

Service Date: May 25, 2005

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER OF CABLE &	)	UTILITY DIVISION
COMMUNICATIONS CORPORATION, dba	)	
MID-RIVERS CELLULAR, Petition for	)	DOCKET NO. D2003.8.105
Designation as an Eligible	)	
Telecommunications Carrier	)	ORDER NO. 6518b

**ORDER ON RECONSIDERATION**

A. Introduction

Cable & Communications Corporation, d/b/a Mid-Rivers Cellular (MRC), applicant in the above-entitled matter, petitioned the Montana Public Service Commission (Commission or MPSC) on August 5, 2003 for designation throughout its licensed service area as an eligible telecommunications carrier (ETC). MRC's August 6, 2004 Petition asserts that its licensed service area includes certain of Mid-Rivers Telephone Cooperative's (MRTC's) exchanges and certain of Range Telephone Cooperative's (RTC's) exchanges. The Montana Telecommunications Association (MTA) and the Montana Consumer Counsel (MCC) have moved for reconsideration of MPSC's April 7, 2005, order (*PSC Order No. 6518a*) granting MRC status as an ETC, with conditions.

B. MTA's Motion for Reconsideration

The PSC determines MTA has submitted no arguments on reconsideration that have not already been fully considered by the PSC.

C. MCC's Motion for Reconsideration

Except for the following four points, the PSC determines MCC has submitted no arguments on reconsideration that have not already been fully considered by the PSC.

## 1. MCC's Argument – Fill-In Licenses

### a. Argument

The MCC cites to a finding in the MPSC's Final Order that states "MRC can obviously acquire additional fill-in licenses or it would not have sought to amend its initial application to include the entire study areas for each of MRTC and RTC." In response to this finding, MCC holds that there is not a shred of evidence in the record to support this conclusion.

### b. MPSC Determination

As background, the MPSC's Final Order (*e.g.*, p. 33) provides several reasons for designating MRC as an ETC within the two cooperative's study areas. One condition is similar to why the MPSC designated Western Wireless an ETC in Qwest's non-rural areas. Just as Western Wireless was not required to meet 98% population coverage upon designation, MRC should have no such obligation. There is no reason to impose an obligation on MRC to serve, upon designation, most or all of either MRTC's and RTC's study areas. MRC will have to acquire additional, fill-in or otherwise, licenses to expand service outside the existing CGSAs (12 circled areas on maps submitted in this proceeding) for which it has received fill-in licenses. MRC can obviously acquire additional fill-in licenses or it would not have sought to amend its initial application to include the entire study areas for each of MRTC and RTC.

The MPSC agrees that there was no information on the additional fill-in licenses that MRC may be able, and that it may need to acquire, to expand its coverage beyond that demonstrated in this docket. Such a requirement however misses the point.

The MPSC allowed MRC time to demonstrate its build-out plans over the next five years (pp. 34, 35, Final Order). MRC must file within 60 days of issuance of Final Order No. 6518a its plans to serve areas in each of MRTC's and RTC's study areas (a/k/a service areas) and with periodic updates. MRC is expected to demonstrate where in each of the two study areas it intends to expand its wireless service. In addition, if for FCC

licensing reasons MRC is prohibited from expansion in certain areas of each of the two study areas, MRC asserts to be able to resell the services of other carriers.

Thus, the means by which MRC achieves expanded coverage is unknown, at this time. Nor is it the MPSC's position to dictate the means by which MRC expands its coverage. The same imperfect information existed in the MPSC's Western Wireless ETC docket (D2003.1.14). The plans that it files, however, must be exacting in their detail of how, when and where MRC intends to expand its coverage.

## 2. MCC's Argument -- Resale

### a. Argument

The MCC's motion holds that there is no evidence to support the MPSC's conclusion that in order to provide study-area wide service MRC could do so, in part, by reselling the services of other wireless providers. The MCC adds that there is no federal requirement that cellular providers permit other companies to resell their services and no evidence that MRC has any commercial agreements with other providers to resell cellular service. In addition, the Commission has no jurisdiction to order a cellular provider to do anything.

### b. MPSC Determination

As for background, the MPSC's Final Order finds that MRC will not be the only provider of wireless service throughout each co-op's study area (p. 33). The Final Order also mentions that MRC will not be the only provider as previously existing licenses are held by other carriers that have apparently fulfilled their due diligence obligations to retain their licenses. In turn, the MPSC concludes that in order to provide study-area wide service MRC may do so by means of its own resources and licenses and by means of reselling the services of other wireless providers.

The MPSC responds as follows to MCC's motion. First, both the Telecommunications Act of 1996 and the FCC's rules require resale of telecommunications services (see Section §251(b)(1) of the 1996 Act and §51.603 CFR). This requirement is imposed on all local exchange carriers (LECs) regardless of whether

they are incumbents or competitive LECs, although the FCC's requirement for just wireless was lifted in 2002.

The MCC is correct that the MPSC cannot require a carrier to use resale as a means of providing service. It cannot impose such a requirement whether that resold product is wireless or wireline service. Nor has the MPSC required MRC or any other carrier to use resold service. Such a requirement is not likely lawful. MRC has, however, apparently considered the resale of service.<sup>1</sup> It is in the first instance a carrier's choice of how to provide service, as evident in the MPSC's expectation that MRC will, in this docket, detail its build-out plans in filings made with the Commission. That there is no evidence of an agreement, commercial or otherwise, is not clearly relevant. If MRC seeks to resell other carriers' services, then MRC will have to do so by means of agreements with those carriers.<sup>2</sup> There is nothing unusual about the MPSC allowing such contracting as a means of providing supported services. In fact, resale is an accepted means by which any carry may, in part, provide services as an ETC and in turn receive federal universal service funds (see §54.201.(d)(1) CFR). Although the obligation to resell wireless has lapsed, there is no prohibition on the resale of wireless if two carriers agree to resale. No carrier need necessarily use resale of either wireline or wireless service as a means of providing service to, in turn, satisfy the requirements to be designated an ETC.

