

ANDERECK, EVANS, MILNE, PEACE & JOHNSON, L.L.C.

ATTORNEYS AT LAW

EUGENE E. ANDERECK

TERRY M. EVANS

ERWIN L. MILNE

JACK PEACE

CRAIG S. JOHNSON

RODRIC A. WIDGER

GEORGE M. JOHNSON

BEVERLY J. FIGG

WILLIAM S. LEWIS

VICTOR S. SCOTT

COREY K. HERRON

700 EAST CAPITOL AVENUE

COL. DARWIN MARMADUKE HOUSE

P.O. BOX 1438

JEFFERSON CITY, MISSOURI 65102-1438

TELEPHONE 573-634-3422

FAX 573-634-7822

LANETTE R. GOOCH

SHAWN BATTAGLER

ROB TROWBRIDGE

JOSEPH M. PAGE

LISA C. CHASE

JUDITH E. KOEHLER

ANDREW J. SPORLEDER

KELLIE R. NILGES

NICOLE D. LINDSEY

OF COUNSEL

MARVIN J. SHARP

PATRICK A. BAUMHOER

GREGORY C. STOCKARD (1904-1993)

PHIL HAUCK (1924-1991)

April 14, 2003

FILED

APR 14 2003

Secretary of PSC
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

**Missouri Public
Service Commission**

Re: Case No. TO-2003-288

Dear Secretary:

Enclosed please find an original and five (5) copies of Alma Telephone Company's Response in Opposition to Staff's Motion to Dismiss.

Thank you for seeing this filed.

Sincerely,

Craig Johnson
Craig S. Johnson

CSJ:tr

Enc.

cc: Denise Day
Michael Dandino
Dan Joyce
Paul DeFord
William R. England, III
James Fisher/Larry Dority

Trenton Office
9th And Washington
Trenton, Missouri 64683
660-359-2244
Fax 660-359-2116

Springfield Office
1111 S. Glenstone
P.O. Box 4929
Springfield, Missouri 65808
417-864-6401
Fax 417-864-4967

Princeton Office
207 North Washington
Princeton, Missouri 64673
660-748-2244
Fax 660-748-4405

Smithville Office
119 E. Main Street
P.O. Box. 654
Smithville, Missouri 64089
816-532-3895
Fax 816-532-3899

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

APR 14 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 Carrier Eligible for)
Federal Universal Service Support pursuant)
to Section 254 of the Telecommunications)
Act of 1996.)

Case No. TO-2003-0288

RESPONSE IN OPPOSITION
TO STAFF'S MOTION TO DISMISS

COMES NOW Alma Telephone Company (Alma) and for its Response in Opposition to Staff's Motion to Dismiss, states to the Commission as follows:

1. The Missouri Public Service Commission ("Commission") has been given authority from Congress in the Telecommunications Act of 1996 to grant eligible telecommunications carrier ("ETC") status pursuant to 47 USC §214(e)(2) to eligible carriers. The FCC defines an "eligible telecommunications carrier" as a carrier designated as such by the state commission. see 47 CFR §§ 54.5 and 54.201.

2. The Commission has previously accepted the jurisdictional grants of Congress under the Telecommunications Act of 1996 and the FCC to act with respect to approving Interconnection Agreements, arbitrating Interconnection Agreements, undertaking 271 proceedings with respect to Southwestern Bell Telephone, as well as determining ETC status for competitive eligible telecommunications carriers in Missouri.

3. Exercising the authority that has been granted to the Missouri Public Service Commission will ensure that all designated ETCs in Missouri are subject to the same terms and conditions. If the Commission refuses to exercise its authority to determine the ETC status of wireless carriers, then the Commission is carving out a class of carriers who will not be subject

to the same terms and conditions that the Commission has imposed on competitive carriers who have been granted ETC status, creating a discrimination problem.

4. If the Staff's jurisdictional analysis is correct, that "the Commission derives *all* of its power and authority from *state* statute," then the Commission would have no authority to approve Interconnection Agreements (especially those with parties who are wireless carriers), to arbitrate Interconnection Agreements, to issue its Report and Order with respect to Southwestern Bell Telephone's 271 M2A approval for in-region, interLATA authority, or to grant ETC status to Greenhills or ExOp as these are all matters of authority exercised under the 1996 Act.

5. The fact is that the Commission *has* exercised its grants of authority under the 1996 Act. The Commission should remain consistent, rather than pick and choose when to exercise the authority granted to it by Congress and the FCC. The Commission is in the best position to make the public interest determinations required when determining the eligibility of a carrier for ETC status in a rural carriers service area. Furthermore, the Commission is in the best position to ensure that similarly situated ETCs are subject to the same terms and conditions, thereby avoiding any problems with discrimination.

ANDERECK, EVANS, MILNE,
PEACE & JOHNSON, L.L.C.

By 

Craig S. Johnson MO Bar No. 28179
Lisa Cole Chase MO Bar No. 51502
The Col. Darwin Marmaduke House
700 East Capitol
Post Office Box 1438
Jefferson City, Missouri 65102
Telephone: (573) 634-3422
Facsimile: (573) 634-7822

ATTORNEYS FOR ALMA

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 ~~24th~~ ^{14th} day of ~~March~~ ^{April}, 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

James Fischer
Larry Dority
Fischer & Dority, PC
101 W. Madison, Suite 400
Jefferson City, MO 65101

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, Swearengen & England P.C.
P.O. Box 456
Jefferson City, MO 65102



Craig S. Johnson