

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>3</sup>  
APR 30 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

**JOINT MOTION FOR RECONSIDERATION AND/OR REHEARING**

COME NOW Spectra Communications Group, LLC d/b/a CenturyTel and CenturyTel of Missouri, LLC (collectively referred to herein as "CenturyTel") and the Office of the Public Counsel and, pursuant to Section 386.500, RSMo 2000 and 4 CSR 240-2.160, file their Joint Motion for Reconsideration and/or Rehearing of the Missouri Public Service Commission's ("Commission") Notice of Dismissal and Closing of Case ("Notice") issued in this matter on April 22, 2003. In support of this Joint Motion for Reconsideration and/or Rehearing, CenturyTel and Public Counsel respectfully state as follows:

**SUMMARY**

This matter involves a case of first impression for this Commission, in which a commercial mobile radio services ("CMRS" or "wireless") carrier seeks Commission designation as an eligible telecommunications carrier ("ETC") for federal universal service support. The Commission's Notice, which "notifies the dismissal of this case and closes it,"<sup>1</sup> is unlawful, unjust and unreasonable, as the Commission erroneously construes the Applicant's pleading requesting that the Commission grant Staff's motion to dismiss on jurisdictional grounds, as Applicant's "voluntary dismissal" of its application pursuant to Commission Rule 4

<sup>1</sup> Notice of Dismissal and Closing of Case, at 1.

CSR 240-2.116. Rather than a mere procedural matter to be addressed by delegation, the parties had framed a substantive and critical jurisdictional issue that requires a majority vote of the Commissioners for appropriate resolution. Accordingly, the Commission should reconsider its decision and continue with its previously ordered prehearing conference and procedural schedule, in order that the intervenors and the Office of the Public Counsel can fully address their positions as to why the Commission should accept jurisdiction of this matter and ultimately address the proposed application for ETC status.

1. On February 13, 2003, Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular ("MMC") filed its application with the Commission for designation as an eligible telecommunications carrier with respect to federal universal service support. Applications to intervene were filed by Alma Communications Company d/b/a Alma Telephone Company ("Alma") on March 7, 2003, and by Spectra Communications Group, LLC, d/b/a CenturyTel, CenturyTel of Missouri, LLC, and Citizens Telephone Company of Higginsville, Missouri ("Citizens"), on March 10, 2003. The Commission granted these interventions on April 3, 2003. The Office of the Public Counsel filed a motion for an evidentiary hearing on March 12, 2003. The Staff of the Commission filed a motion to dismiss on March 19, 2003, based on the Commission's alleged lack of jurisdiction over CMRS carriers. On March 31, 2003, all of the intervenors filed responses opposing Staff's motion and, on the same day, MMC filed a response **"concurring with Staff's motion."**<sup>2</sup> Public Counsel filed a concurrence with the Response of CenturyTel on April 1, 2003.

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<sup>2</sup> Order Setting Prehearing Conference and Requiring Filing of Procedural Schedule, April 3, 2003, at 1.

2. In its responsive pleading, MMC states that:

MMC has considered Staff's motion and based upon the premise that the FCC would exercise jurisdiction if MMC were to make a proper application requesting designation of ETC status, and (*sic*) has determined that it will not oppose Staff's motion to dismiss. Wherefore, MMC respectfully requests that the Commission expeditiously grant Staff's motion to dismiss so that a proper application may be submitted to the FCC.<sup>3</sup>

3. On April 4, 2003, **after** receipt of the above-referenced pleadings, the Commission issued its Order Setting Prehearing Conference and Requiring Filing of Procedural Schedule, wherein the Commission stated that, "This matter is now at issue and a prehearing conference and procedural schedule are appropriate to ensure its prompt resolution." Thereafter, on April 8, 2003, Staff filed "Staff Response to Pleadings Opposing the Staff's Motion to Dismiss," and Citizens and Alma filed replies on April 14, 2003.

4. On April 22, 2003, prior to the prehearing conference scheduled in this matter, the Commission, by delegation, issued its Notice of Dismissal and Closing of Case, in which it erroneously construes MMC's responsive pleading to Staff's motion to dismiss, *supra*, as a voluntary dismissal pursuant to Commission Rule 4 CSR 240-2.116. As a result, the Commission announces that it "will take notice of the dismissal of this case and will close the same."<sup>4</sup>

5. The Commission's Notice is unlawful, unjust and unreasonable, constituting an erroneous construction of MMC's responsive pleading as a voluntary dismissal. CenturyTel and Public Counsel respectfully request that the Commission reconsider its decision to treat MMC's response as a voluntary dismissal. Rather than a mere procedural matter to be addressed by

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<sup>3</sup> MMC "Response to Motion to Dismiss," March 31, 2003, at 2.

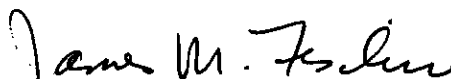
<sup>4</sup> Notice of Dismissal and Closing of Case, at 2.

delegation, the parties have framed a substantive, critical jurisdictional issue that requires a majority vote of the Commissioners for appropriate resolution.

6. CenturyTel and Public Counsel respectfully request that the Commission reconsider and rehear this case in order to address the jurisdictional issue, accept jurisdiction, and ultimately address the proposed application for ETC status. CenturyTel and Public Counsel direct the Commission's attention to the responsive pleadings of the intervenors and the Office of the Public Counsel setting forth the bases for the Commission to exercise jurisdiction in this matter. CenturyTel and Public Counsel concur in the recommendation made by Citizens in its "Reply to Staff Response to Pleading Opposing the Staff's Motion to Dismiss," which was to provide the parties with a chance to fully argue and brief the issue of jurisdiction. (para. 4.)

**WHEREFORE**, Spectra Communications Group, LLC d/b/a CenturyTel, CenturyTel of Missouri, LLC and the Office of the Public Counsel respectfully request that the Commission reconsider and/or rehear the Notice of Dismissal and Closing of Case and continue with its previously ordered prehearing conference and procedural schedule, in order that the intervenors and the Office of the Public Counsel can fully address their positions as to why the Commission should accept jurisdiction of this matter and ultimately address the proposed application for ETC status.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

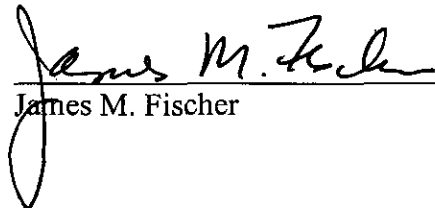
I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, transmitted by e-mail or mailed, First Class, postage prepaid, this 30th day of April, 2003, to:

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