

**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 )	Case No. TO-2003-0531
Company Carrier Eligible for Federal Universal )	
Service Support Pursuant to Section 254 of the )	
Telecommunications Act of 1996. )	

**RESPONSE TO APPLICANT’S AUGUST 26, 2004 FILING**

COME NOW Intervenor Spectra Communications Group, LLC, d/b/a CenturyTel and CenturyTel of Missouri, LLC (collectively “CenturyTel”), pursuant to 4 CSR 240-2.080(15), and for their *Response To Applicant’s August 26, 2004 Filing*, respectfully state as follows:

1. On August 5, 2004 the Commission issued its *Report and Order* in this case.
2. On August 13, 2004 Applicant Missouri RSA No. 7 Limited Partnership, d/b/a Mid-Missouri Cellular (“MMC”) filed its *Petition For Reconsideration and Application For Rehearing*.<sup>1</sup>
3. On August 23, 2004, Intervenor Alma Communications Company d/b/a Alma Telephone Company and Citizens Telephone Company of Higginsville, Missouri (“Intervenor”) filed their *Response* to MMC’s *Petition*. For the record, CenturyTel wholeheartedly concurs with the arguments set forth in Intervenor’s August 23, 2004 *Response* and incorporates same herein by reference.
4. On August 26, 2004, MMC filed a cover letter, containing further argument in support of MMC’s *Petition* on rehearing, along with a copy of an order issued the day

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<sup>1</sup> Counsel for CenturyTel was not timely served with MMC’s *Petition* on rehearing and only received an electronic copy several days later after counsel requested same. Even then, CenturyTel counsel did not then receive, and has not yet received as of this date, a copy of the post-hearing, new “evidentiary” Exhibits attached to MMC’s *Petition* which MMC has deemed to be highly confidential.

before by the FCC's Wireline Competition Bureau *In the Matter of Federal-State Joint Board on Universal Service, NPCR, Inc. d/b/a Nextel Partners Petitions for Designation as an Eligible Telecommunications Carrier in the states of Alabama, Florida, Georgia, New York, Pennsylvania, Tennessee and the Commonwealth of Virginia, Memorandum Opinion and Order*, CC Docket No. 96-45, DA 04-2667 (rel. August 25, 2004) ("Nextel Order").

5. MMC's August 26, 2004 cover letter, containing substantive argument, is in direct violation of Commission rule 4 CSR 240-2.080 (9) and should have been submitted as a formal pleading, if submitted at all.

6. MMC's letter is yet another example of MMC continuing to ignore established Commission procedure throughout this proceeding, beginning with MMC's refusal to supplement its written testimony and exhibits in time for adequate review and cross-examination at hearing, and then again later when MMC attempted to offer new (but of course "highly confidential") record evidence as part of its *Petition* on rehearing.

7. MMC's actions throughout this case have denied the other parties adequate opportunity to review and question MMC's allegations and "evidence"<sup>2</sup> and also have muddied up the evidentiary record so badly that anyone attempting to sort through the record at a later date would find it difficult, if not impossible, to even locate exactly what MMC had promised in return for a Commission ruling in MMC's favor—assuming of course they could even access the "highly confidential" portions of the record. While the

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<sup>2</sup> Based on MMC's Application and MMC's direct testimony, CenturyTel did not employ an outside consultant as a witness. For the first time at hearing and then later in its *Petition* on rehearing, MMC offered what it deemed to be "highly confidential" evidence, which under the Commission's Protective Order, could not be reviewed or challenged by CenturyTel's in-house witness nor could CenturyTel's counsel even disclose such information to CenturyTel's witness. MMC has compounded this problem by attempting to submit new, "highly confidential" evidence as part of its *Petition* on rehearing.

regulatory ETC commitments made, for example, by Virginia Cellular and Highland Cellular (and for that matter, Nextel), could be easily identified and subsequently enforced based on the evidentiary records in their respective cases, such is not the case here. In fact, it is not at all clear that under current Missouri law the Commission would possess adequate discovery powers over MMC to subsequently even investigate MMC's compliance or non-compliance as to MMC's supposed regulatory commitments. MMC's refusal to follow the Commission's fundamental procedures throughout this case may be indicative of the problems which lie ahead should the Commission grant MMC's *Petition*.

