

**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.)	

**PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW OF INTERVENORS
ALMA COMMUNICATIONS COMPANY d/b/a ALMA TELEPHONE COMPANY
AND CITIZENS TELEPHONE COMPANY OF HIGGINSVILLE, MISSOURI**

Alma Communications Company d/b/a Alma Telephone Company ("Alma") and Citizens Telephone Company of Higginsville, Missouri ("Citizens") offer the following Proposed Findings of Fact and Conclusions of Law to the Missouri Public Service Commission ("Commission").

Findings of Fact

1. Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular ("MMC") is a telecommunications carrier authorized by the Federal Communications Commission ("FCC") to provide commercial mobile radio services ("CMRS") in Missouri pursuant to two cellular radiotelephone licenses bearing Call Signs KNKN595 and KNKR207. (MMC Application, ¶ 1)

2. MMC is not certificated to provide telecommunications service by the Commission. (MMC Application, ¶ 1)

3. On June 2, 2003, MMC filed an Application for Designation as an Eligible Telecommunications Carrier Pursuant to § 254 of the Telecommunications Act of 1996 ("Application") requesting that the Commission designate MMC as a carrier eligible to receive

federal Universal Service Fund ("USF") funds. (Application)

4. In its Application, MMC requests ETC status throughout the entire rural LEC study areas of Alma and Citizens. (Application, ¶ 6)

5. Alma and Citizens are small incumbent local exchange companies ("ILECs") providing telecommunication services to members of the public located in the area certificated to them by the Commission. Alma and Citizens provide "basic local telecommunications services" in Missouri exchanges as defined by tariffs on file with and approved by the Commission. (Applications to Intervene of Alma and Citizens) Alma and Citizens are carriers of last resort and provide service throughout their respective service areas. All residents in the Alma and Citizens service areas have access to the public switched network. (Tr. 281)

6. Alma's local tariffed rate for residential service is \$6.50. When combined with the \$6.50 federal subscriber line charge ("SLC") is \$13.00 for basic service. (Schoonmaker, Exh. 10, p. 14)

7. Citizens' local tariffed rate for residential service is \$8.40. When combined with the \$6.50 SLC a Citizens customer pays \$14.90 for local service. (Schoonmaker, Exh. 10, p.14)

8. MMC's rate plans now range from \$19.95 to \$64.95 per month. MMC has not indicated that it will reduce rates if it does become eligible to receive USF funds. (Schoonmaker, Exh. 10, p.15)

9. Six (6) other CMRS carriers currently provide cellular phone service in the service areas of Alma and Citizens. (Schoonmaker, Exh. 10, p. 21) The other CMRS providers charge rates that are similar to those charged by MMC. (Tr. 262)

10. If the Commission grants ETC status to MMC, it will be eligible to receive

approximately \$1.7 million in USF monies. (Exh. 8, p. 17; Tr. 49) The support MMC receives for customers in the Alma and Citizens study areas is based on the amount of support per line Alma and Citizens currently receive in USF funds that is based on those companies actual costs. (Schoonmaker, Exh. 10, pp. 16-17).

11. MMC states that it needs the USF support to replace revenue lost by the elimination of roaming revenue paid to rural CMRS for roaming by other CMRS carriers. (Kurtis, Exh. 5, p. 16)

12. MMC provided no specific written plans to the Commission regarding the use of the USF funds if it is granted ETC status. (Tr. 222)

13. If granted ETC status, MMC will provide a Lifeline service plan to its customers for \$6.25. This plan offers unlimited calling in the area served by the subscriber's home cell site, but does not allow roaming into other cellular networks. (Exh. 5, p.7; Tr. 59, 157) MMC will also provide a second Lifeline plan that allows calling throughout MMC's designated service area for \$10.00. This plan will not allow roaming into other cellular networks. (Tr. 157; Exh. 5, p.7)

14. MMC has paid all terminating compensation due to appropriate ILECs. (Tr. 119-121)

Conclusions of Law

1. Alma and Citizens are each a "telecommunications company" and a "public utility" as those terms are defined by § 386.020, RSMo 2000, and are, therefore, subject to the jurisdiction, regulation and control of the Commission as provided by law. Alma and Citizens are also rural telephone companies and incumbent local exchange carriers as defined by the Federal Telecommunications Act of 1996 ("the Act"). The companies have also been designated by the

Commission as ETCs for purposes of receiving federal USF funds. (See, Applications to Intervene of Alma and Citizens)

2. The CMRS service provided by MMC is excluded from the definition of "telecommunications service" in § 386.020(53)(c). Since it does not provide telecommunications service as defined in Chapter 386, MMC is not subject to the jurisdiction of the Commission. § 386.020(53)(C), RSMo 2000.

3. Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support." 47 U.S.C. § 254(e).

