

**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)	Case No. TO-2003-0531
Federal Universal Service Support pursuant)	
to Section 254 of the Telecommunications)	
Act of 1996.)	

**INITIAL BRIEF OF INTERVENORS
ALMA COMMUNICATIONS COMPANY d/b/a ALMA TELEPHONE COMPANY
AND CITIZENS TELEPHONE COMPANY OF HIGGINSVILLE, MISSOURI**

Introduction and Procedural History

On June 2, 2003, Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular ("MMC") filed an Application with the Missouri Public Service Commission ("Commission") requesting designation as an Eligible Telecommunications Carrier ("ETC") with respect to federal universal service support. MMC stated in its Application that "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." (Application, p.2)

On June 13, 2003, the Staff of the Commission filed a Motion to Dismiss the Application for lack of subject matter jurisdiction. On June 20, 2003, the Commission issued an *Order Granting Intervention, Setting Time for Responses, and Directing Filing* in this case in which it granted the applications to intervene filed by Alma Communications Company d/b/a Alma Telephone Company ("Alma"), Spectra Communications Group, LLC d/b/a CenturyTel,

CenturyTel of Missouri, LLC and Citizens Telephone Company of Higginsville, Missouri ("Citizens"). The parties were directed to file briefs regarding other state commission's decisions related to jurisdiction regarding wireless carriers' requests for ETC designation as well as to brief the relevance, if any, of a recent federal court decision.¹ The parties filed briefs with the Commission no later than June 26, 2003.

On September 16, 2003, the Commission issued its *Order Denying Motion to Dismiss, Setting Prehearing Conference, and Directing Filing of a Proposed Procedural Schedule*. On October 14, 2003, the Commission issued an *Order Adopting Procedural Schedule* in which the matter was set for hearing on January 28-29, 2004. An evidentiary hearing was held on those dates, and the subsequent briefing schedule called for simultaneous Initial Briefs to be filed by the parties on March 15, 2004, with simultaneous Reply Briefs and Proposed Findings of Fact and Conclusions of Law on April 5, 2004.

This is the first case before the Missouri Commission in which a wireless carrier has requested ETC status in order to receive federal universal service fund ("USF") support. The Telecommunications Act of 1996 ("the Act") grants state commissions, such as the Missouri Commission, the primary responsibility for designating common carriers as ETCs. Because the Application of MMC involves areas of Missouri served by rural incumbent local exchange companies ("ILECs"), ETC designation must be supported by a finding that ETC status is in the public interest. The Act states, "Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the

¹*Voices for Choices, et al. v. Illinois Bell Telephone Co., et al., No. 03 C 3290(N.D. Ill. June 9, 2003).*

designation is in the public interest."² The burden of proof to show that the designation is in the public interest is on the ETC applicant. (Tr. 296) On the Friday before the hearing in this case, the Federal Communications Commission ("FCC") issued a decision in which it addressed what it considered to be necessary elements for a public interest analysis where a commercial mobile radio services ("CMRS") provider sought to be designated as an ETC in a rural service area.³

A. The Commission has jurisdiction to consider this Application for eligible telecommunications carrier status by an wireless carrier.

In addition to the arguments previously presented to the Commission supporting Commission jurisdiction to consider this application for designation as an eligible telecommunications carrier,⁴ there have been subsequent decisions by both the Federal Communication Commission ("FCC") and the Federal-State Joint Board on Universal Service ("Joint Board") providing further support for state commission jurisdiction to make ETC determinations and public interest decisions.

The first decision was the FCC's Memorandum Opinion and Order in Virginia Cellular's petition for designation as an ETC.⁵ In that decision, where the FCC granted in part and denied in part the application of Virginia Cellular, the FCC set out guidelines to be followed in making the public interest determination to be followed by state commissions as well as the FCC.

²47 U.S.C. § 214(e)(2) (emphasis added).

³*In the Matter of Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45 (January 22, 2004) (hereafter *Virginia Cellular*).

⁴See, Brief of Intervenors dated June 26, 2003, and Reply Brief of Intervenors dated July 2, 2003.

⁵ *Virginia Cellular*, FCC 03-338.

