a telecommunications carrier eligible under the provisions of Section 54.201(d) of the FCC's Rules to receive federal universal service support; and (2) issue such other orders as are deemed necessary or convenient in this matter.

Respectfully submitted,

MISSOURI RSA No. 7 LIMITED PARTNERSHIP  
d/b/a MID-MISSOURI CELLULAR

By: Paul DeFord

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Its Attorneys

May 29, 2003

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been hand-delivered to all counsel of record this 2<sup>nd</sup> day of June, 2003.


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\_\_\_\_\_  
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# STATE OF MISSOURI



**ROY D. BLUNT**  
SECRETARY OF STATE

**LIMITED PARTNERSHIP SECTION**  
**CERTIFICATE OF LIMITED PARTNERSHIP**

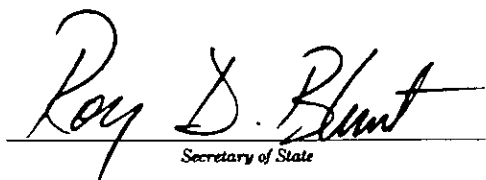
WHEREAS,

MISSOURI R.S.A. NO. 7 LIMITED PARTNERSHIP

FILED ITS CERTIFICATE OF LIMITED PARTNERSHIP WITH THIS OFFICE ON THE 7TH DAY OF NOVEMBER, 1989, AND THAT FILING WAS FOUND TO CONFORM TO THE MISSOURI REVISED UNIFORM LIMITED PARTNERSHIP ACT;

NOW, THEREFORE, I, ROY D. BLUNT, SECRETARY OF STATE, STATE OF MISSOURI, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY LAW, DO CERTIFY AND DECLARE THAT ON THE 7TH DAY OF NOVEMBER, 1989, THE ABOVE ENTITY IS A LIMITED PARTNERSHIP, ORGANIZED IN THIS STATE AND ENTITLED TO ANY RIGHTS GRANTED LIMITED PARTNERSHIPS ORGANIZED UNDER THE MISSOURI REVISED UNIFORM LIMITED PARTNERSHIP ACT.

IN TESTIMONY WHEREOF, I HAVE SET MY HAND AND IMPRINTED THE GREAT SEAL OF THE STATE OF MISSOURI, ON THIS, THE 7TH DAY OF NOVEMBER, 1989.

  
Secretary of State

\$100.00



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AGREEMENT ESTABLISHING  
MISSOURI RSA NO. 7 LIMITED PARTNERSHIP

THIS AGREEMENT is made as of the 25<sup>TH</sup> day of SEPTEMBER, 1989, by and between Alma Cellular Telephone Company ("Alma"), Chariton Valley Cellular Corporation 1, ("Chariton Valley"), Citizens Service Center, Inc., ("Citizens"), and Mid-Missouri Cellular, Inc. ("Mid-Missouri"), all Missouri corporations. Mid-Missouri will hold its interests as the General Partner and all other parties shall hold their interests as Limited Partners. The General Partner and the Limited Partners are herein sometimes collectively referred to as the "Partners."

W I T N E S S E T H:

WHEREAS, the Federal Communications Commission ( the "FCC" ) in its cellular orders in Cellular Communications System, 86 FCC 2d 469 (1981), as modified (the "Cellular Radio Decisions") stated that (a) one of the two frequency allocations for cellular service within each geographic area, including each rural service area, would be assigned to a wireline



carrier authorized to provide telephone exchange service in that area, (b) it is expected that the wireline carriers would commence service promptly, and (c) it strongly urged wireline carriers eligible and desiring to provide service in an area to reach mutually acceptable arrangements for the provision of cellular service; and

WHEREAS, each of the undersigned carriers are wireline carriers or affiliates of wireline carriers eligible for cellular system band "B" frequencies as defined by the FCC in one of the rural services areas designated by the FCC as Missouri RSA No. 7; and

WHEREAS, the Partners desire to provide cellular service in the RSA; and

WHEREAS, the Partners desire to further the objectives of the FCC set forth in the Cellular Radio Decisions in expeditiously providing cellular service to the public and believe that this Agreement as so encouraged by the FCC, is consistent with the FCC's cellular communications policy and is lawful and in the public interest;

NOW, THEREFORE, it is mutually agreed as follows:

ARTICLE I  
FORMATION OF LIMITED PARTNERSHIP

1.1 Formation and Term. The Partners mutually covenant and agree and hereby do form a limited partnership pursuant to the provisions of the Missouri Limited Partnership Act, in accordance with the further terms and provisions hereof. (The latest date on which the Partnership is to be dissolved and its affairs wound up is December 31, 2088.)

1.2 Name and Office.

(a) The name of the Partnership shall be the Missouri RSA No. 7 Limited Partnership and its business shall be carried on in this name or the name of the General Partner with such variations and changes as the General Partner deems necessary to comply with requirements of the jurisdictions in which operations are conducted or as the General Partner deems necessary to change for any reasonable business purpose.

(b) The principal office and place of business of the Partnership shall be maintained at 215 Roe Street, Pilot Grove, Missouri or at such other location as the General Partner may from time to time select, upon prior written notice to the Limited Partner.

1.3 Business Purpose. The purpose of the Partnership shall be to fund, establish and provide Cellular Service. It is understood and agreed that Cellular Service provided by the Partnership shall initially be limited to the certain Cellular Geographic Service Areas which are defined as the "CGSA" in Article II hereof together with any de minimis area beyond the CGSA boundaries to which reliable service may be provided pursuant to the technical parameters approved by the FCC, but may, subject to the provisions of this Agreement, be expanded to include other areas or integrated into the Cellular Service of a larger region.

## ARTICLE II

### DEFINITIONS

2.1 Act. The Missouri Limited Partnership Act.

2.2 Affiliate. A person, association, co-partnership, partnership, corporation or joint-stock company or trust (hereinafter "person") that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with another person. Control shall be defined as (i) ownership of a majority of the voting power of all

classes of voting stock or (ii) ownership of a majority of the beneficial interests in income and capital of an entity other than a corporation.

2.3 Capital Contribution. Funds paid the Partnership for the purchase of the Partnership Interests issued pursuant to Section 5.1 to this Agreement and as supplemented from time to time for additional capital contributions or operating and management expenses pursuant to Section 5.2 and 5.3 hereof.

2.4 Cellular Service. Any and all service authorized by the FCC under Part 22 of its cellular rules as promulgated under the Cellular Radio Decisions and provided pursuant to the terms of this Agreement.

2.5 CGSA. The Cellular Geographic Service Area or Areas which the Partnership is licensed by the FCC to serve from time to time.

2.6 General Partner's Interest. The Partnership Interest of the General Partner.

2.7 Income and Losses. The income and losses of the Partnership as of the close of the Partnership's fiscal year or any other fiscal period,

determined in accordance with generally accepted accounting principles.

2.8 Initial Capital Account Amount. The respective amounts initially credited to the capital account established for the General Partner and the Limited Partners pursuant to Section 5.1.

2.9 Limited Partner's Interest. The Partnership Interest of a Limited Partner.

2.10 Partnership Interest. The entire ownership interest of the General Partner or a Limited Partner in the Partnership at any particular time determined by the ratio which the General Partner's or any such Limited partner's Capital Contribution bears to the aggregate Capital Contributions of the General Partner and the Limited Partners. Such interest includes, without limitation, the interest of each Partner or any such Limited Partner in the Partnership's Income and Losses and any and all benefits to which the Partner may be entitled as provided in this Agreement and in the Act, together with the obligations of the Partner to comply with all the terms and provisions of this Agreement and the Act.

2.11 RSA. The rural services area designated by the FCC as Missouri RSA No. 7 and Market 510.

### ARTICLE III

#### REGULATORY MATTERS

3.1 FCC Approval and Subsequent Transfer of General Partner Interest. Pursuant to Section 14.1, the Limited Partners hereby consent to an assignment or other transfer by the General Partner of its General Partner's Interest to an Affiliate of the General Partner which shall thereupon acquire all rights and obligations of, and shall in all ways be deemed to be, the General Partner hereunder. Such assignment or other transfer shall be subject to the receipt of all required FCC approvals and shall not result in or require dissolution of winding up the Partnership, and, as further provided in Section 14.1 each Limited Partner hereby votes to continue the business of the Partnership with the General Partner as so substituted. The Limited Partners also hereby agree to amend this Agreement to reflect such assignment or other transfer.

3.2 Contingency. The permits or licenses to be issued by regulatory authorities in connection with the provision of Cellular Service may be contingent

during the pendency of litigation or regulatory action concerning the grant of the Partnership's application; however, the pendency of such litigation or regulatory action shall not affect the Partner's obligations under this Agreement.

3.3 Cooperation. The Partners pledge their best efforts and mutual cooperation to permit the Partnership to (i) implement expeditiously Cellular Service and to provide Cellular Service and (ii) obtain all necessary approvals to provide Cellular Service.

3.4 Operational Date. The Partners recognize that the date when Cellular Service can first be offered to the public depends upon the time required to obtain wireline cellular licenses for providing such Cellular Service and other federal, state and local approvals, the time required to organize any necessary proposed affiliated companies and to vest them with appropriate authority to provide Cellular Service, and the time required to construct and test the cellular system taking into account the General Partner's construction schedule and the cellular system manufacturer's schedule.

