

**BEFORE THE PUBLIC SERVICE COMMISSION
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)	Case No. TO-2003-0531
Company Carrier Eligible for Federal)	
Universal Service Support Pursuant to)	
Section 254 of the Telecommunications)	
Act of 1996.)	

REPLY BRIEF OF MID-MISSOURI CELLULAR

Missouri RSA No. 7 Limited Partnership d/b/a/ Mid-Missouri Cellular (“MMC”) hereby replies to the initial briefs filed with respect to the above-captioned proceeding by Alma Communications Company d/b/a Alma Telephone Company and Citizens Telephone Company of Higginsville, Missouri (“Alma/Citizens”) and Spectra Communications Group, LLC d/b/a/ CenturyTel and CenturyTel of Missouri, LLC (“Spectra/CenturyTel”), collectively referred to as (“Opposing Intervenors”), the Office of Public Counsel (“OPC”) and the Missouri Public Service Commission Staff (“MPSC Staff”).

Sprint of Missouri, Inc. intervened in this proceeding in support of MMC’s request for designation as an eligible telecommunications carrier (“ETC”) but neither participated in the hearing nor filed an initial brief. Alma/Citizens and Spectra/CenturyTel oppose MMC’s ETC designation, the MPSC Staff argues that MMC failed to meet its “burden” in this case and the OPC has indicated that, after independently considering all evidence presented at hearing, it now supports designation of MMC as an ETC and believes that such designation would serve the public interest.

The briefing schedule established for this proceeding called for the simultaneous filing of briefs and reply briefs. Accordingly, the briefs are not responsive and many of the issues raised in the Opposing Intervenor briefs have already been addressed, in detail, in MMC's Initial Brief. Those discussions, developed fully in the MMC Initial Brief are not repeated here.

I. THERE IS A NEED FOR USE SUPPORT IN RURAL MISSOURI

MMC has previously briefed, in detail, the strong evidence in the record that grant of ETC status would serve the public interest (MMC Brief pp. 8-20). While this is a case of first impression with respect to a wireless ETC designation, it is difficult to imagine a stronger case for ETC designation in areas served by both rural and nonrural LECs. MMC operates solely within rural areas, wholly within the state of Missouri. MMC provides service to not only the lower cost portions of its licensed coverage area like the nationwide wireless carriers (such as the interstate highways and larger population centers) but also to the more rural areas including population centers like Miami, Gilliam and Pilot Grove, Missouri. MMC seeks ETC support to enable it to enhance its service offering throughout its FCC-licensed service area. Failure to designate MMC as an ETC will result in the continued unavailability of enhanced wireless digital services in the more rural communities and, eventually, the reduction in the level of wireless services available in these areas; a result contrary to the public interest.

The MMC Initial Brief fully demonstrates that Grant of MMC's ETC designation meets the public interest standard as it relates to areas served by incumbent local exchange carriers ("ILECs") that are designated as rural and nonrural. No party disputes that the federal statute requires the designation of a competitive ETC in the areas served by nonrural

carriers where such grant is in the public interest. In this case, the areas served by SBC Communications and CenturyTel are designated as nonrural.

On February 25, 2004, Commissioners from thirteen (13) state public service Commissions, including Missouri¹, wrote a letter to Senator John McCain and Congressman Joe Barton advising of the urgent need for USF support for the rural areas served by nonrural carriers. (“February 25th Letter”). The Commissioners expressly advised that “without USF support, needed investments in the telephone network *are not occurring* in many rural communities, putting them at a competitive disadvantage in today’s increasingly digital economy.” (Attachment A, p. 1”) (emphasis added). Accordingly, the need for increased competition and network upgrades in the rural areas served by nonrural carriers is known to this Commission.

The February 25th Letter also points out the inequity resulting when USF funds flow to some states for particular purposes but not other states. In essence, states such as Missouri are being shut-out from access to certain USF funds. While the Commissioner’s concerns are expressed in the February 25th Letter in the context of nonrural LECs providing service to rural areas, the exact same concerns arise in the context of wireless ETCs. While the Opposing Intervenors and MPSC Staff argue on a policy level as to why wireless ETCs should not be designated, the simple truth is that designation of wireless ETCs is expressly allowed under federal statute and applicable FCC regulations. Wireless ETCs are being routinely designated by the FCC and virtually all other state commissions.² Accordingly, a

¹ Chairman Gaw and Commissioner Murray are both signatories on this letter, a copy of which is appended hereto as Attachment A.