Then on February 27, 2004, the Federal-State Joint Board on Universal Service issued its Recommended Decision ("RD") addressing, among other things, the ETC designation process.⁶ In the Recommended Decision of the Joint Board on Universal Service, the Joint Board first stated that "section 214(e)(2) of the Act gives state commissions the primary responsibility for designating ETCs" (RD p.2, para. 2) The Joint Board then specifically recommended that the FCC adopt permissive federal guidelines for states to consider in proceedings to designate ETCs under section 214 of the Act. The Joint Board stated that it believed that recommended guidelines would "assist states in determining whether or not the public interest would be served by a carrier's designation as an ETC." (RD, p. 1, para..2; p. 3, para..5) The Joint Board further stated:

Federal guidelines concerning minimum qualifications should encourage state commissions to conduct rigorous reviews of ETC applications, including fact-intensive analyses. Because an ETC must be prepared to serve all customers within a designated service area, and must be willing to be the sole ETC should other ETCs withdraw from the market, states may appropriately establish minimum qualifications focused on the carrier's ability to provide the supported services to all consumers in the designated area upon reasonable request. Guidelines encouraging a rigorous application process are appropriate because section 214(e)(2) requires that designation of an additional ETC serve the public interest. Consistent with Section 254(b)(3) of the Act, we believe that a rigorous application process ensures that consumers in all regions of the nation, including rural and low-income consumers, have access to telecommunications services that are reasonably comparable to services provided in urban areas.⁷

States may also impose their own eligibility requirements beyond those listed in section 254(b)(1). (RD, p. 7, para. 15 and cases listed throughout.) The Joint Board believes that

⁶*In the Matter of Federal-State Board on Universal Service*, Recommended Decision, CC Docket No. 96-45 (February 27, 2004).

⁷Recommended Decision, p.5, para. 11.

Congress intended state commissions to exercise a higher level of scrutiny when evaluating ETC applications for designations in rural carrier service areas. (RD, p.7, para. 17) Further, the Joint Board recommended that the FCC adopt a guideline indicating that state commissions may properly impose consumer protection requirements as part of the ETC process. (RD, p.14, para. 31) The Joint Board rejected arguments that subjecting competitive ETCs, particularly wireless competitive ETCs to consumer protection requirements is inconsistent with section 332 of the Act. (RD, p.14-15, para. 33) Specifically, the Joint Board stated:

We reject arguments that subjecting competitive ETCs, particularly wireless competitive ETCs, to consumer protection requirements is inconsistent with section 332 of the Act. While section 332(c)(3) of the Act generally preempts states from regulating the rates and entry of CMRS providers, it specifically allows states to regulate the other terms and conditions of commercial mobile services. Accordingly, while wireless competitive ETCs, for example, otherwise may not be subject to state consumer protection requirements, we believe that states may extend generally applicable requirements to all ETCs in order to preserve and advance universal service, consistent with sections 214 and 254 of the Act. In addition, seeking ETC designation is a choice. We therefore agree with commenters that preemption from state regulation afforded under section 332 of the Act should not be equated with conditions that apply only to carriers that choose to seek ETC designation and universal service support. (Citations omitted.)⁸

Thus, this Commission clearly has jurisdiction to not only consider this application for ETC designation, but also to impose consumer protection requirements as part of the ETC process. (RD., p. 14, para. 31) The Commission may also conduct a specific, fact-intensive inquiry in order to analyze the public interest when evaluating an ETC application for a rural area (RD, p.6, para. 12), and exercise a higher level of scrutiny when evaluating ETC applications for designations in rural carrier service areas. (RD, p. 7, para.17)

⁸Recommended Decision, p.14-15, para.33).

B. The Commission should not grant MMC's Application and designate MMC as an ETC eligible to receive federal universal service funds, because MMC has not shown that the granting of that designation to MMC will be in the public interest.