3.5 Dismissal of Pending Applications. Each Partner agrees that upon its selection by the FCC, it

will request the FCC to substitute the Partnership as the surviving applicant for the license, such request to be contingent upon any required FCC approval of this Agreement and the Partnership. In the event that the FCC does not approve the substitution, the Partners agree that the successful applicant shall seek approval to assign its interest without reservation to the Partnership.

#### ARTICLE IV

##### PARTNERSHIP OPERATIONS

4.1 Management and Operation Services. The General Partner on behalf of the Partnership shall be responsible for obtaining interconnection with the landline network, for operating and maintaining the Cellular Service system, and for marketing Cellular Service. In carrying out the Partnership's responsibility to provide Cellular Service, the Partners hereto agree that the General Partner shall perform all activities and/or functions as the General Partner may deem necessary appropriate to market, sell, establish, operate, maintain and manage the Cellular Service system.



The General Partner shall provide management and accounting services to the Partnership consisting of, but not limited to, maintaining books of record, opening bank accounts, preparing accounting reports (in accordance with generally accepted accounting principles, as varied by appropriate regulatory authorities), and other records or reports necessary to meet regulatory and legal filings, as the General Partner may deem necessary or appropriate.

4.2 Operating and Management Expense. The General Partner shall be reimbursed by the Partnership monthly for any reasonable and necessary expenses incurred by the General Partner on behalf of the Partnership in providing Cellular Service, plus reasonable and necessary administrative and general overhead expenses, including, but not limited to, marketing, maintenance, message charges, facilities, engineering, customary legal, accounting and audit fees, development and implementation of billing procedures, expenses of preparing tax returns and reports, taxes, travel, office rent, telephone, salaries (including social security, relief, pensions and other benefits), and other incidental business expenses incurred by the General Partner on behalf of the Partnership in connection with the provision of

Cellular Service. The General Partner shall not be entitled to any profit in rendering such services to the Partnership, as described in this paragraph, it being understood that the General Partner will be entitled to its proportionate allocated share of Income and Losses as provided in Article VI.

4.3 Ownership of Properties. The Partnership shall acquire and hold in its own name or in the name of the General Partnership on the Partnership's behalf if required by law, directly or through license, all real and personal property, equipment, software and other assets required to provide Cellular Service.

4.4 Authorizations. The General Partner shall, on behalf of the Partnership, obtain in the Partnership's name or in its own name on behalf of the Partnership if required by law, all licenses, permits or other regulatory approvals necessary to provide Cellular Service. If other local, state or federal licenses, permits, certificates of convenience, franchises or other approvals or authorizations are necessary to provide Cellular Service, the General Partner shall make application to the appropriate authority.

## ARTICLE V

### CAPITALIZATION OF PARTNERSHIP

5.1 Initial Capital Contributions. Initial Capital Contributions shall be \$25,000 from each Partner. Capital Contributions may be modified pursuant to Section 5.3. Such initial Capital Contributions shall result in the following respective Partnership Interest for the Partners:

Mid-Missouri, General Partner	1%
Mid-Missouri, Limited Partner	24%
Alma, Limited Partner	25%
Chariton Valley, Limited Partner	25%
Citizens, Limited Partner	25%

Initial Capital Contributions shall be made concurrent with the execution of this Agreement.

5.2 Additional Capital Contributions. From time to time additional capital may be required to be invested by the Partnership to fund expansion or operation of Cellular Service. Capital Contributions may only be requested by the General Partner as they are needed to meet the financial obligations of the Partnership and operating and management expenses as set forth in Section 4.2. The Limited Partners shall notify the General Partner within 10 days after receipt

of such requests, each notice stating the amount of the Capital Contribution which the Limited partner intends to make.

In the event the General Partner determines that additional capital is so needed and subject to Article IX hereof, each Partner shall be entitled to provide its share of additional capital in proportion to its then current Partnership Interest. This additional funding is due and payable on the date set forth in a written notice requesting an additional Capital Contribution given by the General Partner to a Partner, which date shall not be less than sixty days from the date of the notice.

#### 5.3 Failure To Make Capital Contributions.

Should any Partner make a portion but not all of its initial Capital Contribution or any subsequent additional Capital Contribution, or fail to pay such contributions when due, the other Partners may contribute pro rata, according to their then current respective Partnership Interests, an aggregate amount equal to the Capital Contribution declined by the non participating Partner(s), thereby increasing in such proportion the other Partners' Partnership Interests (it being understood that the General Partner may make such additional Capital Contribution as a Limited

Partner, if it desires). In such event, the Partnership Interest of a non-participating Partner shall be diluted accordingly and such Partner shall be limited in its right to provide future additional capital in proportion to its Partnership Interest as so revised.

5.4 Capital Contributions In Cash. Funding of both initial and additional Capital Contributions to the Partnership shall be in cash and not real or personal property.

5.5 Additional Limited Partners. In providing Cellular Service within the RSA, the General Partner may invite one or more carriers to become additional limited partners hereunder subject to approval by at least 90% of the Partnership Interests. In providing Cellular Service in areas adjoining the RSA, the General Partner shall have the right to invite one or more carriers not affiliated with any Partner to become additional limited partners hereunder, subject to the approval by at least 90% of the Partnership Interests. In the event that the Partners approve such additional limited partners, they hereby consent to amend the Agreement to reflect any such inclusion. In the event of any such addition (1) the new Limited Partner shall participate in the

Partnership on the same terms and conditions as described therein (or as hereafter amended), and (ii) the Partnership Interests of the other Partners shall be adjusted according to their then current respective Partnership Interests.

## ARTICLE VI

### ALLOCATIONS AND DISTRIBUTIONS

6.1 Capital Accounts. A capital account shall be established for each Partner in such Partner's Initial Capital Account Amount. Such capital account shall be increased to reflect allocable shares of Income as defined in Section 2.7, and additional capital contributions pursuant to Section 5.2 and 5.5, and decreased to reflect allocable shares of losses, as defined in Section 2.7 and cash distributions made by the Partnership. For purposes of this Section 6.1, Income and Losses shall be apportioned ratably to each day of the fiscal period and each day's share shall be allocated pursuant to the Partnership Interests on such date. In the case of distributions in kind pursuant to Section 15.3, capital accounts shall be adjusted in accordance with Section 15.3.

6.2 Tax Allocations Among Partners. All items of income, gain, loss, deduction and credit (including items of tax preference) of the Partnership for Federal income tax purposes shall be apportioned ratably to each day of the Partnership's taxable year and each day's share of such items shall be allocated to the Limited Partners and to the General Partner in proportion to their respective Partnership Interests on such days.

6.3 Distributions. Funds of the Partnership from all sources, less appropriate reserves as are determined by the General Partner to be reasonably necessary for future administrative and operating expenses, local payments and other costs and expenses and contingencies, shall be distributed on a fiscal quarterly basis as promptly as practicable after the end of each quarter. Each distribution pursuant to this Section 6.3 shall be made to the Partners in proportion to the daily weighted average of their respective Partnership Interests as in effect from time to time during the relevant quarterly time period.

## ARTICLE VII

### RIGHTS AND POWERS OF PARTNERSHIP, GENERAL PARTNER AND LIMITED PARTNERS

7.1 Partnership Powers. In furtherance of the business purpose specified in Section 1.3 and subject to the limitations in this Agreement, the Partnership, and the General Partner on behalf of the Partnership, shall be empowered to do or cause to be done any and all acts reasonably deemed by the General Partner to be necessary or appropriate in furtherance of the purposes of the Partnership or forebear from doing any act if the General Partner reasonably deems such forbearance necessary or appropriate in furtherance of the purposes of the Partnership, including without limitation, the power and authority:

(a) To enter into, perform and carry out contracts and agreements of every kind necessary or incidental to the accomplishment of the Partnership's purposes, including, without limitation, contracts and agreements with the General Partner and Affiliates of the General Partner, and to take or omit such other or further action in connection with the Partnership's business as may be necessary or desirable in the opinion of the General Partner to further the purposes of the Partnership provided, however, that any



transaction between the Partnership and Partners or their Affiliates shall be documented and shall become part of the records of the Partnership;

(b) To borrow from banks and other lenders on such terms and conditions as shall be approved by the General Partner and to secure any such borrowings by mortgaging, pledging or assigning assets and revenues of the Partnership to the extent deemed necessary or desirable by the General Partner;

(c) To invest such funds as are temporarily not required for Partnership purposes in debt obligations selected by the General Partner including government securities, certificates of deposit of commercial banks (domestic or foreign), commercial paper, bankers' acceptances and other money market instruments; and

(d) To carry on any other activities necessary to, in connection with or incidental to any of the foregoing.