² Opposing Intervenors and MPSC Staff have provided isolated examples of denials of wireless ETC designations in cases that are readily distinguished from the facts before the

Commission decision denying MMC's request for ETC designation, while doing nothing to preclude the designation of wireless ETCs, would, contrary to the public interest, ensure that the rural citizens in the state of Missouri are denied access to these federal universal support funds as well. Designation of MMC as an ETC would allow additional USF funds to flow to the rural communities where MMC provides commercial mobile radio service ("CMRS"). As pointed out in the Commissioners' letter, when several states are effectively "shut out" of access to federal funds, "[s]omething is very wrong."³ Except in the instance where a wireline customer disconnects its landline phone in favor of a wireless phone, the USF funds that would be available to MMC would not act to decrease the USF payments to any ILEC.⁴

PSC here. The MPSC Staff-cited example in Nebraska involved a request for ETC designation by a carrier providing multi-state coverage as a representative for a nationwide wireless provider, in an area where the PSC had already designated a wireless ETC. (*In the Matter of the Application of Amended NPCR, Inc. d/b/a Nextel Partners, Eden Prairie, Minnesota seeking designation as an eligible telecommunications carrier that may receive universal service support*, Application No. C-2932, Nebraska Public Service Commission, February 10, 2004). In that case, the commission had already ensured that the rural citizens of Nebraska reaped the benefits of USF support for rural wireless services by having already designated a wireless ETC in that area. Similar to the Nebraska case, the case cited by Alma/Citizens also involved a multi-state carrier seeking ETC designation. (Kurtis Amended Surrebuttal p. 2-3).

³ February 25th Letter at p. 1.

⁴ The Opposing Intervenors theorize that this increased draw on the USF represents a threat to the longterm sustainability of the USF. However, wireless carriers contribute to the USF and the level of wireless contribution has been increased to cover a greater percentage of wireless revenues. As a result, over the past 18 months the level of USF contribution required by all contributors has actually decreased (Kurtis Amended Surrebuttal p. 11) and the fund remains stable (MMC Initial Brief fn. 35). Designation of MMC as an ETC would not adversely impact the sustainability of the USF. (MMC Initial Brief pp. 15-16). Nevertheless, the underlying policy issues relating to the future USF support mechanisms are presently being considered at the federal level and could, in the future, result in a change in the manner in which the level of USF support for wireless and other ETC carriers is calculated. As an ETC, MMC's level of support would change to the extent that differing methodologies are adopted in the future. Support methodologies for ETCs are not

Having recognized the inequity of having certain USF funds flow only to a limited number of states, and having further acknowledged the need for USF funds in rural parts of Missouri, this Commission should, consistent with the position advocated to congress in the February 25th Letter, proceed expeditiously to designate MMC as an ETC.

II. GRANT OF ETC DESIGNATION TO MMC WOULD SERVE THE PUBLIC INTEREST

Opposing Intervenor and MPSC Staff do not argue that grant of MMC's application will not serve the public interest. Rather, they cloud the issue by arguing that MMC did not include all specifics in its pre-filed testimony and therefore failed to meet an as of yet undefined "burden".⁵ Yet no intervenor argues that the MMC public interest showings were any less than those made in countless other ETC filings which have been granted by the FCC and the various state commissions. Indeed, where this Commission has applied the applicable federal statute previously,⁶ not only did the Commission approve the application containing a public interest showing of comparable detail to that initially made by MMC, the MPSC Staff did not even argue that the virtually identical showings made by that ETC applicant were insufficient to carry its public interest "burden" under the same statutory

grandfathered. Missouri ETCs require annual certification by this Commission. (See MMC Brief at pp. 26-29).