As was discussed at length at the hearing in this case, the FCC decision in *Virginia Cellular* provided guidance as to how state commissions should analyze the public interest standard when a wireless carrier seeks ETC designation for a rural study area. The FCC found that it acknowledged a more stringent public interest analysis for ETC designations in rural telephone company service areas, and stated that the "framework enunciated in this Order shall apply to all ETC designation for rural areas pending further action by the Commission."⁹ The FCC stated:

In considering whether designation of *Virginia Cellular* as an ETC will serve the public interest, we have considered whether the benefits of an additional ETC in the wire centers for which *Virginia Cellular* seeks designation outweigh any potential harms. We note that this balancing of benefits and costs is a fact-specific exercise. In determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, we weigh the benefits of increased competitive choice, the impact of the designation on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service, and the competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame.¹⁰

So, must the Commission in this case decide if the grant of ETC status to MMC outweighs the potential harm to Alma and Citizens.

1. Competition

The FCC stated in the *Virginia Cellular* Order that, "We conclude that the value of

⁹*Virginia Cellular*, FCC 03-338, p. 3, para. 4.

¹⁰*Virginia Cellular*, FCC 03-338, p. 13, para.28.

increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas."¹¹

But even without the FCC's statement, MMC would not be able to show any benefit to the public from increased competition if MMC was granted ETC status. MMC is already a competitor of Alma and Citizens and has been providing cellular service in those rural service areas since 1991. (Exh. 8, p. 20) Based on data available on the USAC web site, MMC lines in Citizens' study area are about 22 percent of the ILEC lines and nearly 76 percent of the ILEC lines in the Alma study area. (Exh. 8, p. 20) Additionally, MMC is only one of six (6) CMRS providers who provide service in the Alma and Citizens rural service areas. (Exh. 8, p. 21; Tr. 91) The granting of ETC status will not add any new providers of service in the affected areas or likely result in any new services or rate plans. Thus, increased competition cannot be considered a factor in the Commission's determination of the public interest standard in this case.

2. Impact of the designation on the universal service fund.

When Congress passed the Telecommunications Act of 1996, it focused on two major purposes: 1) increasing competition in telecommunications services, and 2) increasing Universal Service availability. The Act defined the Universal Service Principles in Section 254(b).

(b) UNIVERSAL SERVICE PRINCIPLES.—The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

(1) QUALITY AND RATES. —Quality services should be available at just, reasonable, and affordable rates.

¹¹*Virginia Cellular*, FCC 02-338, p. 3, para.4.

(2) ACCESS TO ADVANCED SERVICES.–Access to advanced telecommunications and information services should be provided in all regions of the Nation.

(3) ACCESS IN RURAL AND HIGH COST AREAS.–Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

(4) EQUITABLE AND NONDISCRIMINATORY CONTRIBUTIONS.–All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.

(5) SPECIFIC AND PREDICTABLE SUPPORT MECHANISMS.–There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.

(6) ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES FOR SCHOOLS, HEALTH CARE, AND LIBRARIES.–Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services as described in subsection (h).

(7) ADDITIONAL PRINCIPLES.–Such other principles as the Joint Board and

the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act.

The FCC later adopted the following additional principle pursuant to 254(b)(7):¹²

COMPETITIVE NEUTRALITY.—Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another and neither unfairly favor nor disfavor one technology over another.

The Commission must use these principles when evaluating the application of MMC for ETC status in the rural areas where MMC has requested such status. Under current FCC rules, MMC will receive federal USF support based on the identical amount per line that the ILEC receives. An incumbent rural carrier receives support based on its actual embedded costs of providing the service and making investments in its area. This support is based on annual cost filings prepared by the incumbent carrier to reflect its costs and submitted to the Universal Service Administration Corporation ("USAC"). A competitive ETC, on the other hand, merely reports the number of customers it is serving in its designated ETC area and then receives the same amount of support per line as the incumbent without verification of its cost or the underlying need for support being made by any regulatory or administrative entity. (Exh. 8, p. 25) There is certainly a question as to whether this approach meets the competitive neutrality principle set out above.

¹²Report and Order, CC Docket No. 96-45, FCC 97-157 (May 8, 1997) (para. 47).

Additionally, the Commission should consider the impact on the universal fund of the rapid growth in high-cost support being distributed to competitive ETCs.¹³ MMC intends to seek support for all of its customers regardless of the plan they subscribe to. (Tr. 48) The amount of support received by MMC will be based on current cost-based support received by Alma and Citizens, among others. (Exh. 8, p. 16) MMC will be eligible to receive approximately \$1.7 million in USF support. (Exh. 8, p.17; Tr. 49) The granting of ETC status to wireless carriers is causing a dramatic growth in the size of the federal USF. Between the fourth quarter of 2001 and the fourth quarter of 2002, the amount grew from approximately \$10.8 million annually to approximately \$250 million annually. (Exh. 8, p. 26) There clearly is concern that growth in the federal fund resulting from the large increase in wireless ETC designations ultimately may jeopardize the sustainability of the USF to all providers.