7.2 Powers of the General Partner. In addition to those powers vested pursuant to Section 7.1 and subject to the limitations in this Agreement, the General Partner hereby is vested with the power to:

(a) Manage, supervise and conduct the affairs of the Partnership;

(b) Make all elections, investigations, evaluations and decisions, binding the Partnership thereby, that may be necessary or appropriate in connection with the business purposes of the Partnership;

(c) Incur obligations or make payments on behalf of the Partnership in the name of the Partnership or in its own name if required by law;

(d) Execute all instruments of all kind or character which the General Partner in its discretion shall deem necessary or appropriate in connection with the business purposes of the Partnership;

(e) Enter into agreements with other providers of Cellular Service (including Affiliates of the General Partner) to obtain switching services when in the judgment of the General Partner, such agreements are in the best interest of the Partnership;

(f) From time to time increase or decrease the coverage area of Cellular Service within

the CGSA or to apply for regulatory approval to expand the geographic area of the CGSA;

(g) Inspect and copy, during normal business hours and at its own expense, upon three business days notice to any Limited partner, any of the Limited Partner's books of records, contracts or agreements, relating to its Partnership interest; and

(h) Subject to the provisions of Sections 5.2 and 5.5 herein, apply to the FCC on behalf of the Partnership for permits and licenses to provide Cellular Service in areas adjoining the RSA where such adjoining areas and the RSA have a community of interest and where such expansion appears to be economically justifiable and would result in Cellular Service being provided by the Partnership in a unified area which includes the RSA and adjoining areas, negotiate on behalf of the Partnership to reach mutually acceptable arrangements with other carriers desiring to provide service in such areas and decide and conduct all matters pertaining to such applications and to the Cellular Service that may result from such applications.

7.3 Rights of Limited Partners. Each Limited Partner shall have the right to:

(a) Inspect and copy, during normal business hours and at its own expense, upon three business days notice to the General Partner, any of the Partnership records required to be maintained under the Act.

(b) Obtain from the general partners from time to time upon reasonable demand: (1) true and full information regarding the state of the business and financial condition of the limited partnership; (2) promptly after becoming available, a copy of the limited partnership's federal, state and local income tax returns for each year; and (3) other information regarding the affairs of the limited partnership as is just and reasonable.

(c) Audit, at its own expense and once every calendar year, the Partnership books of record, accounting records, and financial statements of the Partnership;

(d) Have dissolution and winding up by decree of court when permitted under the Act;

(e) Meet with representatives of the General Partner on a regular basis at a time and place designated by the General Partner to consult with or advise the General Partner as to the operation of the

Partnership (such meeting may be waived upon a unanimous vote of the Limited Partners);

(f) Inspect and copy, during normal business hours and at its own expense, upon three business days notice to the General Partner, the books of record, accounting records, financial statements or other records or reports of the General Partner relating to its operations of this Partnership; and

(g) Consent or not consent to addition of limited partners as provided in Section 5.5.

(h) Vote on appropriate matters affecting the Partnership in accordance with the provisions of Article IX hereof.

7.4 Ownership or Conduct of Other Business. Subject to the provisions of Section 8.8, 11.4 and 15.7, the Partners may engage in or possess an interest in other business ventures of every kind and description. Neither the Partnership nor any Partner shall have any rights by virtue of this Agreement in such independent business ventures or to the income or profits therefrom.

## ARTICLE VIII

### OBLIGATIONS OF GENERAL PARTNER

8.1 Duty of the General Partner. The General Partner will at all times perform its duties hereunder in the best interests of the Partnership.

8.2 Conduct of Business. The General Partner shall manage and provide administrative services to the Partnership, and shall execute all contracts, agreements and instruments as the General Partner reasonably may deem necessary or desirable to carry on the purpose of the Partnership.

8.3 Filings. The General Partner shall file all certificates, notices, statements or other instruments required by law for the formation, operation and termination of the Partnership and its business in all appropriate jurisdictions and shall prepare and file all necessary Partnership tax returns. The General Partner shall advise the Limited Partners of any elections under applicable tax laws that may affect Partnership Income or Losses.

8.4 Maintain Accounts. Pursuant to the provisions of this Agreement, the General Partner shall maintain or cause to be maintained capital accounts on

the books and records of the Partnership in respect of each Partnership Interest.

8.5 Financial Reports. The General Partner shall furnish annual Partnership financial statements audited by a recognized firm of independent certified public accountants and quarterly unaudited Partnership financial statements to the Limited Partners. Quarterly unaudited financial statements will be furnished to the Limited Partners within 60 business days after the close of each quarter and be certified by an officer of the General Partner. Year-end financial statements will be made available to the Limited Partners within 90 business days after the close of the fiscal year. The Partners may agree to extend the dates by which financial reports are due.

8.6 Performance of Partnership Obligations. The General Partner shall use its best efforts to cause the Partnership to observe and perform each and every obligation under all agreements and undertaking made the Partnership or imposed on the Partnership by law or regulatory authority.

8.7 Resale of Cellular Service. No party hereto shall resell Cellular Service within the RSA without the consent of at least 90% of the Partnership

Interests. However, nothing herein will preclude any party from serving as an agent to sell cellular service on behalf of the Partnership. In addition, nothing herein will preclude any party from selling or leasing terminal equipment used in connection with Cellular Service independently from the partnership whether within or outside the RSA. Neither the General Partner nor any Affiliates thereof shall be funded or staffed by the Partnership for such provision of Cellular Service or resale activity and any transactions between the General Partner or any such Affiliate and the Partnership shall be an arms-length basis and on prices, terms and conditions equivalent to the prices, terms and conditions of any agreements between the Partnership and other resellers of Cellular Service.

8.8 Cellular Service in Other Areas.

Nothing herein shall preclude the General Partner or an Affiliate thereof from providing Cellular Service independently from the Partnership in areas other than the RSA.

ARTICLE IX

ADDITIONAL RIGHTS OF LIMITED PARTNERS;

ADMINISTRATIVE PROCEDURES

9.1 Matters Requiring Approval of Partners.

Certain matters affecting the Partnership shall be



voted on by the Partners. For purposes of any vote, each Partner shall have a voting interest equal to its Partnership Interest. A matter shall be deemed to have been approved by the Partnership if it is approved by a majority of the total 100 Partnership Interests (General or Limited). The following matters shall require such an affirmative vote:

- a. The approval of the initial engineering plan for the provision of cellular service in the RSA;
- b. Any amendments to or any extensions of the engineering plan to provide cellular service in the RSA;
- c. Approval of annual budgets for the Limited Partnership regarding the provision of cellular service in the RSA;
- d. The right to call a special meeting of the Partnership.

For matters requiring a vote of the Partnership Interests, a total of 100 votes will be allocated with each Partner entitled to one vote for each percentage point of Partnership interest it owns.

9.2 Annual Budget. The General Partner shall prepare an annual budget of estimated revenues and expenditures which shall be supplied to the Limited Partners no later than October 1 of each year which date may be extended by the approval of the Partners.

Such budget shall contain the General Partner's best estimate of revenues and expenditures for the next calendar year. No later than December 1 of each year (or such other date as agreed to by the Partners), the General Partner shall hold a Partnership meeting to answer questions and consult with the Limited Partners with respect to such budget. At such meeting the Partners shall approve or amend the proposed budget in accordance with Section 9.1 hereof. Upon approval of such budget, the General Partner shall not exceed the budgeted expenditures by more than twenty percent, unless the General Partner submits the anticipated expenditures to a vote of the Partners pursuant to Section 9.1(c) or such expenditures fall within the exceptions set forth in Section 9.1(c). The General Partner shall not be responsible if actual revenues do not meet budgeted revenues.

9.3 System Design. The initial cellular system shall be designed by the General Partner within the limitations set forth in this Section 9.3. The General Partner shall provide the Partners with a general description of (i) the desired CGSA, (ii) the anticipated switching arrangements, (iii) the number of initial cell sites, and (iv) the type of equipment to be used in constructing the system. Within thirty days

of receipt of this information, the General Partner shall hold a Partnership meeting to answer questions and consult with the Limited Partners with respect to such budget. At such meeting the Partners shall approve or amend the system design in accordance with Section 9.1 hereof. Upon approval of such system design, the General Partner shall not change the system design, unless the General Partner submits the anticipated change to a vote of the Partners pursuant to Section 9.1(b) or such expenditures fall within the exception set forth in Section 9.1(b). It is understood and agreed that within these limitations, the General Partner shall have the power to design and construct the system. In particular, it is acknowledged and agreed that the General Partner shall have the sole discretion to determine the location of the cell sites within the limitations of this Section 9.3.

## ARTICLE X

### BANKING, ACCOUNTING, BOOKS AND RECORDS

10.1 Banking. All funds of the Partnership shall be deposited in separate bank account or accounts as shall be established and designated by the General Partner. Withdrawals from any such bank account shall

be made upon such signature or signatures as the General Partner may designate.

10.2 Maintenance of Books and Accounting Method. The General Partner shall keep or cause to be kept full and accurate accounts of the transactions of the Partnership in proper books of account in accordance with generally accepted accounting principles, as varied by appropriate regulatory authorities. Such books and records shall be maintained or available on notice at the principal place of business of the General Partner and be made available for reasonable inspection, examination and copying by the Limited Partners or their respective duly authorized agents or representatives upon three business days' notice to the General Partner.

10.3 Fiscal Year; Partnership Tax Returns. The fiscal year of the Partnership shall begin on the first day of January in each year and end on the 31st day of December in each year. The General Partner shall cause to be filed the Federal income tax partnership return and all other tax returns required to be filed for the Partnership for all applicable tax years, and shall furnish as promptly as practicable a statement of each Limited Partner's allocated share of

income, gains, losses, deductions and credits for such taxable year.