⁵ Indeed, Staff makes it clear that it does not maintain that the grant of the MMC application would not serve the public interest. "...my position throughout this case and throughout my pre-filed testimony has not been that this case is not in the public interest. My position has been and continues to be to this day and throughout listening to all the testimony that was given yesterday that the company has not met the burden of meeting the public interest standard." (McKinnie Tr. p294-295).

⁶ See, e.g., *Application of Green Hills Area Cellular Telephone, Inc. d/b/a Green Hills Telecommunications Services*, Case No. CO-2003-0162, Order Approving Stipulation and Agreement, (adopted March 4, 2003) ("*Green Hills Case*").

provision. In the *Green Hills Case*, when OPC sought an evidentiary hearing to delve more deeply into the public interest considerations, MPSC Staff strenuously objected to even conducting such a hearing, arguing that OPC had not met its burden of identifying potential concerns with the application.⁷ In further irony, counsel for Alma/Citizens that argues here as to the sufficiency of the MMC showing, was counsel for the ETC applicant in the *Green Hills Case* and made the same type showings as MMC upon which this Commission summarily found the grant of ETC designation under the same federal statute to be in the public interest.⁸ Clearly, MMC has met the standard previously applied by this Commission under the applicable federal statute; standards deemed sufficient by both Staff and counsel for Alma/Citizens in that case.

What is unusual in this case is that intervening circumstances, beyond the control of MMC or any other party, occurred after the MMC application and all pre-filed testimony had been submitted. On the eve of the hearing, the FCC issued its *Virginia Cellular Order*⁹ which substantially modified the approach taken by the FCC in processing ETC applications and, for the first time, offered guidance to state commissions on how to evaluate wireless ETC applications. Accordingly, during oral testimony, MMC supplemented the record and affirmatively committed to each and every newly-announced reporting and service requirement set forth in that order. (MMC Initial Brief p. 4). Intervenors were also given the

⁷ MMC Initial Brief p. 7.

⁸ See e.g. *Stipulation & Agreement, Green Hills Case*, Ex. 15 p. 7, signed on behalf of the applicant by Brydon, Swearingen & England, counsel for Alma/Citizens in the instant case.

⁹ *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Application for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia, Memorandum Opinion and Order*, CC Docket No. 96-45, FCC 03-338 (rel. January 22, 2004), (Exhibit No. 10), (“*Virginia Cellular Order*”).

opportunity to address the impact of the *Virginia Cellular Order* in the hearing case. MPSC Staff testified that the *Virginia Cellular Order* represented the type of public interest analysis that should be applied in these cases. The MPSC Staff witness testified that he “...believe[s] that the FCC has done a good job [in the *Virginia Cellular Order*] of stating what a good public...they have stated the good public interest standard on a going forward basis.” (McKinnie Tr. p. 316). Nevertheless, having previously decided to oppose MMC’s filing, MPSC Staff continues to urge that the Commission find MMC’s identical commitments inadequate.

In sharp contrast, OPC began the hearing advising that it was withholding judgment on the MMC application until after all evidence was in. OPC has now concluded that MMC, having made the same commitments as those required by the *Virginia Cellular Order*, has clearly demonstrated that its designation as an ETC would serve the public interest. As OPC concluded

The evidence in the record provides ample compliance with the requirements for ETC designation. The concerns raised by Public Counsel for the PSC to consider in weighing the issue of whether or not the grant of the application was in the public interest were adequately addressed in the record. The FCC sanctioned guidelines for making the public interest finding by the FCC in the Virginia FCC Order and, based upon these guidelines, the applicant committed to operate in accordance with conditions imposed by the PSC for the grant of the ETC status based upon those guidelines. Therefore, Public Counsel is satisfied that the public interest standard as best reflected in the provisions of Section 392.185, RSMo has been met. The application, subject to those conditions, should be approved.¹⁰

¹⁰ OPC Initial Brief pp. 5-6.

III. ETC DESIGNATION IS CRUCIAL TO THE ABILITY OF MMC TO CONTINUE SERVING THE HIGHER-COST MOST RURAL PORTIONS OF ITS SERVICE AREA

Opposing Intervenors and MPSC Staff argue that there is no need for designation of MMC as an ETC since MMC is already providing service throughout its licensed CMRS service area.¹¹ While it is true that MMC has demonstrated a commitment to extend its existing service to even the most rural portions of its FCC-licensed service area, the record includes detailed, specific testimony as to why ETC support is necessary.