3. Unique advantages and disadvantages of MMC's service offering.

MMC stated at hearing and in response to data requests that it offered plans that ranged in price from \$19.95 per month to \$64.95 for residential customers. (Exh. 1, Attachment 1) Some of these plans offered unlimited local usage and in others the local usage is limited with a substantial increase in cost per minutes of use over the limit. The costs of none of these plans is regulated as to reasonableness by the Missouri Commission or any other regulatory body. (Exh. 8, p. 15; Tr. 43, 249, 271) MMC admitted that the cost of the plans it offers are similar to the cost of the plans offered by the other CMRS providers who offer service in the same area. (Tr.

¹³*Virginia Cellular*, p. 15, para. 31.

262-263) Thus, there is nothing "unique" about the services MMC offers.

On the other hand, Citizens local rate is \$8.40 for residential service while Alma's tariffed rate for residential service is \$6.50. When combined with the mandatory federal subscriber line charge of \$6.50, a Citizens customer would pay \$14.90 for local service and an Alma customer would pay \$13.00. (Exh. 8, p.14) The Commission, by state statute, has the authority to review and establish rates of these companies to assure that they are just, reasonable and affordable. (Exh. 8, p.14; § 392.200, RSMo 2000) As stated above, MMC's rates are not regulated by the Missouri Commission.

MMC made much of at least one, and maybe two, new plans it will offer if it is granted ETC status. The first plan is for customers who qualify for a Lifeline discount. This plan will be offered to qualifying customers for \$6.25 according to MMC witness Dawson. (Tr. 59, 67) It will be a toll-blocked service, and the service area will be limited to the cell cite serving the customer's primary residence. (Exh. 1, p. 3; Tr. 58, 80) As the hearing progressed, MMC witnesses began to talk about another \$10 plan that would include a seven-county calling scope. (Tr. 81, 92, 157, 244) This plan would also only be available to qualifying Lifeline customers. (Tr. 92, 157, 244)

Lifeline discounts are only available to customers who qualify for the plan through participating in one of several assistance programs.¹⁴ The percentage of customers who qualify for these plans is very low, so the majority of MMC's customer base would not qualify for these low-cost plans. Instead, they would continue to pay for plans that cost between \$19.95 and

¹⁴These assistance programs are: Medicaid, food stamps, supplemental security income, federal public housing assistance and Low-income Energy Assistance Program (LIHEAP).

\$64.95. The public will not benefit if USF funds are provided to MMC, while its rates remain significantly higher than those of the incumbent wireline carriers. MMC witness Dawson stated that there is no guarantee that prices will go down. (Tr. 72) If one reviews the history of Universal Service, a prime intent of providing USF funds is so rates for local service can be maintained at lower, affordable levels. MMC will not comply with this intent if it is granted ETC designation.

MMC witness Dawson stated at hearing that MMC has an extensive network in place, and that it could provide service throughout its licensed service area within one year. (Tr. 70, 75, 77) But MMC did not show that there is any unique need for providing these expanded services. In response to data requests from Alma and Citizens requesting MMC's specific plans for infrastructure and technology improvements if it was granted ETC designation, MMC only stated that it would "use any high cost Universal Service Fund support in accordance with Section 254(e) of the Communications Act...Accordingly, MMC's high cost support will be used only to provide, maintain and upgrade facilities and services for which the support is intended." (Exh. 13) In response to a second data request from Citizens requesting copies of all Business Plans of MMC referenced in the Direct Testimony of Michael K. Kurtis, MMC responded that "business plan" as used in the testimony only referred to "MMC's general plans for its system's original design and implementation and for its continuing expansion and improvement. . . . Another example of a general plan, within the meaning of the Kurtis Direct Testimony at page 2 was the process of transitioning MMC's exclusively analog cellular network to one that also offers digital capability." (Exh. 14) Yet in Mr. Kurtis' Amended Surrebuttal Testimony, he stated that MMC intends to use the USF funding in part to overbuild its entire network in order to move from time

division multiple access ("TDMA") technology to code division multiple access ("CDMA") technology. (Exh. 5, pp. 14-15)

Thus, MMC's stated reason for requesting the USF funds is to update its platform from TDMA to CDMA. This will enable the company to provide higher speed data services and update its wireless platform so MMC can provide picture phone service for its customers. (Tr. 65, 83) Alma and Citizens do not believe that this falls within the purposes of USF as set out above.