**ARTICLE XI**  
**LIMITED PARTNERS**

11.1 Limited Partners Not To Take Part In Business. The Limited Partners, acting in their capacity as a Limited Partner, shall not, except as otherwise provided in this Agreement, take part in, or interfere in any manner with, the conduct or control of the Partnership business, nor shall the Limited Partners have any right or authority to act for or bind the Partnership.

11.2 Limitation On Liability Of Limited Partners. The liability of each Limited Partner to provide funds or any other property to the Partnership shall be limited to the amount of Capital Contributions which the Limited Partner makes or otherwise agrees to make pursuant to the provisions of Article V. The obligation of any Limited Partner to return any distributions previously made shall be as set forth in the Act. Subject to the Act, the Limited Partner shall have no further liability to contribute money to the Partnership for, or in respect of, the liabilities or

obligations of the Partnership and shall not personally be liable for any obligations of the Partnership.

## ARTICLE XII

### TRANSFER OF LIMITED PARTNER'S INTEREST

12.1 Limitation On Transfer; Right Of First Refusal. Any Limited Partner may transfer its Partnership Interest to an Affiliate thereof at any time without any consent or restriction from the General Partner or any other Limited Partner. Otherwise, there shall be no sale, transfer, assignment or exchange of the whole or any portion of any Limited Partner's Interest without the prior written consent of the General Partner, which consent shall not be unreasonably withheld. In addition, before any Limited Partner sells, transfers, assigns or exchanges any part of its Partnership Interest to a non-Affiliate of such Limited Partner, it shall offer, by giving written notice to the General Partner, that interest to all of the other Partners for the value at which and the terms under which such non-Affiliate has offered pursuant to a bona-fide offer in writing to pay for such interest. For a period of five years, beginning with the date on which the Partnership is issued a Construction Permit, the selling partner shall offer, by giving written notice to the General Partner, to

sell other Partners that interest which it desires to sell, transfer, assign or exchange to a non-affiliate for a price equal to the greater of either: 1) twice the amount of Capital Contributed by the Selling Partner with respect to the Partnership Interest to be sold; or 2) twice the amount of that part of the Selling Partner's Capital Account in the Partnership which is allocable to the Partnership Interest to be sold. The General Partner, in turn, shall forward such notice to all other Limited Partners. Each Partner shall initially be entitled to purchase that fraction of the offering Partner's interest equal to its Partnership Interest divided by the Partnership Interests of all nonselling Partners. If any Partner(s) declines to exercise its right of purchase hereunder, the other Partners electing to exercise that right shall be entitled to purchase that portion of the interest intended to be sold that has been declined by the other Partner(s) in amounts allowably determined pursuant to reapplication of the principles set forth in this Section 12.1, excluding from consideration the Partnership Interests of the selling and declining Partners. Each nonselling Partner shall notify the General Partner and the selling Limited Partner, in writing, of its intention to exercise or not to exercise its purchase rights hereunder within thirty

days following receipt of the offer of sale. The General Partner shall promptly notify each Limited Partner of the elections by the other Limited Partners. Subsequent written notifications, if necessary, shall be required within ten days after receipt by the Limited Partners which have not previously declined to exercise their rights of purchase, of their intentions with respect to that portion of the selling Limited Partner's Partnership Interest still subject to a right of purchase. No portion of an interest offered under this Section 12.1 shall be permitted to be purchased by any Partner pursuant to this Section 12.1 unless the entire interest offered is purchased by one or more Partners.

For purposes of this Article XII, an assignment shall be deemed to have occurred if in a single transaction or in a series of transactions any interest in a Limited Partner (whether stock, partnership, interest or otherwise) is transferred, diluted, reduced or otherwise affected. An assignment shall not be deemed to have occurred due to the mortgage of all or any part of a Partnership Interest to a bank or trust company licensed pursuant to any state or federal banking laws.



12.2 Substitute Limited Partner. No

assignee, purchaser or transferee of the whole or any portion of any Limited Partners' Interest shall have the right to become a substitute Limited Partner, unless:

(a) The transferring Limited Partner has designated such intention in a written instrument of assignment, sale or transfer, a copy of which has been delivered to the General Partner;

(b) The transferring Limited Partner has obtained the written consent of the General Partner, which consent shall not be unreasonably withheld;

(c) The person acquiring the Limited Partner's Interest has adopted and agreed in writing to be bound by all of the provisions hereof, as the same may have been amended;

(d) All documents reasonably required by the General Partner and the Act to effect the substitution of the person acquiring the Limited Partner's Interest as a Limited Partner shall have been executed and filed at no cost to the Partnership; and

(e) Any necessary prior consents have been obtained from any regulatory authorities.

Provided, however, that subsections (a) and (b) above shall not apply in the case of an assignment or sale to an Affiliate of the assignor or seller.

12.3 Indemnification. Each Limited Partner transferring a Limited Partners' Interest hereby indemnifies the Partnership and the other Partners against any and all loss, attorneys' fees, damage or expense (including, without limitation, tax liabilities or loss of tax benefits) arising, directly or indirectly, as a result of any transfer or purported transfer in violation of any provision contained in this Article XII.

12.4 Distribution and Allocation Subsequent to Transfer.

(a) The Income and Losses of the Partnership attributable to any Partnership Interest acquired by reason of the assignment of the Partnership Interest or substitution of a Partner with respect to that Interest and any distributions made with respect thereto shall be allocated between the assignor and assignee based upon the length of time during any fiscal year of the Partnership, as measured by the

effective date of the assignment or substitution, that the Partnership Interest so assigned or with respect to which there is a substitution was owned by each of them.

(b) The effective date of an assignment, sale, transfer or exchange of the Limited Partner's Interest or any portion thereof shall be the date designated by the transferring Limited Partner.

#### ARTICLE XIII

##### WITHDRAWAL BY LIMITED PARTNER

##### 13.1 Withdrawal.

(a) Effective upon thirty days written notice to each Partner, any Limited Partner may withdraw from the Partnership subject to any required regulatory approval.

(b) Any Limited Partner shall promptly withdraw from the Partnership upon the occurrence of default in performance by such Limited Partner of any Obligation under this Agreement if such default shall not be corrected within sixty days after the same shall be called to the attention of such Limited Partner by the General Partner by written notice specifying the thing or matter in default and the General Partner

chooses to insist upon such withdrawal. Provided, however, that such sixty day period shall cease to run during the pendency of any arbitration proceeding instituted pursuant to Section 20.9 to determine the existence of such a default. The General Partner shall notify each non-defaulting Limited partner of such default in performance.

(c) Any Limited Partner shall promptly withdraw upon the bankruptcy or assignment for the benefit of creditors of such Limited Partner.

(d) Any Limited Partner shall promptly withdraw upon failure by such Limited Partner to make any of its initial Capital Contribution pursuant to Section 5.1. A Limited Partner making a portion (but not all) of its initial Capital Contribution shall not be required to withdraw but shall have its interest reduced in accordance with Section 5.3.

(e) Upon withdrawal pursuant to (a), (b) or (c) above the Limited Partner so withdrawing shall, subject to the provisions of Section 13.2, receive distribution of its capital account in cash.

(f) Upon withdrawal pursuant to (a), (b), (c) or (d) above, the proportionate Partnership

Interests of the remaining Limited Partners shall be increased pro rata to reflect such withdrawal.

13.2 Distribution on Withdrawal. If distribution is made pursuant to Section 13.1, amounts payable to the Limited Partner so withdrawing shall be paid to such Limited Partner by the Partnership and may at the General Partner's option and consistent with regulatory and other legal constraints, be paid in equal annual payments including interest over a period not to exceed three years in order to provide the Partnership sufficient time to raise capital to replace that capital being withdrawn and to ensure the continued provision of Cellular Service. Such interest shall be calculated at a rate equal to one point above the average daily prime interest rate for the year preceding the date on which a payment is made and which had been charged on new borrowings by Citibank N.A., New York, New York as applied to the outstanding balance due.

#### ARTICLE XIV

##### TRANSFER OF GENERAL PARTNER'S INTERESTS

14.1 Assignment. Subject to Section 3.1 hereof, the General Partner may transfer or assign its General Partner's Interest only after written notice to

all the other Partners and the consent of at least 90% of the Partnership Interests. All Partner's agree that upon the affirmative vote of such Partnership Interests, each Partner hereby consents to continue the business of the Partnership with the assignee of the General Partner as General Partner. Any such transfer or assignment shall be subject to required regulatory approval.

14.2 Withdrawals. Withdrawal of the General Partner will cause the dissolution and termination of the Partnership in accordance with the terms of Article XV except in the case of assignments as provided in Section 3.1 and 14.1. The General Partner may not withdraw until it has given the other Partners ninety days notice. If during that time the other Partners designate a substitute general partner who will agree both to purchase the General Partner's interest, and its Limited Partner's Interest, on terms acceptable to the General Partner and continue the business of the Partnership, subject to required regulatory approval, the General Partner agrees to transfer or assign its Interests to the designated general partner. The General Partner shall not unreasonably withhold its acceptance of terms for purchase of its Partnership Interest proposed by the substitute General Partner.

The designation of the substitute General Partner shall require the consent of at least 90% of the Partnership Interests, including all interests held by the General Partner which shall be deemed to have been voted as consenting to the designation of the substitute General Partner.

