

**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.)	

**RESPONSE OF INTERVENORS
ALMA COMMUNICATIONS COMPANY d/b/a ALMA TELEPHONE COMPANY
AND CITIZENS TELEPHONE COMPANY OF HIGGINSVILLE, MISSOURI
TO PETITION FOR RECONSIDERATION AND APPLICATION FOR REHEARING
OF MID-MISSOURI CELLULAR**

Come now Alma Communications Company d/b/a Alma Telephone Company ("Alma") and Citizens Telephone Company of Higginsville, Missouri ("Citizens") (collectively "Intervenors") and for their Response to the Petition for Reconsideration and Application for Rehearing filed by Mid-Missouri Cellular ("MMC") state to the Missouri Public Service Commission ("Commission") as follows:

1. On August 5, 2004, the Commission issued its Report and Order in this case finding that it was not in the public interest to grant eligible telecommunications carrier ("ETC") status to MMC. On August 13, 2004, MMC filed its Petition for Reconsideration and Application for Rehearing ("Petition") with the Commission requesting that the Commission either reconsider its decision or re-open the record and accept additional written evidence.
2. Intervenors believe that MMC has mischaracterized both the Commission's decision and the record evidence in this case in the following respects:

A. **The Commission did not base its decision to deny ETC status to MMC on the ability or inability of the incumbent to provide adequate service.**

The Commission based its decision to deny ETC status to MMC on its determination that the designation of an additional ETC was not in the public interest using the guidelines set out in the *Virginia Cellular*¹ and *Highland Cellular*² orders issued by the Federal Communication Commission ("FCC") acknowledging the need for a more stringent public interest analysis. (Report and Order at p. 20) These decisions found that the benefit of increased competition, by itself, was not sufficient to meet the public interest standard.³ The Commission found that since MMC already has a significant presence in the service territories where it sought ETC status, the grant of ETC status would not significantly increase competition. (Report and Order, p. 22)

The second factor considered by the Commission in its analysis was the impact on the Universal Service Fund ("USF"). The Commission stated that it was concerned with the rapid growth of the fund and could not ignore the potential harm to the fund of designating a wireless carrier as an additional ETC in rural areas. The Commission then considered the unique advantages and disadvantages of MMC's proposed offering and found that MMC had failed to present specific plans for the upgrading of its network. The Commission also found that wireless

¹*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 at hearing) hereafter "Virginia Cellular."

²*In the Matter of Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, Memorandum Opinion and Order*, CC Docket No. 96-45, FCC 04-37 (rel. April 12, 2004) hereafter "Highland Cellular Order."

³*Virginia Cellular*, ¶ 4.

companies are not subject to the mandatory quality of service standards with which wireline companies must comply, and that the Commission would be limited in its ability to enforce additional requirements it might impose. (Report and Order, p. 25) The Commission's reference to evidence regarding the ILEC's ability to serve was in reference to MMC's evidence that it had provided service in one instance where the ILEC was unable to serve. The Commission merely stated that there was no evidence in this record that any other ILEC was not able to meet its carrier of last resort obligations. (Report and Order, p. 24) The Commission did not base its decision on the ILEC's ability or inability to serve. Thus MMC's statement that the Commission had incorrectly used that as a criterion for judging its entry into the marketplace is a mis-characterization of the Commission's decision and analysis. The final consideration of the Commission was MMC's ability to serve, and the Commission concluded that MMC has the ability to serve the areas where ETC designation was requested. As can be seen from this summary, the Commission carefully considered the standards set out by the FCC in making the public interest determination and did not rely on the ILECs' ability to serve in making its decision.

B. **The request by a wireless carrier such as MMC to be designated as an ETC cannot be compared to the request of a Missouri certificated competitive local exchange company such as Green Hills Telecommunications.**

MMC states in its Petition that its application was "wholly consistent with the evidentiary requirements" applied by the Commission when it granted ETC designation to Green Hills Telecommunications Services. (Petition at p. 3) The application of MMC as a wireless carrier not subject to regulation by the Missouri Commission cannot be compared to the application of Green Hills which holds a certificate of service authority as a competitive local exchange

company ("CLEC") from the Missouri Commission and is subject to continuing regulation by the Missouri Commission.