A. MMC's EXISTING NETWORK REQUIRES TOTAL OVER-BUILDING

The MMC network was deployed utilizing then state-of-the-art time division multiple access ("TDMA") technology. However, that technology is no longer being supported and MMC needs to overlay its entire network with a code division multiple access ("CDMA") technology. The specifics regarding the costs associated with that overbuild were provided in highly confidential testimony at hearing. (Kurtis HC Tr. pp. 186-187). This overbuild, while not only allowing for enhanced voice and data services throughout MMC's market, is also essential for enabling MMC to meet the FCC accuracy requirements with respect to E911 Phase II locational services. As explained fully at hearing, **

¹¹ Ironically, in an effort to argue against the need for designation of a competing ETC in their particular markets, the Opposing Intervenors have testified that they too have already completely built out all portions of their service areas. (Schoonmaker Tr. P 365); (Martinez Tr. 395). Following their arguments, having completed construction of their respective networks, one would expect them to advise that they, too, no longer require ETC support. Of course, they did not so testify. As the Opposing Intervenors would undoubtedly agree, there are ongoing costs to operate and maintain their respective networks. Moreover, even though they testified that they presently provide service to all areas in their market, on cross examination they acknowledged that they still need to construct new facilities to extend their service to portions of their exchanges where they do not, in fact, presently offer service. (Martinez Tr. pp. 402-403).

[illegible]

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B. MMC's SERVICE OFFERINGS BRING COMPETITIVE BENEFITS TO THE CONSUMERS

The competitive benefits of the MMC service offering are well documented. The MMC service plans offer mobility, extended local calling areas and, in most instances, an allotment of minutes that can be used for placing toll calls without incurring any toll charges. The Opposing Intervenors argue that these services are not truly competitive because they are costlier than comparable LEC service. That is not the case. While the MMC rates cited by the Opposing Intervenors appear to be costlier than those charged by Citizens, Alma and Spectra¹² the subject level of services are not comparable. Each of the MMC plans include voice mail, call waiting, call forwarding, three way calling and caller ID. Adding the tariff

¹² Citizens and Alma compare their local service offerings (\$14.90 and \$13.00) respectively with the MMC price plans ranging from \$19.95 to \$64.95 per month. (Alma/Citizens Brief pp. 10-11.) The Spectra rates in its Concordia exchange are \$15.11 per month.

rates for those features to the rates charged by the Opposing Intervenor results in monthly rates of \$29.85 for Citizens, \$21.95 for Alma and \$39.06 for Spectra.¹³ The “free” local calling area for those LEC subscribers is limited to the subscriber’s local exchange. All calls beyond that limited local calling area result in additional per minute toll charges. In sharp contrast, the MMC local calling area includes all of the exchanges of not only the Opposing Intervenor but also all other LECs in a near seven county area as well as a number of “bundled” minutes which an MMC subscriber can use to place toll calls without incurring toll charges.

The MMC service offering also affords mobility and access to emergency services wherever the subscriber is located, not only at the nearest wired telephone jack as is the case for the Opposing Intervenor’s service offering. Clearly, the MMC service offers competitive advantages and ETC designation will enable consumers to continue to benefit from these advantages throughout MMC’s service area.

ETC designation will also allow MMC to extend these services, for the first time, to low income members of the rural communities that qualify for Lifeline and Linkup services. MMC has proposed two additional calling plans for Lifeline-eligible subscribers only. Those plans, directly competitive with the lowest-priced LEC plans from a pricing standpoint, add the advantages of mobility and extended local calling areas.¹⁴ Designation of MMC as an ETC will, for the first time, allow the low income members of the community access to the lower costs, higher featured, wider calling areas, mobility and ubiquitous access to

¹³ Alma, Citizens and Spectra rates for each of these additional services are tariffed items and a matter of public record.

¹⁴ The MMC Lifeline Plans, like all MMC calling plans, include voicemail, call waiting, call forwarding, three way calling and caller ID.

emergency services under a Lifeline-supported cost structure. (MMC Initial Brief pp. 14-15).