#### ARTICLE XV

##### DISSOLUTION AND TERMINATION OF LIMITED PARTNERSHIP

15.1 Dissolution. The Partnership shall be dissolved and terminated if:

(a) the FCC grants the Partnership's cellular application subject to terms and conditions that are unacceptable to both the General Partner and one Limited Partner which is not also the General Partner and all available administrative and judicial appeals of such FCC approval have been finally exhausted;

(b) the Cellular Radio Decisions are not continued in substantially the same form and such change materially adversely impacts the Partnership's ability to conduct its business and all available administrative and judicial appeals regarding such Cellular Radio Decisions have been finally exhausted;

(c) the FCC finally denies authorizations to the Partnership empowering it to construct and provide Cellular Service;

(d) the Partnership applies for and is finally denied state or other regulatory approvals or is granted such approval subject to terms and conditions that are unacceptable to both the General Partner and one Limited Partner that is not also the General Partner on the grounds such that denial or conditional grant has a materially adverse impact on the Partnership's ability to conduct its business; or

(e) agreement is reached by at least 90% of the Partnership Interests to dissolve and terminate the Partnership and receive any approvals required by the FCC or any other regulatory authority for such dissolution and termination.

(f) the General Partner withdraws pursuant to Section 14.2, except in the case of assignments as provided in Section 3.1 and 14.1. Regarding (c) and (d) above, any such denial of regulatory approval shall not be considered finally denied until all available administrative and judicial appeals of such denial have been finally exhausted.



15.2 Distribution Upon Dissolution. Upon dissolution of the Partnership, the General Partner shall proceed, subject to the provisions herein, to liquidate the Partnership and apply the proceeds of such liquidation, or to distribute Partnership assets, in the following order of priority:

(a) to creditors, including Partners who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the Partnership other than liabilities for distributions to Partners under Articles XIII and XIV;

(b) to the establishment of any reserve which the General Partner may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Partnership. Such reserve may be paid over by the General Partner to any attorney at law, or other acceptable party, as escrow agent to be held for disbursement in payment of any of the aforementioned liabilities and, at the expiration of such period as shall be deemed advisable by the General Partner, for distribution of the balance, in the manner hereinafter provided in this Paragraph;

(c) to Partners and former Partners in satisfaction of liabilities for distributions under Articles XIII and XIV; and

(d) to Partners first for the return of their capital accounts as set forth in Section 6.1 in proportion to the Partners' respective capital accounts at the time of such dissolution, with any remaining Partnership assets being distributed in proportion to the Partners' respective Partnership Interests on the date of dissolution.

15.3 Distribution In Cash Or In Kind. Upon dissolution, the General Partner may in its discretion (a) liquidate all or a portion of the Partnership assets and apply the proceeds of such liquidation in the priorities set forth in Section 15.2 or (b) hire independent recognized appraisers to appraise the value of Partnership assets not sold or otherwise disposed of (the cost of such appraisal to be considered a debt of the Partnership), allocate any unrealized gain or loss to the Partners' capital accounts as though the properties in question had been sold on the date of distribution and, after giving effect to any such adjustment, distribute said assets in accordance with the priorities as set forth in Section 15.2. The General Partner may determine in its sole discretion

whether undivided portions of assets distributed in kind will be distributed pro rata to Partners in accordance with their respective Partnership Interests at the time of dissolution or assets may be distributed otherwise in accordance with their respective Partnership Interests at the time of dissolution; provided, however, that any distributions of unrealized receivables or substantially appreciated inventory within the meaning of Section 751 of the Internal Revenue Code shall be made proportionately to the Partners' Partnership Interests at the time of dissolution unless otherwise agreed to by at least 90% of the Partnership Interests. To the extent practicable such distributions will take into account the interests of the Limited Partners. In the case of any distribution in kind of Partnership assets under this Section to a Partner, the value of the asset determined by appraisal as provided above shall be applied against the Partner's capital account.

15.4 Time For Liquidation. A reasonable amount of time shall be allowed for the orderly liquidation of the assets of the Partnership and the discharge of liabilities to creditors so as to enable the General Partner to minimize any losses which otherwise might be incurred.

15.5 Termination. Upon compliance with the foregoing distribution plan the Partnership shall cease to be such, and the General Partner shall execute, acknowledge and cause to be filed a certificate of cancellation of the Partnership pursuant to the power of attorney contained in Article XVI.

15.6 General Partner Not Liable For Return Of Distribution. The General Partner shall not be liable for any distribution required pursuant to Sections 15.2 (b), (c) and (d) and such distribution shall be made solely from available Partnership assets, if any.

15.7 General Partner's Right to Continue Providing Cellular Service. Each Limited Partner hereby agrees that, in the event that such Limited Partner withdraws pursuant to Article XIII or the Partnership is dissolved pursuant to Articles XIV or XV, the General Partner shall have the right to provide Cellular Service either singly or with others, subject to any necessary regulatory approval.

## ARTICLE XVI

### POWER OF ATTORNEY

16.1 Grant of Power of Attorney. Each Limited Partner hereby irrevocably constitutes and

appoints the General Partner as its true and lawful attorney and agent, in its name, place and stead to make, execute, acknowledge and, if necessary, file and record:

(a) Any certificates or other instruments or amendments therefore which the Partnership may be required to file under the laws of each state governing this Agreement or pursuant to the requirements of any governmental authority having jurisdiction over the Partnership or which the General Partner shall deem it advisable to file, including, without limitation, this Agreement, any amended Agreement and a certificate of cancellation as provided in Section 15.5.

(b) Any certificates or other instruments (including counterparts of this Agreement with such changes as may be required by the law of other jurisdictions) and all amendments thereto which the General Partner deems appropriate or necessary to qualify, or continue the qualification of, the Partnership as a limited partnership (or a partnership in which the Limited Partner has limited liability) and to preserve the limited liability status of the Partnership in the jurisdictions in which the

Partnership may own properties, conduct business and acquire investment interests.

(c) Any certificates or other instruments which may be required to admit additional or substitute Limited Partners pursuant to the terms of this Agreement, to reflect the withdrawal of any Limited Partner, to reflect changes in Capital Contributions or changes in respective Partnership Interests of the Partners or to effectuate the dissolution and termination of the Partnership, pursuant to Article XV.

(d) Any amendments to any certificate necessary to reflect any other changes made pursuant to the exercise of the powers of attorney contained in this Article XVI.

16.2 Irrevocable And Coupled With An Interest; Copies To Be Transmitted. The powers of attorney granted under Section 16.1 shall be deemed irrevocable and to be coupled with an interest. A copy of each document executed by the General Partner pursuant to the powers of attorney granted in Section 16.1 shall be transmitted to each Limited Partner promptly after the date of the execution of any such document.

16.3 Survival Of Powers Of Attorney. The powers of attorney granted in Section 16.1 shall survive delivery of an assignment by a Limited Partner of the whole or any portion of its Limited Partner's Interest, except that if such assignment was of all of its Limited Partners' Interest and the substitution of the assignee as a Limited Partner has been consented to by the General Partner, the foregoing powers of attorney shall survive the delivery of such assignment for the purpose of enabling the General Partner to execute, acknowledge and file any and all certificates and other instruments necessary to effectuate the substitution of the assignee as a Limited Partner. Such powers of attorney shall survive the dissolution or termination of a Limited Partner and shall extend to such Limited Partner's successors and assigns.

16.4 Limitation On Powers Of Attorney. Except as set forth in this Article XVI, the General Partner may not modify the terms of the powers of attorney or this Agreement without the written consent at least 90% of the Partnership Interests. The powers of attorney granted under Section 16.1 of this Article cannot be utilized by the General Partner to increase or extend any financial obligation or liability of any

Limited Partner without the written consent of such Limited Partner.

## ARTICLE XVII

### EXCULPATION AND INDEMNIFICATION

17.1 Exculpation of the General Partner. The General Partner will not be liable for any loss to the Partnership or the Limited partners by reason of any act or failure to act unless the General Partner was guilty of willful misconduct or gross negligence.

17.2 Indemnification of the General Partner. The Partnership shall indemnify the General Partner against any loss (excluding General Partner's share of the Partnership's net operating losses) or damage incurred by the General Partner (including legal expenses) by reason of any acts performed or not performed by the General Partner for and on behalf of the Partnership, unless the General Partner was guilty of willful misconduct or gross negligence. The General Partner shall indemnify the Partnership against any damages incurred by reason of the General Partner's willful misconduct or gross negligence.



## ARTICLE XVIII

### AMENDMENTS

18.1 Amendments. Except for amendments made in accordance with this Agreement in connection with assignments of Partnership Interests by Partners to their Affiliates and to reflect additional or substitute Partners or change in Capital Contributions, this Agreement may not be amended except upon written consent of a minimum of 90% of the Partnership Interests.

18.2 Execution Of Amended Agreements. Each Limited Partner agrees to execute or cause to be executed promptly any amendments to this Agreement and certificates of the Partnership reasonably requested by the General Partner and authorized under Section 18.1

## ARTICLE XIX

### TECHNOLOGY AND INFORMATION

19.1 Technology License. The General Partner shall, on behalf of the Partnership, obtain the right to use hardware and software technology associated with Cellular Service. The General Partner is hereby authorized, on behalf of the Partnership, to engage in negotiations and to enter into contracts for licenses to use cellular hardware, software or related

processes. In general, such contracts shall be merely the right to use contracts and will not vest any title in any Partner to this Agreement.