8. In any event, as a matter of regulatory policy and fairness the Commission should hold MMC to the same procedural standards it demands of all parties coming before the Commission and should therefore, at minimum, deny MMC's *Petition* on procedural grounds.

9. The Commission is not lawfully required to reverse its original decision in this case based on the Nextel Order. First, unlike the *Virginia Cellular*<sup>3</sup> and *Highland Cellular*<sup>4</sup> cases, the Nextel Order was issued by the FCC's Wireline Competition Bureau, not the FCC Commissioners. As noted by MMC in its *Petition* with respect to the *Virginia Cellular* and *Highland Cellular* orders, the Nextel Order likewise has not become a final order of the FCC.<sup>5</sup> The question of appropriate public interest guidelines with respect to ETC status for wireless companies continues to be an evolving area of

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<sup>3</sup> 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).

<sup>4</sup> 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).

<sup>5</sup> MMC *Petition* on rehearing, page 7, footnote 9.

regulation and the FCC has yet to act on the Federal-State Joint Board recommendations. Even there, state commissions are not necessarily bound by particular FCC methodologies or analyses when it comes to matters reserved to the states by law.<sup>6</sup>

10. Second, as noted above, there is a vast difference in the type and amount of record evidence offered in the Nextel case and the evidentiary record put forth by MMC in the instant proceeding.<sup>7</sup> Not only is the evidentiary record in support of MMC's request comparatively lacking, MMC could have filed its *Petition* Exhibits earlier, but chose not to do so.

11. Third, even a cursory review indicates that as a general rule the FCC's Wireline Competition Bureau historically has always granted or recommended wireless ETC status despite a fairly recent trend by the FCC and the Federal-State Joint Board to apply a more rigorous public interest standard to such requests. The Missouri Commission is not necessarily bound by the type and scope of the "competition analysis" used by the Wireline Competition Bureau. Instead, the Commission can and should do what it did in its *Report and Order* and use a fact-specific, company-specific, market-specific, Missouri-specific approach based on the record evidence produced by the wireless company applicant in making its own ETC public interest determinations.

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<sup>6</sup> The Federal Act clearly gives state commissions an important role in making public interest ETC determinations. That the states and the FCC might not always agree is evidenced by, for example, the Iowa Utilities Board et al. proceedings, 525 U.S. 366, 119 S.Ct. 721, 142 L.Ed 2d 834 (1999).

<sup>7</sup> Unlike MMC, Nextel apparently filed written supplemental testimony and exhibits in its proceeding and other parties were given an adequate opportunity to review and comment on same. Nextel Order at pp. 4-5, paragraph 7. *See, also* footnote 31, page 6 "Nextel has provided detailed information on how it will use universal service support to construct cell sites throughout the states in which it is designated an ETC...[S]pecifically, Nextel provides the location by study area of new cell sites, timeframe for commencement and completion of build-out plans, populations served by new cell sites, and cost of build-out plans." Differences also exist with respect to subsequent enforcement of regulatory commitments. *See*, Nextel Order at pp. 12-13.

WHEREFORE, Intervenor Spectra Communications Group, LLC d/b/a CenturyTel and CenturyTel of Missouri, LLC respectfully request the Commission to reject the post-hearing evidence and arguments made by MMC and deny MMC's *Petition* on rehearing.

Respectfully submitted,

**/s/ Charles Brent Stewart**

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document was sent via electronic transmission to counsel for all parties of record in Case No. TO-2003-0531 this 7<sup>th</sup> day of September, 2004.

**/s/ Charles Brent Stewart**

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