In addition, with the advent of local number portability, MMC's designation as an ETC will allow the Lifeline subscriber to switch from the current limited LEC service offering to an MMC Lifeline plan while retaining their telephone number. Absent ETC designation, no Lifeline customer would be able to port its Lifeline number to a wireless carrier and still receive Lifeline supported services, essentially setting a financial barrier to a citizen's right to local number portability (MMC Initial Brief pp. 19-20).

IV. REDEFINITION OF ETC SERVICE AREAS

MMC has sought redefinition of the rural LEC service areas of Sprint, Mid-Missouri Telephone Company ("MMTC") and Spectra. Neither Sprint nor MMTC have posed any objection to this redefinition. The proposed re-definition is at the wire center level for MMTC and Spectra. In both cases, MMC has proposed including all of the areas within entire wire centers that are encompassed by the MMC FCC-licensed service area. Spectra argues that the redefinition of the Spectra service area would be unduly burdensome on Spectra.

MMC's originally proposed ETC service area included all areas served by an ILEC within the MMC FCC-licensed service area where MMC's FCC-licensed service area encompassed one or more entire wire centers for that ILEC. MMC made this proposal to avoid allegations that MMC was seeking to "cream skim" only selected LEC service areas within the MMC FCC-licensed service area. MMC expressly excluded areas within its FCC-licensed service area where it served *only* partial wire centers for any given ILEC.

Spectra testified that it disaggregates its costs to the wire center level, thereby obviating any “cream-skimming” concerns. (Martinez Rebuttal, Ex. 9 at p. 13). Accordingly, with respect to the areas served by Spectra, MMC has limited its request for ETC designation to the entire Concordia wire center. (MMC Initial Brief pp. 23-24). All arguments set forth by Spectra with respect to the designation of a service area below the wire center level are moot. The Concordia wire center is geographically non-contiguous with the remaining portions of the Spectra study area within the state of Missouri. The FCC has expressly held that requiring an ETC to serve noncontiguous wire centers could act as a barrier to market entry. (MMC Brief p. 24). Redefining the Spectra service area to the Concordia wire center only for purposes of designation of a competitive ETC would impose no burden on Spectra or cause any change in the manner in which it presently reports costs. Moreover, since Spectra has testified that costs have been disaggregated to that wire center level, there is no opportunity for MMC to “cream skim” since the reported Spectra costs for that wire center are for that wire center alone.¹⁵

V. THE JOINT BOARD RECOMMENDATIONS DO NOT ALTER THE CURRENT CRITERIA FOR PUBLIC INTEREST DETERMINATIONS

As fully discussed in MMC’s Brief (pp. 2-4), Section 214(e) sets forth the criteria for designation of ETCs. The FCC has determined that the “public interest” criterion of

¹⁵ MPSC Staff states that the FCC must concur in the change in definition of a rural LEC service area. To the extent such concurrence is required, MMC will file such a petition for concurrence upon a determination by this Commission that such a change in service area is warranted. This is the procedure which has been followed in other cases where states exercise primary jurisdiction over designation of ETCs. *See, e.g., Petition of ALLTEL Communications, Inc. for Consent to Redefine the Service Areas of Rural Telephone Companies in the State of Michigan*, CC Docket No. 96-45, filed December 17, 2003 (seeking FCC agreement to the Michigan PSC decision to redefine the service areas of certain rural telephone companies in the state of Michigan).

Section 214(e)(2) will be met by the public interest benefits related to the introduction of competition in rural areas, provided that the applicant for ETC status: (1) satisfies the requirements of Section 214(e)(1); and (2) satisfies the additional requirements recently established by the FCC in its *Virginia Cellular Order*. Staff and Intervenors now suggest that MMC should have to also satisfy additional criteria proposed by the Federal-State Joint Board on Universal Service in its recent *Recommended Decision*.^{16, 17} The recommendations made by the Joint Board are just that – *recommendations* – and unless and until such recommendations are adopted by the FCC, this Commission is not required to apply such proposed criteria to any ETC designation request pending before it.