19.2 Proprietary Information.

All information, including but not limited to specifications, microfilm, photocopies, keypunch cards, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, customer information, financial reports, and market data marked or identified in writing as proprietary (all hereinafter designated as "Proprietary Information") furnished to or obtained by a Partner from any other Partner, whether written or oral or in other form, shall remain the disclosing Partner's property. All copies of such information whether written, graphic or other tangible form shall be returned to the disclosing Partner upon the disclosing Partner's request except that one copy may be retained for archival purposes. Unless otherwise agreed, no obligation hereunder shall extend beyond five years from the date of receipt of such information and the obligation does not apply to such Proprietary Information as was previously known to the receiving Partner free of any obligation to keep it confidential or has been or is subsequently made public by the

disclosing Partner or a third party. Such Proprietary Information shall be kept confidential by the receiving Partner and shall be used only for performing the covenants contained in this Agreement and may be used for such other purposes only upon such terms as may be agreed upon between the disclosing Partner and receiving Partner in writing.

## ARTICLE XI

### MISCELLANEOUS PROVISIONS

20.1 Warranties. Each Partner warrants as follows:

(a) It has the legal capacity to enter into and execute this Agreement, and

(b) This Agreement does not breach any of its existing agreements with other parties.

20.2 Table of Contents and Headings. The table of contents and the headings of the Sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part hereof.

20.3 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Partners and any additional or substitute Limited Partner or General Partner and to their respective

successors and assigns except that nothing contained in this Section shall be construed to permit any attempted assignment or other transfer which would be unauthorized by or void pursuant to any other provision of the Agreement.

**20.4 Severability.** Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement; provided, however, that the general intent of this Agreement shall not be voided thereby.

**20.5 Non-Waiver.** No provision of this Agreement shall be deemed to have been waived unless such waiver is contained in a written notice given to the Partner claiming such waiver and no such waiver shall be deemed to be a waiver of any other or further obligation or liability of the Partner or Partners in whose favor the waiver was given.

**20.6 Applicable Law.** This Agreement and the rights and obligations of the Partners shall be interpreted in accordance with the laws of the state of Missouri. The Partnership will be bound by and fully comply with any applicable provisions of the equal

employment opportunity laws, including any executive orders issued thereunder.

20.7 Entire Agreement. This Agreement constitutes the entire Limited Partnership Agreement between the Partners and their affiliates and (a) shall supersede all previous negotiations, commitments, representations and writings, and (b) to the extent inconsistent with any provision contained in any other documents, shall supersede such provisions.

20.8 Notices. All notices given by any Partner to any other Partner under this Agreement shall be in writing, registered or certified mail, postage prepaid, addressed as follows (or to such other address as a Partner may specify in such a notice to all other Partners):

Alma Cellular Telephone Company  
Mr. Oral Glasco  
206 South County Road  
Box 127  
Alma, Missouri 64001

Chariton Valley Cellular Corporation 1  
Mr. William Biere  
Highway 129 North, P.O. Box 470  
Bucklin, Missouri 64631

Citizens Service Center Inc.

Mr. Howard N. Fisher  
1905 Walnut Street, P.O. Box 737  
Higginsville, Missouri 64037

Mid-Missouri Cellular Inc.  
Mr. David L. Jones  
215 Roe Street, P.O. Box 38  
Pilot Grove, Missouri 65276

Such notices shall be effective on the third business day subsequent to the date of mailing.

**20.9 Arbitration.** (a) In case any disagreement with respect to Section 13.1 (b) or under Article IX, which cannot be resolved by negotiations, shall arise between any Limited Partner or group of Limited Partners and the General Partner, the General Partner or such Limited Partner or group of Limited Partners may initiate proceedings to submit such disagreement to arbitration by serving written notice of arbitration on the other party, which notice shall include appointment of an arbitrator, naming such arbitrator. Within thirty days after the date that such notice is deemed to be given, pursuant to the provisions of Section 20.8, the Partner (or group thereof, if applicable) to whom such notice is given shall similarly appoint an arbitrator by giving like written notice to the initiating Partner or Partners; or, failing to make such appointment, the arbitrator initially appointed shall be empowered to act as the sole arbitrator and to render a binding decision. In such event, such sole arbitrator shall set a date for

hearing the dispute not later than ninety days after the date of his appointment, and shall render its decision in writing to the disputing Partners not later than sixty days after the last hearing date.

(b) In the event that the disputing Partners duly appoint arbitrators pursuant to subparagraph (a) above, the two arbitrators so appointed shall, within thirty days after the appointment of the later of them to be appointed, select a third arbitrator who shall act as Chairman of the arbitration panel. Such arbitration panel shall set a time for the hearing of the dispute which shall not be later than sixty days after the date of appointment of the third arbitrator, and the final decision of the arbitrators shall be rendered in writing to the disputing Partners not later than sixty days after the last hearing date.

(c) In the event that the arbitrators appointed by the disputing Partners are not able within thirty days after the appointment of the later of them to be appointed to agree on the selection of a third arbitrator, either one of them may request the American Arbitration Association to select a third arbitrator, and the selection of such third arbitrator by such Association shall be binding.

(d) The place of any arbitration shall be 215 Roe Street, Pilot Grove, Missouri or at such other place as agreed to by the disputing Partners.

(e) The arbitration shall be conducted in accordance with the rules of the American Arbitration Association then prevailing, and the decision of the arbitrator or arbitrators, as the case may be, shall be final and binding on the disputing Partners, and shall be enforceable in the courts of the United States.

(f) It is understood and agreed that during any arbitration proceeding involving a dispute arising under Article IX, the General Partner shall have the power and authority to continue the business of the Partnership, including but not limited to proceeding with the action under dispute.

20.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be considered an original.



IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed by their duly authorized representatives.

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES

ALMA CELLULAR TELEPHONE COMPANY

Attest: Anneth W. Lovcamp By: Adolf L. Harris  
Title: Secretary Title: President  
Date: 9-27-89 Date: 9-27-89

CHARITON VALLEY CELLULAR CORPORATION 1

Attest: Denise M. Day By: William Brew  
Title: Controller Title: General Manager  
Date: 9/25/89 Date: Sept 25 1989

CITIZENS SERVICE CENTER INC.

Attest: Mary Virginia Day By: Robert H. Fish  
Title: Secretary-Treasurer Title: President  
Date: 9/25/89 Date: 9/25/89

MID-MISSOURI CELLULAR INC.

Attest: Denise M. Day By: Don H. Jones  
Title: Controller Title: PRESIDENT  
Date: 9/25/89 Date: 09-25-89

FIRST AMENDMENT TO AGREEMENT ESTABLISHING  
MISSOURI RSA NO. 7 LIMITED PARTNERSHIP

THIS agreement is made as of the 5th day of December, 1990, by and among Alma Cellular Telephone Company ("Alma"), Chariton Valley Cellular RSA NO. 1 Corporation ("Chariton Valley"), Citizens Service Center, Inc. ("Citizens"), and Mid-Missouri Cellular, Inc. ("Mid-Missouri"), all Missouri corporations.

W I T N E S S E T H:

WHEREAS, Alma, Chariton Valley and Citizens are limited partners, and Mid-Missouri is a limited and the general partner (Alma, Chariton Valley, Citizens and Mid-Missouri collectively referred to herein as the "Partners") in Missouri RSA NO. 7 Limited Partnership, a Missouri Limited Partnership (hereinafter the "Partnership"), pursuant to the "Agreement Establishing Missouri RSA No. 7 Limited Partnership" dated September 25, 1989 (hereinafter the "Partnership Agreement").

WHEREAS, each of the Partners is seeking to obtain financing from the National Bank for Cooperatives, a federally chartered corporation (hereinafter "CoBank"), to finance up to 65% of each Partner's capital contributions in the Partnership (hereinafter collectively referred to as the "CoBank Loans") (each of the CoBank Loans is a separate and distinct transaction and individually referred to as the "Alma CoBank Loan," the "Chariton Valley CoBank Loan," the "Citizens CoBank Loan" and the "Mid-Missouri CoBank Loan").

WHEREAS, in connection with the CoBank Loans, each of the

Partners is required to execute and deliver to CoBank the "Loan Agreement," the "Promissory Note," the "Security Agreement," and the "Licensee Equity Interest Assignment" (hereinafter the "Loan Documents") (the Loan Documents for each Partner are designated as the "Alma Loan Documents," the "Chariton Valley Loan Documents," the "Citizens Loan Documents" and the "Mid-Missouri Loan Documents").

WHEREAS, each of the Partners has requested the Partnership to guaranty and otherwise secure each Partner's obligations to CoBank arising out of the respective CoBank Loans and the Loan Documents by requesting the Partnership to execute and deliver to CoBank the "Guaranty," the "Guarantor Security Agreement," the "Deeds of Trust," and the "Licensee Consent" (hereinafter collectively the "Guarantor Documents") (the Guarantor Documents for each Partner are designated as follows: the "Alma Guarantor Documents," the "Chariton Valley Guarantor Documents," the "Citizens Guarantor Documents" and the "Mid-Missouri Guarantor Documents").

WHEREAS, the Partnership is willing to guaranty each Partner's obligations to CoBank arising out of the respective CoBank Loans and the Loan Documents, so long as each of the Partners is controlled by their current parent corporations or any affiliate thereof.