There are several differences that demonstrate that the Commission's consideration and grant of the ETC status to Green Hills was a very different proceeding. At the time of its application to the Commission, Green Hills was a CLEC subject to the jurisdiction of the Commission. In its application for a certificate of service authority, Green Hills agreed to abide by all Commission rules and regulations regarding quality of service, service and billing practices and E-911 requirements. Green Hills filed a tariff setting out the terms and conditions of its service as well as the rates it would charge for those services. That tariff was reviewed and approved by the Commission as are all CLEC tariffs. In its application for ETC designation, Green Hills only requested ETC designation in one Sprint Missouri, Inc., exchange where it provided facilities-based service. Green Hills is required to file an Annual Report with the Commission each year, and it is required to make the same annual ETC filings to the Commission as the incumbent local exchange companies with cost support showing that the funds it receives from the USF fund have been used for the required purposes. Green Hills was obligated by its certificate of service authority to provide facilities-based service throughout the entire exchange consistent with and subject to the Commission's full enforcement powers relating to quality of service and other customer protection requirements imposed by rule on all Missouri certificated telecommunications companies. Additionally, regulatory standards and procedures used to evaluate ETC applications have evolved over time as can be seen from the *Virginia Cellular* case relied on by MMC and the Federal-State Joint Board *Recommended*

Decision.⁴

- C. **MMC should not be allowed to supplement the record in this case either with the attachments to its Petition or through further written documentation as requested.**

The Commission correctly found that MMC had not met its burden to show that a grant of ETC status was in the public interest. MMC did not submit sufficient evidence either in its application or in its prepared testimony of its plans to upgrade its facilities or to offer additional service plans that would benefit the public. The Commission found that MMC's oral testimony at hearing that it would increase its network capabilities without offering any written, specific plans for the network upgrades was not sufficient for it to determine whether designating MMC as an ETC would offer any advantages over its current service offering.⁵ (Report and Order, p. 25) MMC's evidence regarding expanding and enhancing its service only materialized at hearing. MMC's prefiled testimony contained only general statements, and its supposed plans to overbuild its existing network in exchange for ETC status and supposed service commitments was proposed for the first time at hearing - and then only in the *in camera* portion of the hearing. (HC Tr. 171-173). MMC's proposed conversion to new technology was not part of MMC's case-in-chief and was not addressed in response to data requests. (Tr. 205-06, Exhibit 13) Neither was the conversion from TDMA to CDMA addressed in surrebuttal testimony, and no

⁴*In the Matter of Federal-State Board on Universal Service*, Recommended Decision, CC Docket No. 96-45 (February 27, 2004).

⁵MMC argues in its Petition that the FCC's *Virginia Cellular* case was released after the filing of prepared testimony in this case. However, Mr. Kurtis was allowed at hearing to discuss at length the standards set out in that case as well as MMC's ability to meet those standards. (Tr. 124-137, *In Camera* Tr., pp. 166-188)

business plans or cost analysis were ever provided to the parties or to the Commission on the record. (Tr. 203, 210-211, Exhibit 14)

In fact, not only did MMC not present sufficient evidence of its plans to upgrade its facilities, MMC witness Kurtis in his Amended Surrebuttal testimony admitted that the USF funds were needed to replace roaming revenues lost because competing wireless carriers had constructed their own networks. He went on to say that, "Providing this financial support [to replace revenues lost to competition] is precisely the function intended for the USF" ⁶ Replacing revenues lost to competition does not offer any specific advantages to the public.

As attachments to its Petition, MMC offers additional information some of which it has designated as "highly confidential." Intervenors suggest that the time for presenting testimony has passed, and MMC should not be allowed to supplement the record at this late date with additional evidence that it failed to present in prepared testimony or at the evidentiary hearing. Neither should MMC's request to re-open the record and allow it to present additional evidence be granted.

⁶Kurtis Amended Surrebuttal Testimony, Exhibit 5, p. 16). See also, Notice of *Ex Parte* Contact, correspondence from Mr. Kevin Dawson, General Manager, Mid-Missouri Cellular, to Commissioner Murray stating, "Competitive pressures in our industry and declining revenues has made it extremely difficult to maintain and deploy the latest technological advancements in the rural most portions of the market overlooked by larger regional and national wireless carriers."

For all the reasons stated above, Intervenor respectfully request that the Commission deny MMC's Petition.

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 23^d day of August, 2004 to:

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