The Joint Board was established by the FCC pursuant to Sections 254(a)(1) and 410 of the Act. While the FCC is expected to give substantial weight to the Joint Board recommendations, such recommendations are “advisory in nature” and the FCC is not required to adopt them.¹⁸ Indeed, Section 214(e)(5) of the Act explicitly authorizes the FCC

¹⁶ *Federal-State Joint Board on Universal Service*, Recommended Decision (CC Docket No. 96-45) (rel. February 27, 2004) (“*Recommended Decision*”).

¹⁷ See MPSC Staff Initial Brief at pp. 13-15; Alma/Citizens Initial Brief at pp. 3-5; Spectra/CenturyTel Initial Brief at pp. 8-12. The additional criteria proposed by the Joint Board, either as eligibility criteria or as criteria for a state to adopt at its discretion, include: (1) a financial showing; (2) a demonstration of capability and commitment to provide service throughout the ETC applicant’s service area to any requesting customer; (3) submission of formal buildout plans; (4) resale service; (5) provision of equal access; (6) compliance with consumer protection requirements; and (7) amount of local usage. *Recommended Decision* at Section II.

¹⁸ S. Rep. No. 104-23, at 25 (1995) (“Consistent with all Joint Boards established under Section 410(c), the recommendations of the Joint Board are advisory in nature, and the FCC is not required to adopt the recommendations. However, the Committee intends that the FCC shall give substantial weight to the Joint Board recommendations.”).

to ignore Joint Board recommendations,¹⁹ and the Joint Board recognizes that its recommendations amount solely to guidance.²⁰ Throughout the Joint Board's history, the FCC has chosen to disregard various Joint Board recommendations.²¹ Indeed, if the FCC were to merely "rubber stamp" Joint Board recommendations, there would be no reason for the FCC to routinely seek public comment on such recommendations.²² Given the uncertainty as to which, if any, of the Joint Board's recommendations the FCC will ultimately adopt, this Commission should not attempt to apply any of the Joint Board's recommendations to MMC's pending request. Significantly, *not* applying those conditions to an MMC designation at this time would *not* preclude their addition to all previously-designated ETCs, including MMC, at such time as the recommendations were to be adopted by the FCC. Any additional eligibility criteria ultimately adopted by the FCC may be applied

¹⁹ See 47 U.S.C. §214(e)(5).

²⁰ See *Federal-State Joint Board on Universal Service*, Second Recommended Decision, CC Docket No. 96-45 (rel. Nov. 25, 1998) at par. 6 ("In resolving these issues in light of our guidance, therefore, the Commission has the difficult task of selecting a national solution that balances these competing interests.").

²¹ See, e.g., *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45 (rel. May 8, 1997) at pars. 300, 305, 949 (rejecting Joint Board's recommendation to freeze per-line support); *Id.* at par. 96 (rejecting Joint Board's recommendation to limit support to primary lines); *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plea for Regulation of Interstate Services of Non-PriceCap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourth report & Order, Twenty-second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244 at ¶ 124 (2001) (rejecting Joint Board Rural Task Force proposal to freeze high-cost loop support).

²² See, e.g., *Common Carrier Bureau Seeks Comment on Universal Service Joint Board's Second Recommended Decision*, FCC Public Notice (DA 98-2410), released November 25, 1998. In its *Virginia Cellular Order*, the FCC repeatedly makes reference to awaiting the "outcome" of the Joint Board proceeding. *Virginia Cellular Order* at par. 12, 27, 31.

by this Commission to MMC on a prospective basis in connection with the Commission's annual recertification process.

Each additional criterion proposed by the Joint Board will need to be reviewed by the FCC to determine, among other things, whether it may lawfully be applied by a state commission. Section 332(c)(3) of the Act prohibits state or local governmental entities from regulating "the entry of or the rates charged by any commercial mobile service," while Section 253(a) of the Act prohibits a state or local legal requirement from prohibiting or having the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. In considering the Joint Board's recommendations, the FCC will determine whether one or more of the proposed criteria violate Section 332 and/or 253 of the Act.²³ For this Commission to attempt to make such legal determinations in advance