WHEREAS, in order to induce the Partnership to execute and deliver the Guarantor Documents to CoBank, and in order to protect the Partnership, the Partners have entered into this first amendment to the Partnership Agreement (hereinafter the "First

Amendment").

NOW, THEREFORE, in consideration of the Partnership entering into the Guarantor Documents:

I. The title to Article XIII of the Partnership Agreement is amended to read as follows: "WITHDRAWAL BY PARTNER."

II. Section 13.1(c) of the Partnership Agreement is amended to read as follows:

(c) (1) Any Partner shall promptly withdraw upon the ~~bankruptcy~~ or assignment for the benefit of creditors of such Partner.

(2) Notwithstanding any provision of this Agreement to the contrary, without the expressed written consent of the General Partner, which consent shall not be unreasonably withheld, Alma shall promptly withdraw upon the occurrence of any of the following:

A. Any amendment or waiver of performance of any of the following provisions of the Alma Loan Documents: the Alma Promissory Note; or, Article I, Article II, Section 6.3(ii), (iii), (iv), (v) or (viii), Section 6.4, Section 7.1(v), Section 7.10, Section 7.14 or Article X of the Alma Loan Agreement;

B. An "Event of Default" or "Potential Default" occurs pursuant to the Alma Loan Documents;

C. Alma fails to make any payment of principal or interest pursuant to the Alma Loan Documents;

D. The Partnership incurs any liability pursuant

to the Alma Guarantor Documents; or

E. Fifty percent or more of the "control" (as defined in Section 2.2 to this Agreement) of Alma or Alma's parent (Alma Telephone Company), or any affiliate of Alma or Alma Telephone Company which controls Alma, is transferred to any person other than one of the Partners, unless the person acquiring the control of such company obtains a release for the Partnership from all obligations of the Partnership to CoBank under the Alma Guarantor Documents.

(3) Notwithstanding any provision of this Agreement to the contrary, without the expressed written consent of the General Partner, which consent shall not be unreasonably withheld, Chariton Valley shall promptly withdraw upon the occurrence of any of the following:

A. Any amendment or waiver of performance of any of the following provisions of the Chariton Valley Loan Documents: the Chariton Valley Promissory Note; or, Article I, Article II, Section 6.3(ii), (iii), (iv), (v) or (viii), Section 6.4, Section 7.1(v), Section 7.10, Section 7.14 or Article X of the Chariton Valley Loan Agreement;

B. An "Event of Default" or "Potential Default" occurs pursuant to the Chariton Valley Loan Documents;

C. Chariton Valley fails to make any payment of principal or interest pursuant to the Chariton Valley Loan Documents;

D. The Partnership incurs any liability pursuant

to the Chariton Valley Guarantor Documents; or

E. Fifty percent or more of the "control" (as defined in Section 2.2 to this Agreement) of Chariton Valley, Chariton Valley's parent (Chariton Valley Communication Corporation, Inc.) or the parent of Chariton Valley Communication Corporation, Inc. (Chariton Valley Telephone Corporation), or any affiliate of Chariton Valley, Chariton Valley Communication Corporation, Inc., or Chariton Valley Telephone Corporation which controls Chariton Valley, is transferred to any person other than one of the Partners, unless the person acquiring the control of such company obtains a release for the Partnership from all obligations of the Partnership to CoBank under the Chariton Valley Guarantor Documents.

(4) Notwithstanding any provision of this Agreement to the contrary, without the expressed written consent of the General Partner, which consent shall not be unreasonably withheld, Citizens shall promptly withdraw upon the occurrence of any of the following:

A. Any amendment or waiver of performance of any of the following provisions of the Citizens Loan Documents: the Citizens Promissory Note; or, Article I, Article II, Section 6.3(ii), (iii), (iv), (v) or (viii), Section 6.4, Section 7.1(v), Section 7.10, Section 7.14 or Article X of the Citizens Loan Agreement;

B. An "Event of Default" or "Potential Default"

occurs pursuant to the Citizens Loan Documents;

C. Citizens fails to make any payment of principal or interest pursuant to the Citizens Loan Documents;

D. The Partnership incurs any liability pursuant to the Citizens Guarantor Documents; or

E. Fifty percent or more of the "control" (as defined in Section 2.2 to this Agreement) of Citizens or Citizens' parent (Citizens Telephone Company of Higginsville, Missouri), or any affiliate of Citizens or Citizens Telephone Company of Higginsville, Missouri which controls Citizens, is transferred to any person other than one of the Partners, unless the person acquiring the control of such company obtains a release for the Partnership from all obligations of the Partnership to CoBank under the Citizens Guarantor Documents.

(5) Notwithstanding any provision of this Agreement to the contrary, without the expressed written consent of the General Partner, which consent shall not be unreasonably withheld, Mid-Missouri shall promptly withdraw upon the occurrence of any the following:

A. Any amendment or waiver of performance of any of the following provisions of the Mid-Missouri Loan Documents: the Mid-Missouri Promissory Note; or, Article I, Article II, Section 6.3(ii), (iii), (iv), (v) or (viii), Section 6.4, Section 7.1(v), Section 7.10, Section 7.17 or Article X of the Mid-Missouri Loan Agreement;

B. An "Event of Default" or "Potential Default" occurs pursuant to the Mid-Missouri Loan Documents;

C. Mid-Missouri fails to make any payment of principal or interest pursuant to the Mid-Missouri Loan Documents;

D. The Partnership incurs any liability pursuant to the Mid-Missouri Guarantor Documents; or

E. Fifty percent or more of the "control" (as defined in Section 2.2 to this Agreement) of Mid-Missouri or Mid-Missouri's parent (Mid-Missouri Telephone Company), or any affiliate of Mid-Missouri or Mid-Missouri Telephone Company which controls Mid-Missouri, is transferred to any person other than one of the Partners, unless the person acquiring the control of such company obtains a release for the Partnership from all obligations of the Partnership to CoBank under the Mid-Missouri Guarantor Documents.

(6) Capitalized terms in Section 13.1(c) to this Agreement, which are not otherwise defined in this Agreement, shall have the same meaning as set forth in the "First Amendment to Agreement Establishing Missouri RSA NO. 7 Limited Partnership," dated December 5, 1990.

III. This First Amendment shall be attached to the Partnership Agreement and become a part thereof for all purposes.

IV. This First Amendment may be executed in any number of counterparts, each of which shall be considered an original.

IN WITNESS WHEREOF, the undersigned have caused this First



Amendment to be duly executed by their duly authorized representatives.

THE CONTRACT WHICH THIS FIRST AMENDMENT MODIFIES  
CONTAINS A BINDING ARBITRATION  
PROVISION WHICH MAY BE ENFORCED BY THE PARTIES

ALMA CELLULAR TELEPHONE COMPANY

Attest: Leslie Lemback  
Title: Secretary  
Date: 12-5-90

By: [Signature]  
Title: President  
Date: 12-5-90

CHARITON VALLEY CELLULAR RSA NO. 1 CORPORATION

Attest: Kenise M. Ray  
Title: \_\_\_\_\_  
Date: 12-5-90

By: William Biese  
Title: General Manager  
Date: 12-5-90

CITIZENS SERVICE CENTER, INC.

Attest: Mary Virginia Gray  
Title: Asst. Treasurer  
Date: 12/5/90

By: Howard H. Smith  
Title: President  
Date: 12/5/90

MID-MISSOURI CELLULAR, INC.

Attest: Angela J. Jones  
Title: Secretary  
Date: 12-5-90

By: [Signature]  
Title: PRESIDENT  
Date: 12-5-90

No. X 209009**STATE OF MISSOURI**

ROY D. BLUNT, Secretary of State

Appendix B

## CORPORATION DIVISION

**Registration of Fictitious Name**

(Sec. 417.200-417.230, R.S.Mo)

**TO BE FILED IN DUPLICATE**

THE FILING FEE OF \$2.00 MUST ACCOMPANY THIS AFFIDAVIT. The affidavit must be signed and verified by all parties owning interest in the company. Mail with filing fee to: ROY D. BLUNT, SECRETARY OF STATE, P.O. BOX 778, JEFFERSON CITY, MISSOURI 65102. The duplicate copy will be returned to the business address of the business registered unless you indicate otherwise in your cover letter.

Make check for \$2.00 payable to the State Director of Revenue.

This information is for the use of the public and gives no protection to the name. There is no provision in this Chapter to keep another company or corporation from adopting and using the same name.

We, the undersigned, are doing business under the following name, and at the following address:

Name to be registered: Mid-Missouri Cellular

Business Address (Mo., if any; if not, other): 215 Roe Street, P.O. Box 145

City, State, and Zip Code: Pilot Grove, Mo. 65276

The parties having an interest in the business, and the percentage they own are (if a corporation is owner, indicate corporation name and percentage owned). If all parties are jointly and severally liable, percentage of ownership need not be listed:

Name of Owners, Individual or Corporate	Street and Number	City	State	If listed, Percentage of ownership must equal 100%
Missouri RSA No. 7 Limited Partnership	215 Roe Street	Pilot Grove	Mo.	100 %
				%
				%
				%
				%
				%

**FILED**

NOV 07 1989

*Roy D. Blunt*  
SECRETARY OF STATE

State of Missouri

County of Cooper

ss

The undersigned, being all the parties owning interest in the above company, being duly sworn, upon their oaths each did say that the statements and matters set forth herein are true.