Virginia Cellular, on the other hand, provided specific construction plans to the FCC regarding the use of the high cost funds it sought. (Exh. 11, p. 4) Virginia Cellular identified underserved areas where there was a need for cell sites, and provided a spread sheet setting forth the names, locations, populations covered and estimated budget amounts. (Exh. 11, p. 5) MMC has provided no such specificity for the Commission. Mr. Kurtis admitted at hearing that there is nothing in the record of this proceeding to determine the financial feasibility of converting from TDMA to CDMA, or that would indicate whether MMC is able to do so with or without ETC funds. (Tr. 210, 222) Its plans are vague and seem to have been determined as the case proceeded in response to a perceived need for justification for use of the funds as requested by other parties to the proceeding. MMC has not shown any unique advantage to the public to be gained from the grant of ETC designation.

3. MMC's commitments regarding quality of telephone service.

MMC is not subject to the quality of service standards of Missouri regulated companies such as Alma and Citizens. (Exh. 8, p. 23; Tr. 271) One of the tests for the public interest analysis set out by the FCC in the Virginia Cellular case is the commitments made by the

applicant regarding quality of service. MMC has presented into evidence the CTIA Consumer Code for Wireless Service (Exh. 12) which it has indicated to the Commission that it will follow if granted ETC designation. (Tr. 248) In contrast to the Commission's quality service rules found in Chapters 32 and 33, the requirements of the CTIA Code are vague and generic and not subject to enforcement or oversight by any agency. Mr. Kurtis stated at hearing that there "may be a problem" with the Commission imposing conditions in regard to quality of service similar to quality of service requirements of landline carriers. (Tr. 271) However, the Joint Board Recommendation clearly states that state commissions may impose consumer protection requirements as part of the ETC designation process. (RD, p.14, para. 31) The Joint Board believes that CMRS carriers that request ETC designation are making a choice, and states may extend generally applicable requirements to all ETCs in order to preserve and advance universal service.¹⁵ (RD, p. 15, para. 33) Wireless carriers that do not have to meet these requirements will likely not conform to these requirements the Commission has found necessary for the provision of telecommunications service, and thus won't provide service that is likely to fulfill or advance the public interest. If the Commission chooses to grant ETC status to MMC, Alma and Citizens believe that the Commission should condition the grant of that designation on MMC being subject to the same quality of service rules as all other ILECs and CLECs in the state.

Additionally, the imposition of tariffs, service standards and other regulatory requirements on ILECs to meet service and billing standards, while allowing CMRS providers to

¹⁵Competitive Local Exchange Companies ("CLECs") are already subject to the same quality of service rules as incumbent local exchange companies as a condition of their certification to provide telecommunications service in Missouri. § 392.451.2(2), RSMo 2000.

avoid such requirements, lead to a USF system that is not competitively neutral as described by the USF principle adopted by the FCC.¹⁶ The Commission should consider this violation of the USF principle when considering the public interest standard. It cannot be considered competitively neutral to provide CMRS providers the benefits of USF when they are not required to meet the same service standards as the ILEC nor incur the same costs to meet these service standards. (Exh. 8, p. 24)

Consumer complaints for wireless service are directed to the FCC. (Tr. 251) MMC has consented to provide the Commission an annual list of customer complaints, but unlike the FCC, the Missouri Commission may have no authority to resolve any complaints or exercise any regulatory restraint over MMC. (Tr. 251) The FCC in *Virginia Cellular* imposed as conditions the commitments made by *Virginia Cellular* on the record.¹⁷ While it is not yet clear whether the Missouri Commission has the authority to condition its approval of MMC's Application on the commitments made by MMC at hearing, the Joint Board has recommended to the FCC that it find that state commissions have that authority. The Missouri Commission may revoke the ETC status, but at this time, that can only be done when the Commission finds that the company is not using the funds for the intended purposes. (Tr. 246-247) The Joint Board has stated in its Recommended Decision that where an ETC fails to comply with the requirements of section 214(e) or any additional requirements proposed by the state commission, the state commission may decline to grant an annual certification or may rescind a certification granted previously.