4. Section 214(e)(2) of the Act grants state commissions, such as the Missouri Commission, the primary responsibility for designating common carriers as ETCs. 47 U.S.C. § 214(e)(2).

5. Section 214(e)(1) of the Act states that a common carrier designated as an ETC must offer the services supported by the federal USF mechanisms throughout the designated area. The ETC must offer such services either using its own facilities or a combination of its own facilities and resale of another carrier's services. The services that are supported by the federal USF support mechanisms are:

1. Voice grade access to the public switched network.
2. Local usage.
3. Dual Tone Multifrequency (DTMF) signaling or its functional equivalent.
4. Single-party service or its functional equivalent.
5. Access to emergency services, including 911 and enhanced 911.

6. Access or operator services.
7. Access to interexchange services.
8. Access to directory assistance.
9. Toll limitation for qualifying low-income customers.

47 C.F.R. § 54.101(a).

6. Because the Application of MMC involves areas of Missouri served by rural incumbent local exchange companies ("ILECs"), ETC designation must be supported by a finding that ETC status is in the public interest. The Act states, "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." 47 U.S.C. § 214(e)(2) (emphasis added).

7. The burden of proof to show that the designation is in the public interest is on the ETC applicant. *In the Matter of Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45 (January 22, 2004) ¶ 26 (hereafter *Virginia Cellular*).

8. The value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas. *Virginia Cellular*, FCC 03-338 ¶ 4.

9. In *Virginia Cellular*, the FCC set out guidelines for state commissions, such as this Commission, to use when determining whether MMC should be granted ETC status. The FCC stated that:

In determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, we weigh the benefits of increased competitive choice, the impact of the designation on the universal service fund, the unique advantages

and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service, and the competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame.

10. On February 27, 2004, the Federal-State Joint Board on Universal Service issued its Recommended Decision ("RD") addressing, among other things, the ETC designation process.¹ The Joint Board specifically recommended that the FCC adopt permissive federal guidelines for states to consider in proceedings to designate ETCs under section 214 of the Act. The Joint Board recommended the following additional minimum eligibility requirements.

1. Adequate financial resources.
2. Commitment and ability to provide the supported services.
3. Ability to remain functional in emergencies.
4. Ensure consumer protection.
5. Local usage.

11. The principles for the preservation and advancement of universal service are found in § 254(b) of the Act and the principle of competitive neutrality was adopted by the FCC in Docket No. 96-45, FCC 97-157 (May 8, 1997). These principles have been used by the Commission in evaluating the public interest benefits of granting ETC status to MMC.

12. The public interest must be analyzed in a manner that is consistent with the purposes and goals of the Act itself and relevant universal service principles. States making public interest determinations may properly consider the level of high-cost per-line support to be received by ETCs. *Recommended Decision*, p.18, ¶ 43.

¹In the Matter of Federal-State Board on Universal Service, Recommended Decision, CC Docket No. 96-45 (February 27, 2004).

12. The Commission has determined that the grant of ETC status to MMC is not in the public interest because MMC has not provided competent and substantial evidence to show that the public will benefit from the grant. MMC has not agreed to abide by the same quality of service standards as landline companies which raises the question of whether one technology is being favored over another in violation of the competitive neutrality principle found in § 254(b)(7). The Commission will have no jurisdiction over rates or service plans of MMC, and MMC has not agreed to provide plans with lower rates if it is allowed to become an ETC except for the Lifeline service required under the law. MMC has told the Commission that the funds will be used for an upgrade of its system, but it has no written construction or financial plans for these upgrades. It has not agreed to allow the Commission to audit the progress of the upgrades in any manner. The FCC granted ETC status to Virginia Cellular based on specific commitments from the company. MMC has not provided competent and substantial evidence that it is making the same commitments to the Commission in this case as Virginia Cellular made to the FCC.

Additionally, MMC has not shown that the customers in the rural service areas will see any increased benefits from the grant of ETC status to MMC. MMC's service will not be expanded as it already covers its entire licensed area and is able to offer service to any customer who requests it. MMC does not intend to reduce its rates or expand its service offerings if it is granted ETC designation. Although cellular service does offer mobility that the landline carriers cannot provide, that service is already available throughout MMC's service area to those customers who have a need for that service. MMC states that it intends to update its TDMA platform to a CDMA with the funds, but it also admits that the upgrade will have to be made whether or not it is granted ETC status. (Tr. 55, 64) This upgrade is necessary because of

federal law requiring 911 service to its customers. MMC has not met its burden of proof to show that the grant of ETC status is in the public interest.

Respectfully submitted,

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CERTIFICATE OF SERVICE

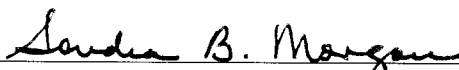
I hereby certify that a true and correct copy of the above and foregoing document was mailed or hand-delivered this 5th day of April, 2004 to:

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