Individual  
Owners  
Sign Here

X

X

X

X

General Partner

Missouri RSA #7

Limited Partnership

X

X

X

The undersigned corporation has caused this application to be executed in its name by its President  
or Vice-President and its Secretary or Assistant Secretary, this \_\_\_\_\_  
day of \_\_\_\_\_, 19 \_\_\_\_.

If  
Corporation  
is  
Owner,  
Corporate  
Officers  
Execute  
Here

(Exact Corporate Title)

By

Its President or Vice-President.

By

Its Secretary or Assistant Secretary.

(Corporate Seal)  
If no seal, state "none".

I, Wanda L. Hazlett, A Notary Public, do hereby certify that on the 1st  
day of November, 19 89, personally appeared before me David L. Jones,  
and being first duly sworn by me, acknowledged that \_\_\_\_\_ he signed as his own free act and deed the foregoing  
document in the capacity therein set forth and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

(Notarial Seal)

Wanda L. Hazlett  
Notary Public

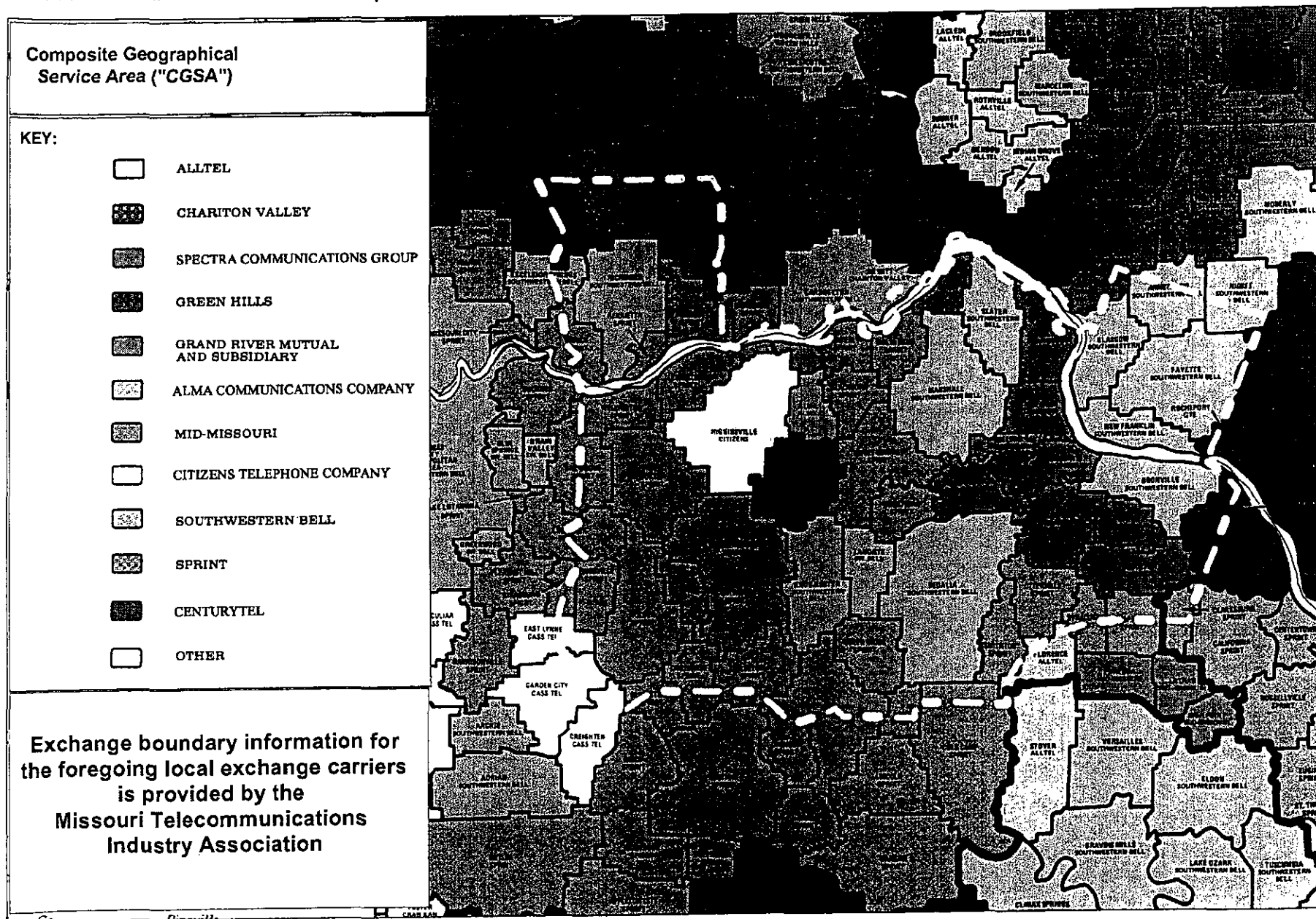
My commission expires March 11, 1993

APPENDIX C

INTENTIONALLY BLANK

# Missouri RSA #7 Limited Partnership d/b/a Mid-Missouri Cellular - Proposed ETC Service Area

Appendix D



©2002 Kurtis & Associates, P.C.

Suite 200  
1000 Potomac Street, N.W.  
Washington, D.C. 20007  
(202) 328-4500

**APPENDIX E**  
**NON-RURAL LEC WIRE CENTERS**

**SOUTHWESTERN BELL**

1. Armstrong (partial)
2. Boonville
3. Carrolton
4. Excelsior Springs (partial)
5. Fayette (partial)
6. Glasgow (partial)
7. Higbee (partial)
8. Knob Noster
9. Lamonte
10. Marshall
11. New Franklin
12. Richmond
13. Sedalia
14. Slater (partial)

**SPECTRUM COMMUNICATIONS GROUP (GTE)**

1. Braymer (partial)
2. Concordia
3. Harrisburg (partial)
4. Kingston (partial)
5. Lawson (partial)
6. Prairie Home (partial)
7. Rocheport (partial)
8. Wooldridge (partial)

**SPRINT**

1. Blackburn
2. Blairstown (partial)
3. Calhoun (partial)
4. California (partial)
5. Centerview
6. Chilhowee (partial)
7. Clarksburg (partial)
8. Cole Camp (partial)
9. Green Ridge
10. Hardin (partial)
11. Henrietta
12. Holden
13. Houstonia

**APPENDIX E**  
**NON-RURAL LEC WIRE CENTERS**

14. Ionia (partial)
15. Kingsville (partial)
16. Leeton (partial)
17. Lexington
18. Lone Jack (partial)
19. Malta Bend
20. Norborne (partial)
21. Oak Grove (partial)
22. Odessa
23. Otterville
24. Smithton
25. Strasburg (partial)
26. Sweet Springs
27. Syracuse (partial)
28. Tipton (partial)
29. Urich (partial)
30. Waiverly (partial)
31. Warrensburg
32. Wellington (partial)
33. Winsor (partial)

**APPENDIX F**  
**MID-MISSOURI TELEPHONE COMPANY STUDY AREA**  
**CONSTITUENT EXCHANGES**

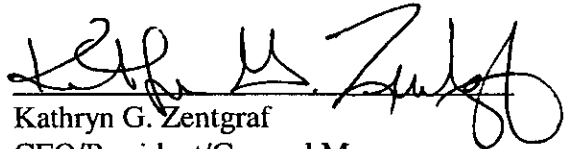
1. Arrow Rock
2. Blackwater
3. Bunceton
4. Fortuna
5. Gilliam
6. High Point
7. Latham
8. Marshall Jct.
9. Miami
10. Nelson
11. Pilot Grove
12. Speed



VERIFICATION

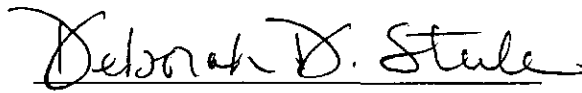
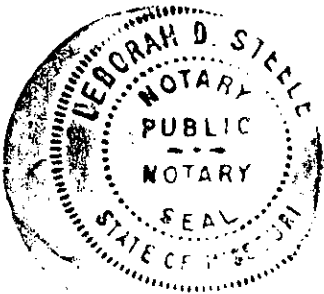
STATE OF MISSOURI                    )  
  ) ss  
COUNTY OF PETTIS                    )

Kathryn G. Zentgraf, having been duly sworn upon her oath, states that she is the CEO/President/General Manager of the Applicant herein, and as such, is duly authorized by the Applicant to execute the foregoing Application and to make this Affidavit on its behalf, and that the matters and things stated in the foregoing Application and Appendices thereto are true and correct to the best of her knowledge, information and belief.



Kathryn G. Zentgraf  
CEO/President/General Manager  
Mid-Missouri Cellular, Inc. its General Partner  
Missouri RSA No. 7 Limited Partnership  
d/b/a Mid-Missouri Cellular

Subscribed and sworn to before me, a Notary Public, on this 11th day of February, 2003.



Notary Public

**DEBORAH D. STEELE, NOTARY PUBLIC  
COUNTY OF PETTIS, STATE OF MISSOURI  
MY COMMISSION EXPIRES: MARCH 30, 2004**

My Commission Expires: \_\_\_\_\_