¹⁶Report and Order, CC Docket No. 96-45, FCC 97-147 (May 8, 1997) (para. 47).

¹⁷*Virginia Cellular*, FCC 03-338, p. 23, para. 46.

(RD, p. 20, para. 48, emphasis added.) The Missouri Commission should be able to refuse to grant, or be able to revoke, a designation for failure to follow the Missouri Commission's quality of service standards.

4. MMC's ability to satisfy its obligation to serve the designated area.

MMC has stated to the Commission that it is willing to accept the obligation to serve as a carrier of last resort in its designated areas. (Tr. 253-54) But the Commission must find that MMC is capable of providing service to all customers within its designated area who make a request for service. The Joint Board states that state commissions may choose to implement this requirement by requiring a formal build-out plan. (RD, p. 10, para. 24) While MMC has stated to the Commission that it is capable of serving all customers who request service within its licensed area, it has not presented any specific, written plan for insuring that it is capable of providing this service. (Tr. 222) Additionally, MMC has not made any commitment to provide service at just, reasonable and affordable rates if granted ETC status.

C. MMC has not met its burden of proof by showing that the grant of ETC designation is in the public interest.

MMC has the burden of proof to show that the grant of ETC status is in the public interest. MMC witness Kurtis states in his Direct Testimony that, "Designating MMC as an ETC will make it easier for customers in rural Missouri to choose telecommunications service based on pricing, service quality, customer service and service availability." (Exh. 4, p. 13) Yet, MMC has made no commitment to lower its rates if it is granted ETC status other than the one, or two, plans it will offer to Lifeline customers, an extremely small segment of its customer base. MMC

has stated that its rates are not regulated in any way. MMC has indicated that it will not be bound by the Commission's quality of service rules, and has only agreed to abide by the much more lenient guidelines of the CTIA Code. (Exh. 8, p. 23, Sched. RCS-2; Tr. 128) Customers in MMC's service area are already able to choose MMC's wireless service at the current prices and with the same quality of service. Wireless customers will not benefit from the grant of ETC status as to price or quality of service.

As to the upgrade of its facilities with the USF funds if ETC status is granted, MMC has only provided a "moving target" of what it will provide to benefit the public. First, MMC witness Kurtis stated in his Direct Testimony that "MMC will provide the nine services listed above using its existing network infrastructure" (Exh. 4, p.11) This suggested that it had no need to increase its facilities in order to provide the required services. Then, however, in the same testimony Mr. Kurtis stated "MMC is committed to extending its existing network into the remote and high-cost regions of its proposed ETC area. The high-cost support that MMC will receive once its Application is granted will allow it to fulfill this commitment." (Exh. 4, p.12) This seems to indicate that MMC will expand its facilities if ETC status is granted. However, in response to a data request from Citizens asking for "specific plans for infrastructure improvement," MMC's reply was a very general response saying they will comply with the law. (Exh. 13) Since MMC provided no specific plans, the reasonable inference was that it had no plans for infrastructure improvement. It is only in his Amended Surrebuttal Testimony that Mr. Kurtis states that USF funding will be used, in part, to overbuild and convert the TDMA network to CDMA technology. (Exh. 5, pp. 14-15) This overbuild will allow MMC to offer faster data service that will allow its customers to use "picture phones." Although some customers might

consider being able to use picture phones as a public benefit, Alma and Citizens do not believe that this benefit is sufficiently compelling under the Universal Service Principles to show that MMC should be granted ETC status.

Conclusion

MMC has not met its burden of proof to show that the granting of ETC status serves the public interest. The Commission should deny MMC's application for ETC designation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was mailed or hand-delivered this 15th day of March, 2004 to:

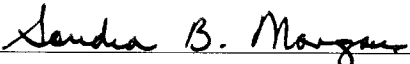
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