²³ By way of example, the Joint Board has recommended that the FCC adopt a guideline indicating that state commissions may properly impose consumer protection requirements as part of the ETC designation process. *Recommended Decision* at par. 31. The Commission's LEC regulatory requirements, currently applicable to wireline carriers, include the requirement that a carrier offer its service pursuant to tariff. Such requirement conflicts with the prohibition against rate regulation in Section 332 of the Act. Similarly, the Joint Board proposes that the FCC adopt guidelines encouraging states, as a condition of ETC designation, to require competitive ETCs to be prepared to provide equal access if all other ETCs in that service area exercise their rights to relinquish their ETC designations. *Recommended Decision* at par. 28. While MMC has committed to make subscriber-originated equal access available should any customer so request, it is significant to note that the Joint Board also notes that preemption based on rate and entry regulation is an issue, and that in order for the proposed equal access requirement to be lawfully adopted, the FCC must first clarify its *Western Wireless Kansas CMRS Order*, 17 FCC Rcd 14802 (2002), which the Joint Board believes may "be interpreted as precluding states from imposing equal access requirements on CMRS carriers under any conditions." *Recommended Decision* at par. 29. In addition, the Joint Board recommends that state commissions be given discretion to require ETC applicants to incorporate resale in their plans to serve all customers upon reasonable request as a condition of ETC designation. *Id.* at par. 26. Requiring resale is inconsistent with Section 214(e)(1)(A) of the Act, which requires ETCs to offer supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services."

of the expert federal agency charged with making such determinations is unnecessary and inefficient.

In its *Virginia Cellular Order*, the FCC established a new framework for its public interest analysis of rural ETC applications pending further action by the FCC in the Joint Board proceeding. In establishing additional public interest criteria, the FCC recognized that the *Virginia Cellular Order* criteria might be subject to further modification, but stressed the need for “a more stringent public interest analysis for ETC designations in rural telephone company service areas” pending further action by the FCC.²⁴ Accordingly, recognizing that it may ultimately modify its public interest criteria, the FCC nonetheless recognized the importance of establishing public interest criteria that may be applied by state commissions during the pendency of the Joint Board proceeding. The FCC intended that state commissions apply the *Virginia Cellular Order* criteria pending the adoption of modified or additional criteria resulting from the FCC’s consideration of the Joint Board recommendations. This Commission should utilize the analytical framework adopted by the FCC in considering MMC’s request. When and if such criteria are modified, the Commission may then apply the new criteria to MMC at that time.

VI. CONCLUSION

MMC has clearly satisfied all statutory and regulatory requirements for designation as an ETC and demonstrated that grant of its Application would be in the public interest. Specifically, MMC outlined how it provides services and functionalities in Missouri

²⁴ *Virginia Cellular Order* at 4. *See also Id.* at par. 28 (“We recognize that as part of its review of the ETC designation process in the pending proceeding examining the rules relating to high-cost support in competitive areas, the Commission may adopt a different framework for the public interest analysis of ETC applications. This Order does not prejudge the Joint Board’s deliberations in that proceeding and any other public interest framework that the Commission might ultimately adopt.”).

supported by the federal universal service program, enumerated in Section 54.101(a) of the FCC's rules.²⁵ MMC also established that it satisfied each of the elements required for ETC designation by the FCC pursuant to Section 214(e)(6) of the Act.²⁶ Further, MMC demonstrated that it will meet additional conditions as established in the *Virginia Cellular Order*. Because MMC's proposed ETC offering in Missouri is in the public interest, the public interest dictates that the Commission act swiftly to grant MMC's Application. Delay of consideration or denial of MMC's Application by the Commission will prevent consumers in rural Missouri from receiving new advanced services offered by MMC.

Respectfully submitted,

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²⁵ 47 C.F.R. § 54.101(a).

²⁶ See 47 U.S.C. § 214(e)(6); *see also*, Application at 6-10.

CERTIFICATE OF SERVICE

I 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 5th day of April, 2004, to:

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February 25, 2004

The Honorable John McCain
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The Honorable Joe Barton
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Dear Chairman McCain and Chairman Barton:

On December 24, 2003, the Federal Communications Commission issued its projections for federal universal service funding (USF) in 2004. In doing so, the Commission confirmed that millions of rural Americans, including many in your home states, will continue to be deprived of the benefits of universal service, contrary to Congressional intent.

