

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

In the Matter of the Application of Missouri RSA)
No. 7 Limited Partnership d/b/a Mid-Missouri)
Cellular for Designation as a Telecommunications)
Carrier Eligible for Federal Universal Service) **Case No. TO-2003-0288**
Support Pursuant to Section 254)
of the Telecommunications Act of 1996.)

**RESPONSE
OF
SPECTRA COMMUNICATIONS GROUP, LLC dba CENTURYTEL
AND CENTURYTEL OF MISSOURI, LLC
IN OPPOSITION TO STAFF’S MOTION TO DISMISS**

COME NOW Spectra Communications Group, LLC d/b/a CenturyTel (“Spectra”) and CenturyTel of Missouri, LLC (“CenturyTel”) (collectively referred to herein as “Respondents”), pursuant to 4 CSR 240-2.080(15), and for their Response in Opposition to Staff’s Motion to Dismiss (“Response”) respectfully state as follows:

1. Spectra and CenturyTel timely filed their Application to Intervene in this matter on March 10, 2003, pursuant to the Commission’s Order Directing Notice of February 18, 2003. As fully set forth in their Application, Respondents oppose the relief sought by Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular (“MMC”) in its application for designation as an eligible telecommunications carrier with respect to federal universal service support under Section 254 of the Telecommunications Act of 1996. Separate Applications to Intervene were filed in this matter by Alma Communications Company, d/b/a Alma Telephone Company (“Alma”), and Citizens Telephone Company of Higginsville, Missouri (“Citizens”). In addition, the Office of the Public Counsel (“OPC”) filed a request for an evidentiary hearing in this proceeding.

2. On March 19, 2003, the Staff of the Missouri Public Service Commission filed its Motion to Dismiss for lack of subject matter jurisdiction, wherein the Staff “concludes that the Commission lacks the necessary subject matter jurisdiction to grant ETC designation to cellular carriers since the facilities and services of CMRS carriers are exempted from the jurisdiction of the Commission. Accordingly, the Staff moves for the Commission to dismiss MMC’s application.”¹

3. While Respondents have moved to intervene in opposition to the relief requested by MMC in this matter, Respondents respectfully oppose the Staff’s motion to dismiss MMC’s Application. As Respondents, Alma, Citizens and OPC point out, this application involves the certification of an additional eligible telecommunications company in a service area served by rural telephone companies. Thus, the Commission must not only find that MMC meets the eligibility requirements of § 214 (e)(1), but it also must find that designating MMC as an ETC meets the public interest criterion set forth in § 214(e)(2) of the Act. Further, whereas MMC appears to seek designation as an ETC in an area that deviates from both Spectra’s and Mid-Missouri Telephone Company’s study areas, federal law requires at 47 U.S.C. § 214(e)(5) that, “In the case of an area served by a rural telephone company, ‘service area’ means such company’s ‘study area’ unless and until the Commission [FCC] and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c) of this title, establish a different definition of service area for such company.” (emphasis added.)

¹ Motion to Dismiss at 4.

Indeed, MMC submits that the requisite determinations to be made pursuant to the Act, should be made by this Commission.²

4. As MMC states in its Application, “. . . no CMRS carrier has sought designation from the Commission as an Eligible Telecommunications Carrier (“ETC”). For that reason, the instant application represents a case of first impression for the Commission.” Respondents respectfully submit that this Commission is best situated to make the critical determinations as to whether the designation of MMC as an ETC is “consistent with the public interest, convenience and necessity,” and to make an express finding as to whether such designation is in the public interest. Substantive public policy determinations regarding end-user and competitive impacts, as well as the interests of regulated incumbent local exchange carriers in providing basic local exchange service to the customers located within their service areas, will be addressed in this proceeding.

5. In observing that “[r]ecent appearances by CMRS providers before the Commission have been in cases involving interconnection agreements under Sections 214 and 215 of the Act,” Staff suggests that it is, in fact, the Commission’s jurisdiction over the incumbent local exchange carrier that is a party to the agreement that supports the Commission’s jurisdiction over such cases.³ Indeed, as noted above, the impact on, and the interests of, regulated rural telephone companies in providing basic local exchange service to the customers within their service areas, will be critical factors in making the determination as to whether the designation of MMC as an ETC is in the public interest. Like the authority granted state

² “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: . . . ” Application For Designation As An Eligible Telecommunications Carrier Pursuant to § 254 Of The Telecommunications Act of 1996, page 10.

³ Motion to Dismiss at 4.

commissions to review and ultimately approve or reject interconnection agreements presented for their consideration (many of which are filed in Missouri by CMRS carriers), the designation of common carriers as ETCs is another area of authority granted state commissions pursuant to the Act. As the Washington Utilities and Transportation Commission recently held in explaining its jurisdiction under the Act:

The Telecommunications Act of 1996 requires state utility commissions to make a number of decisions related to opening local telecommunications markets to competition and preserving and advancing universal service. One of those decisions is the designation of qualified common carriers as eligible telecommunications carriers (ETCs).⁴

Consequently, Respondents respectfully submit that this Commission is best situated to consider the substantial and competent evidence that will be presented in this proceeding, and to make findings and conclusions based upon that evidence.

WHEREFORE, Spectra Communications Group, LLC d/b/a CenturyTel and CenturyTel of Missouri, LLC respectfully request that the Commission deny Staff's Motion To Dismiss filed in this matter on March 19, 2003.

Respectfully submitted,


James M. Fischer MBE #27543
Fischer & Dority, P.C.
101 Madison, Suite 400
Jefferson City, MO 65101
Telephone: (573) 636-6758
Fax: (573) 636-0383
Email: jfischerpc@aol.com

Attorneys for:
Spectra Communications Group, LLC d/b/a
CenturyTel and CenturyTel of Missouri, LLC

⁴ *In the Matter of the Petition of Inland Cellular Telephone Company for Designation as an Eligible Telecommunications Carrier*, Docket No. UT-023040, *Order Granting Petition*, dated August 30, 2002.

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, transmitted by e-mail or mailed, First Class, postage prepaid, this 31st day of March, 2003, to:

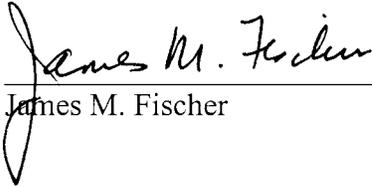
Office of the Public Counsel
P.O. Box 7800
Jefferson City MO 65102

Dana K. Joyce
General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City MO 65102

Craig S. Johnson
Lisa Cole Chase
Andereck, Evans, Milne, Peace & Johnson, LLC
700 East Capitol Ave.
P.O. Box 1438
Jefferson City, MO 65102

Paul DeFord, Esq.
Lathrop & Gage, L.C.
2345 Grand Boulevard, Suite 2800
Kansas City, MO 64108-2684

W.R. England, III
Sondra B. Morgan
Brydon, Swearngen & England P.C.
P.O. Box 456
Jefferson City, MO 65102



James M. Fischer