### 3. MCC's Argument – Public Witness Testimony

#### a. Argument

The MCC held in its motion that there is no record support for the finding that public witnesses testified that they "...highly value study-area wide cellular service and supported MRC's petition so that they may receive such service." The MCC further adds that not a single witness referred to "study-area wide" service. (emphasis added)

#### b. PSC Determination

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<sup>1</sup> See response to PSC -020(b) distinguishing wireline resale.

<sup>2</sup> MRC has no apparent arrangement to share towers, infrastructure etc., with other wireless carriers. (PSC -019(b))

As background, the MPSC based its decision to designate MRC an ETC in part on the comments that public witnesses provided. The Final Order did find that those witnesses highly value study-area wide cellular service and that they supported MRC's petition so that they may receive such service (see p. 33).

Contrary to the MCC's motion that there is no record that even a single witness referred to "study-area wide" service, there was support of just such a designation for MRC. The Powder River County Board of County Commissioners in its October 25, 2004 letter to the MPSC in this docket requests that Mid-Rivers Cellular be designated as a CETC within the Mid-Rivers "service areas"; and, based upon the FCC's rules, in the case of a rural company such as MRTC or RTC, "service area means such company's study area" (see ¶54.207(a),(b) CFR, emphasis added ). In addition, the letter of October 12, 2004 from Mr. Alan Stempel on behalf of the Local Emergency Planning Committee (McCone County), also supported the MRC petition to be designated an ETC throughout its service area. Other public witnesses testified at the hearing in support of MRC's designation (see TR 98-112). Ms Janet Kelly (Custer County Commission) noted the public benefits of "expanded cellular service." The Resolution submitted by Chairman Robert Kluth on behalf of the McCone County Board of Commissioners supports MRC's petition to be designated an ETC throughout its "service area." These public witnesses have apprised the MPSC of certain public benefits of MRC's designation as an ETC. Not one public witness opposed MRC's designation as an ETC.

#### 4. MCC's Argument – Qwest Exchanges and MRC's Designation

##### a. Argument

The MCC's motion recites part of the MPSC's Final Order and then states that the finding is perplexing:

*The MPSC expects that of the six additional areas in which MRTC is designated an ETC and for which it may receive federal USFs that MRC will not use its designation in this docket to expand its service coverage into those Qwest exchanges, with one possible exception. (Final Order, p. 33, italics added)*

b. PSC Determination

As background, the MPSC did not intend to make this complex matter perplexing and it will attempt to clarify the reason for the above statement cited in the MCC's motion. First, however, the MPSC would add that the above cited finding of fact to be complete would include the following:

*If and when the FCC designates MRTC as an incumbent in the Terry exchange, the geographic study area for which the MPSC designates MRC in the case of MRTC is expected to expand to include Terry.(id)*

The MPSC's reason for including the above finding of fact in the Final Order stems from unique circumstances surrounding Qwest's service areas in eastern Montana. Qwest serves six exchanges in which MRTC is also designated an ETC, one of which is Terry. It was the MPSC's intent with this finding to put MRC on notice that it is not to use its designation in this docket to somehow receive federal universal service funds (FUSFs) for customers residing in any of these six communities that are not part of MRTC's service area (study area).<sup>3</sup> On a prospective basis however there is the likelihood that the FCC will, pursuant to MRTC's petition under ¶251(h) of the 1996 Act, become an incumbent carrier in the Terry exchange. If and when that happens, MRTC's provision of service in the Terry exchange may be folded into MRTC's service (study) area. In turn, if MRC offered service in Terry to MRTC's wireline customers, MRC could receive FUSFs that MRTC receives for those customers that subscribe to MRC's services. MRC would need a FCC license to serve Terry if it were providing facility based wireless service.

**Conclusion**

The Commission has jurisdiction over applications for designation as an eligible telecommunications carrier in Montana. *47 U.S.C. § 214(e)(2); § 69-8-840, MCA.*

Consideration of the public interest applies in all applications for designation as an eligible telecommunications carrier. *47 U.S.C. § 214(e)(2), ("[u]pon request and consistent with the public interest, convenience, and necessity" a state commission may*

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<sup>3</sup> In response to MTA -010, MRC intends to use billing addresses to verify the physical location of customers.

*designate additional eligible telecommunications carriers*). The Commission has considered the public interest in this proceeding.

The Commission has adopted rules governing the designation of eligible telecommunications carriers and the maintenance of status as an eligible telecommunications carrier. *See PSC Docket No. L-04.07.5-RUL*. The rules, as adopted, will apply to all eligible telecommunications carriers in Montana, including Mid-Rivers Cellular. The rules may modify or replace one or more of the terms and conditions in this order.

All pending motions, objections, and arguments not specifically acted upon in this Order on Motions for Reconsideration are denied, to the extent denial is consistent with this Order.

#### ORDER

Montana Telecommunications Association's and the Montana Consumer Counsel's motions for reconsideration are denied and the MPSC affirms its Final Order with the clarifications above.

Done and dated this 17th day May, 2005, by a vote of 3-2.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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GREG JERGESON, Chairman

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BRAD MOLNAR, Vice Chairman  
Voting in Dissent.

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DOUG MOOD, Commissioner

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ROBERT H. RANEY, Commissioner

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THOMAS J. SCHNEIDER, Commissioner  
Voting in Dissent

ATTEST:

Connie Jones  
Commission Secretary

(SEAL)