Without USF support, needed investments in the telephone network are not occurring in many rural communities, putting them at a competitive disadvantage in today's increasingly digital economy.

Approximately 70% of rural telephone consumers are served by one of 30 so-called "non-rural" carriers, which is what the FCC calls large carriers that serve both urban and rural areas. In 2003, under the USF program for those carriers, almost 85% of the money went to just three states (Mississippi, Alabama, and West Virginia), with the remainder going to just five more states (Maine, Vermont, Kentucky, Montana and Wyoming). **Consumers in 42 states -- including Arizona, Texas, and many of the least densely populated states in the country -- paid more than \$200 million into this critical component of the USF and received zero benefit in return.**

For 2004, the FCC has updated its line data and eligibility formula, resulting in an estimated \$50 million increase in this part of the USF. However, the new state funding shares are still arbitrary and unfair. The FCC projects only two additional states receiving funds (Nebraska and South Dakota); two states are out back (Maine and West Virginia); and most of the increase flows to states that were already beneficiaries. **Forty states are still shut out of the program entirely.**

Surely, Congress did not intend these huge disparities. Something is very wrong.

We strongly encourage you to schedule action this year on legislation to ensure a fairer, more targeted distribution of this fund, focused on rural communities that truly need the help. Legislation to accomplish this goal without raising consumer costs, taxes, surcharges or federal

spending has been offered by Sen. Gordon Smith (S. 1380) and Rep. Lee Terry (H.R. 1582). These bills enjoy broad, bipartisan support in both houses of Congress and across the country.

It's important to note that these bills would not affect the separate USF account for small rural carriers and co-ops. Those funds are dedicated to a separate category of consumers and are irrelevant to meeting the needs of the majority of rural consumers served by larger carriers.

We also recognize there are many problems in the broader USF program. However, comprehensive reform of USF may take years to accomplish. In contrast, targeted reform of the "non-rural" account can be accomplished relatively quickly and easily. In the interests of ensuring fair treatment for millions of rural Americans, the high-cost, non-rural program can and should be fixed this year.

Sincerely,

Marc Spitzer, Chairman, Arizona Corporation Commission
Greg Sopkin, Chairman, Colorado Public Utilities Commission
Polly Page, Commissioner, Colorado Public Utilities Commission
Paul Kjellander, President, Idaho Public Utilities Commission
William McCarty, Chairman, Indiana Utility Regulatory Commission
Brian Moline, Chairman, Kansas Corporation Commission
John Wine, Commissioner, Kansas Corporation Commission
Robert Nelson, Commissioner, Michigan Public Service Commission
Laura Chappelle, Commissioner, Michigan Public Service Commission
LeRoy Koppendrayner, Chairman, Minnesota Public Utilities Commission
Phyllis Reha, Commissioner, Minnesota Public Utilities Commission
Steve Gaw, Chairman, Missouri Public Service Commission
Connie Murray, Commissioner, Missouri Public Service Commission
Gerald L. Vap, Chairman, Nebraska Public Service Commission
Anne Boyle, Commissioner, Nebraska Public Service Commission
Rod Johnson, Commissioner, Nebraska Public Service Commission
Frank Landis, Commissioner, Nebraska Public Service Commission
Lowell Johnson, Commissioner, Nebraska Public Service Commission
Tony Clark, President, North Dakota Public Service Commission
Kevin Cramer, Commissioner, North Dakota Public Service Commission
Denise Bode, Chairman, Oklahoma Corporation Commission
Bob Sahr, Chairman, South Dakota Public Utilities Commission
Gary Hanson, Vice Chairman, South Dakota Public Utilities Commission
Jim Burg, Commissioner, South Dakota Public Utilities Commission
Marilyn Showalter, Chairman, Washington Utilities and Transportation Commission
Richard Hemstad, Washington Utilities and Transportation Commission
Patrick J. Oshie, Commissioner, Washington Utilities and Transportation Commission

cc: Members of the Senate Committee on Commerce, Science and Transportation
Members of the House Committee on Energy and Commerce
Members of the Federal Communications Commission