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June 18, 2003

FILED⁴

JUN 18 2003

Missouri Public
Service Commission

Dale Hardy Roberts
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Re: Case No. TO-2003-531

Dear Mr. Roberts:

Enclosed for filing on behalf of Citizens Telephone Company of Higginsville, Missouri, please find an original and eight (8) copies of a Response to Staff's Motion to Dismiss.

Would you please see that this filing is brought to the attention of the appropriate Commission personnel.

I thank you in advance for your cooperation in this matter.

Sincerely yours,

BRYDON, SWEARENGEN & ENGLAND P.C.

By: *Sandra Morgan*

Sondra B. Morgan

SBM/lar
Enclosure

cc: Dan Joyce
Michael Dandino
Paul DeFord
Lisa Cole Chase
Jim Fischer/Larry Dority
Judge Dippell

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED⁴
JUN 18 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-2003-0531

RESPONSE TO STAFF'S MOTION TO DISMISS

Comes now Citizens Telephone Company ("Citizens") and for its Response to
Staff's Motion to Dismiss states to the Missouri Public Service Commission
("Commission") as follows:

1. In its Motion to Dismiss, Staff concludes that since the Commission does not
have jurisdiction over the services or facilities of Mid-Missouri Cellular ("Mid-Missouri"),
it does not have jurisdiction to consider Mid-Missouri's request for designation as an
eligible telecommunications carrier ("ETC"). Staff states that the Commission derives
all of its power and authority from state statutes, and the Telecommunications Act of
1996 ("the Act") cannot confer jurisdiction on the Commission. Citizens disagrees with
Staff that the statutory exemption from the definition of telecommunications service for
commercial mobile radio services ("CMRS") providers prevents the Commission from
determining whether Mid-Missouri Cellular should be designated as an additional ETC
in Citizens' rural service area.

2. Staff argues that the Commission derives all of its power and authority from
state statute, so the Act alone cannot confer jurisdiction. The Staff cites Missouri

appellate cases for the proposition that the Commission's jurisdiction is limited to those powers conferred by Missouri statutes. The Commission has not, however, hesitated to assert jurisdiction over other matters brought before it pursuant to provisions of the Act. For example, the Commission routinely considers applications for approval of interconnection agreements pursuant to § 252(e) of the Act.¹ The Commission also arbitrates interconnection issues when parties request pursuant to § 252(b) of the Act.² There is no specific Missouri statute authorizing the Commission to consider these cases, yet the Commission routinely does so. Certain incumbent local exchange carriers petitioned this Commission for suspension and modification of the duty to provide dialing parity pursuant to § 251(b)(3) of the Act in Case No. TO-97-220, and the Commission granted that petition.³ And, the Commission, in fact, entertained applications for ETC designation from LECs providing service in Missouri pursuant to 47 C.F.R. § 54.201(d) and § 254(e) of the Act.⁴ The Commission has also granted

¹"Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission." § 252(e)

²"[T]he carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues." § 252(b)(1) "The State commission shall resolve each issue set forth in the petition and the response" § 252(b)(4)(C)

³*In the Matter of the Request for Suspension and Modification of Federal Communications Commission Rules Regarding IntraLATA Dialing Parity*, MoPSC Case No. TO-97-220.

⁴*In the Matter of the Application of Mid-Missouri Group and the Small Telephone Company Group of Incumbent Local Exchange Companies for Designation as Telecommunications Carriers Eligible for Federal Universal Service Support Pursuant to Section 254 of the Telecommunications Act of 1996*, 7 Mo. P.S.C. 3d (December 4, 1997).

applications for ETC status from competitive local exchange companies.⁵ There is no separate state authority to allow the Commission to make these designations. In a recent "Order Finding Necessity for Rulemaking" the Commission cited Section 254(e) of the Act as authorizing it to institute a rulemaking in order to establish a certification process for carriers receiving federal high-cost funds.⁶ Staff also cited the Act as authority when it filed its Motion to Open Case and For a Finding of Necessity for Rulemaking in that proceeding. There are various other references to authority granted to state commissions in the Act, and state commissions have routinely asserted authority over these matters pursuant to the Act.⁷ The Commission has also considered and granted approval of interconnection agreements between local exchange companies and wireless carriers. In some instances, the wireless carrier has been the petitioning party. There is no separate Missouri statutory authority for these matters.

