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April 14, 2003

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

FILED³
APR 14 2003

Re: Case No. TO-2003-0288

**Missouri Public
Service Commission**

Dear Mr. Roberts:

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

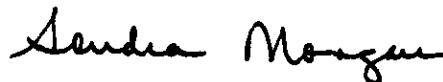
Would you please see that this filing is brought to the attention of the appropriate Commission personnel.

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

Sincerely yours,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:



Sondra B. Morgan

SBM/lar
Enclosure

cc: Michael Dandino
Marc Poston
Paul DeFord
Larry Dority
Craig Johnson/Lisa Chase

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

FILED³

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

**REPLY TO STAFF RESPONSE TO PLEADINGS
OPPOSING THE STAFF'S MOTION TO DISMISS**

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

1. Staff states in its Response that none of the motions opposing dismissal mentions the sole authority relied on by Staff in its Motion to Dismiss, § 386.020(53)(c). Citizens, in its Response to Staff's Motion to Dismiss, may not have specifically cited this statutory provision when arguing that the Commission could assert jurisdiction over the application for eligible telecommunications carrier ("ETC") status by Mid-Missouri Cellular, but it clearly set out the reasons why it believed that provisions of the federal Telecommunications Act of 1996 ("the Act") authorized the Commission to assert jurisdiction over the application despite the language of § 386.020(53)(c). Citizens disagrees with Staff that this statutory exemption 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. (Response, ¶ 4) The Staff cites Missouri appellate cases for the proposition that the Commission's jurisdiction is limited to those powers conferred by Missouri statutes.¹ However, the cases cited state that the Commission's jurisdiction is limited to those powers conferred upon it by statute, and do not address separate and additional sources of authority such as the Act.

3. Further, the Commission has not 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.² The Commission also arbitrates interconnection issues when parties request pursuant to § 252(b) of the Act.³ There is no specific Missouri statute authorizing the Commission to consider these cases, yet

¹*Inter-City Beverage Co. v. Kansas City Power & Light Co.*, 889 S.W.2d 875, 877 (Mo.App. 1994) ("The [PSC] is an agency of limited jurisdiction and has only such powers as are conferred upon it by statute."); *State ex rel. Kansas City Power & Light v. Buzard*, 168 S.W.2d 1044, 1046 (Mo. banc 1943) ("the Public Service Commission is a body of limited jurisdiction and has only such powers as are expressly conferred upon it by the statutes and powers reasonably incidental thereto."). The third case cited by Staff, *State ex rel. Atmos Energy Corporation v. Public Service Commission*, 2001 WL 1806001 (Mo. App. 2002), is currently being considered by the Missouri Supreme Court after that Court accepted transfer. The holdings of that case cannot therefore be cited as authority.

²"Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission." § 252(e)

³"[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)

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-97-220.⁴ 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.⁵ The Commission has also granted applications for ETC status from competitive local exchange companies.⁶ There is no separate state authority to allow the Commission to make these designations. 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

⁴*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.

⁵*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).

⁶The 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.

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)

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.

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.

4. Citizens does not agree that the Commission should necessarily issue a decision regarding jurisdiction prior to the prehearing conference scheduled for May 22, 2003. The Commission could take the Motion to Dismiss with the case and decide whether it has jurisdiction after the parties have had a chance to fully argue and brief

the issue.

Wherefore, Citizens respectfully requests that the Commission consider its Reply to Staff Response to Pleadings Opposing the 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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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was mailed or hand-delivered this 14th day of April, 2003 to:

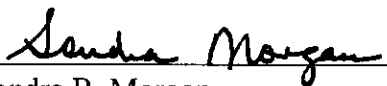
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