⁵The latest such designation was issued by the Commission on April 10, 2003, *In the Matter of the Application of ExOp of Missouri, Inc. d/b/a Unite for Designation as a Telecommunications Company Carrier Eligible for Federal Universal Service Support in the Platte City Exchange Pursuant to Section 254 of the Telecommunications Act of 1996*, Case No. CO-2003-0252.

⁶*In the Matter of a Proposed Rulemaking Regarding the Annual Federal Universal Service Fund Certification*, Case No. TX-2003-0381 (April 29, 2003).

⁷"The party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the State commission." § 251(f)(1)(B). A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines . . . may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c)" § 251(f)(2) State commission shall determine the just and reasonable rate for interconnection. § 252(d)(1) State commission reviews and approves statements of generally available terms. § 252(f)

Section 214(e)(2) of the Act states that, "A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier" Section 214(e)(6) also provides that where a state commission does not have authority, the carrier may request ETC designation from the Federal Communications Commission ("FCC"). The statute clearly allows the state commission to make the determination of its own jurisdiction in the first instance. Granted, the Missouri Commission has not regulated CMRS providers in the past because of the exemption from the definition of telecommunications service found in § 386.020(53)(c). The application for ETC designation currently before the Commission is entirely different, however. Mid-Missouri Cellular has requested designation by the state commission pursuant to the provisions of the Act. The Missouri Commission clearly has jurisdiction to make that designation under § 214(e). The current application does not involve regulation of rates or terms and conditions of telecommunications service provided by CMRS providers in Missouri. The exemption found in § 386.020(53)(c) does not apply to prevent the Commission from considering this application for ETC designation by a wireless carrier.

3. This case is one of first impression in Missouri. Because of the important public policy considerations, the Commission should assert jurisdiction. Section 214(e)(2) of the Act *mandates* a finding that designating Mid-Missouri as an ETC is in the public interest, because Mid-Missouri is applying for ETC status in an area served by a rural telephone company. ("Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State

commission shall find that the designation is in the public interest.")⁸ The Commission is best situated to make the public interest determination required by the Act. Citizens does not believe that the granting of ETC status to a second carrier is in the public interest, but, more importantly, Citizens believes that it should be able to present its reasons why the designation is not in the public interest to the Missouri Commission. Citizens is a Missouri local exchange company subject to the authority of the Missouri Commission. As a Missouri regulated company, Citizens prefers that the necessary public interest determination be made by a regulatory body that understands the challenges and problems faced by local exchange companies providing service within the state.

4. In its Motion, Staff states that other state commissions have dismissed applications for ETC designation citing lack of jurisdiction. However, other state commissions have asserted jurisdiction over wireless ETC application cases, even when those commissions do not generally regulate wireless carriers. The Alaska⁹ and

⁸47 U.S.C. § 214(e)(2); see also 47 CFR § 54.201(c) ("Upon request and consistent with the public interest, convenience and necessity, the state commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier for a service area designated by the state commission, so long as each additional requesting carrier meets the requirements of paragraph (d) of this section. *Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the state commission shall find that the designation is in the public interest.*") (Emphasis added.)

⁹*In the matter of the Request by Alaska Digitel, LLC for Designation as a Carrier Eligible to Receive Federal Universal Support under the Telecommunications Act of 1996*, U-02-39.

West Virginia¹⁰ commissions are presently examining the question of whether wireless carriers should be granted ETC status in areas served by rural companies. Other state commissions have already granted or denied applications for ETC status, and these commission decisions have been affirmed by supreme courts in those states.¹¹ There is no doubt that the Act does confer jurisdiction on state commissions to make this determination.

Wherefore, Citizens respectfully requests that the Commission consider its Response to Staff's Motion to Dismiss in determining whether it has jurisdiction to consider Mid-Missouri Cellular's application for designation as an ETC.

Respectfully submitted,

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¹⁰*Petition for Consent and Approval of Highland Cellular to be Designated as an Eligible Telecommunications Carrier in Areas Served by Citizens Telecommunications Company of West Virginia*, Case No. 02-1453-T-PC.

¹¹*In re Application No. C-1889 of GCC Licence Corp.*, 647 N.W.2d 45, 50 (Neb. 2002); *WWC Holding Co. v. Public Service Commission of Utah*, 44 P. 3d 714 (Utah 2002); and *Washington Independent Telephone Association v. Washington Utilities and Transportation Commission*, 2003 Wash. LEXIS 208 (Washington Supreme Court 2003).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was mailed or hand-delivered this 18th day of June, 2003 to:

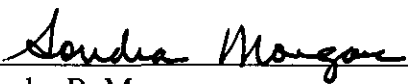
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