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COMMISSION

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November 19, 2003

HAND DELIVERED

Ms. Kate Whitney  
Utility Division Administrator  
Montana Public Service Commission  
1701 Prospect Avenue  
P.O. Box 202601  
Helena, MT 59620-2601

Re: Cable & Communications Corporation, d/b/a Mid-Rivers  
Cellular, Petition for Designation as an Eligible  
Telecommunications Carrier  
Docket No. D2003.8.105

Dear Ms. Whitney:

Enclosed for filing is an original and ten copies of  
"Montana Telecommunications Association's Motion to Compel  
Responses to Data Requests. This document was filed on  
November 19, 2003, by e-mail.

Respectfully submitted,

MICHAEL J. RIELEY



for MICHAEL J. RIELEY, P.C.

MJR/gv

Encs.

cc: Mr. Geoffrey A. Feiss

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

PUBLIC SERVICE  
COMMISSION

In The Matter of Cable & ) UTILITY DIVISION  
Communications Corporation, d/b/a )  
Mid-Rivers Cellular, Petition for ) DOCKET NO. D2003.8.105  
Designation as an Eligible )  
Telecommunications Carrier )  
\_\_\_\_\_ )

MONTANA TELECOMMUNICATIONS ASSOCIATION'S  
MOTION TO COMPEL RESPONSES  
TO DATA REQUESTS

Comes now the Montana Telecommunications Association ("MTA") and requests an order from this Commission overruling the objection of Cable & Communications Corporation, d/b/a Mid-Rivers Cellular (MRC) to data requests MTA-011, MTA-030, MTA-043, MTA-044, and MTA-045, as well as ordering a responsive answer to MTA-023 B. and MTA-025.

MTA-011 RE: USF Certification  
WITNESS: Unknown

Please describe in detail how MRCo-op's USF support compares proportionately to the cost of MRC's proposed universal service offering.

Objection. Under the current federal rules, MRC's costs are irrelevant to the calculation of USF support, and therefore, the request seeks information which is beyond the scope of the petition for designation as Eligible Telecommunications Carrier. In addition, considering the relevant issues involved in this proceeding, the request is not designed to lead to, discover or elicit relevant or admissible evidence.

The amount of MRCo-op's USF support is a matter of public record.

MRC cannot refuse to provide responses based upon its unilateral assertion as to relevancy, admissibility, as well as what is reasonably calculated to lead to the discovery of admissible evidence. See Rule M. R. Civ. P. 26(b)(1). This data request is based upon this Commission's need to make a "public interest" determination.

MTA-023 RE: Universal Service  
WITNESS: Unknown

- A. For what purpose(s) does MRC request/require USF support?

USF will be utilized for statutorily appropriate purposes, "for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 U.S.C. § 254(e).

- B. Will USF support provide reimbursement for existing facilities, or will it be used to deploy new service?

MTA-023 Par A.

MRC's response is "nonresponsive to the question." The response simply does not provide the information requested.

MTA-025 RE: Universal Service  
WITNESS: Unknown

If MRC already offers reasonably comparable services at reasonably comparable rates, why does it seek/ require USF support?

See MTA-023 and MTA-024.

These responses are:

[MTA-023 RE: Universal Service  
WITNESS: Unknown

- A. For what purpose(s) does MRC request/require USF support?

USF will be utilized for statutorily appropriate purposes, "for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 U.S.C. § 254(e).

- B. Will USF support provide reimbursement for existing facilities, or will it be used to deploy new service?

MTA-023 Par A.

- C. If USF is to be used for deployment of new service, provide detailed information concerning MRC's plan regarding use of USF support for that purpose.

Major portions of Eastern Montana have no mobile calling. It is MRC's intention to continue our efforts to expand the access to mobile calling services in Eastern Montana.]

[MTA-024 RE: Universal Service  
WITNESS: Unknown

Provide detailed information concerning the implementation plan for MRC's universal service offering in the event it is designated an ETC.

MRC will continue to provide existing universal service offerings and may be able to expand service coverages and implement mandated services.]

MRC's data response is circular by which it avoids answering the data request.

MTA-030 RE: ETC Designation  
WITNESS: Unknown

Please describe in detail, any and all needs that justify the expense/contribution level for multiple ETCs (as opposed to multiple competitive carriers) in rural Montana.

Objection. Expense/contribution levels are established on a national, not state level, and therefore the request seeks information which is beyond the scope of the petition for designation as Eligible Telecommunications Carrier. In addition, considering the relevant issues involved in this proceeding, the request is not designed to lead to, discovery or elicit relevant or admissible evidence.

In objecting to this data request, MRC ignores the parenthetical. This data request is based upon this Commission's need to make a "public interest" determination, e.g. can MRC justify the relationship between universal support received and expenses used.

MTA-043 RE: Competitive Neutrality  
WITNESS: Unknown

Please describe in detail how it is "competitively neutral" for MRC to be provided USF support based on MRCo-op's level of USF support.

Objection. Under current rules, demonstration of "competitive neutrality" is irrelevant to the determination of the level of USF support available to MRC. The rules regarding the level of USF support available to wireless carriers are established pursuant to federal policy decisions. Therefore the request seeks information which is beyond the scope of the petition for designation as Eligible Telecommunications Carrier. In addition, considering the relevant issues involved in this proceeding, the request is not designed to lead to, discover or elicit relevant or admissible evidence.

Once again, MRC cannot refuse to provide responses based upon its unilateral assertion as to relevancy and admissibility, as well as what is reasonably calculated to lead to the discovery of admissible evidence. See Rule M. R. Civ. P. 26(b)(1). This data request is based upon this Commission's need to make a "public interest" determination.

MTA-044 RE: Competitive Neutrality  
WITNESS: Unknown

Please describe in detail how it is "competitively neutral" for wireless ETCs not to face the same regulatory compliance obligations as wireline ETCs.

Objection. Given that federal law precludes the adoption of the same regulatory treatment for wireless carriers, including wireless ETCs, as may be applied to wireline carriers on a state level, the policy question has been answered and is not the subject of debate in this forum. Therefore, the request seeks information which is beyond the scope of the petition for designation as Eligible Telecommunications Carrier. In addition, considering the relevant issues involved in this proceeding, the request is not designed to lead to, discover or elicit relevant or admissible evidence. (MRC notes also that wireline ETC's are subject to varying degrees of regulatory oversight in Montana.)

47 U.S.C. § 332(c)(3)(A) precludes a state from regulating only rates and entry regarding mobile service. As a result, this objection is not sustainable.

MTA-045 RE: Competitive Neutrality  
WITNESS: Unknown

Please describe in detail how "competitive neutrality" is achieved (given the different regulatory requirements imposed on wireline compared to wireless carriers) when a wireless provider receives ETC support

based on the costs, quality of service standards, and regulatory requirements imposed on a wireline carrier.

See MTA-043.

This response is:

[MTA-043 RE: Competitive Neutrality  
WITNESS: Unknown

Please describe in detail how it is "competitively neutral" for MRC to be provided USF support based on MRCo-op's level of USF support.

Objection. Under current rules, demonstration of "competitive neutrality" is irrelevant to the determination of the level of USF support available to MRC. The rules regarding the level of USF support available to wireless carriers are established pursuant to federal policy decisions. Therefore the request seeks information which is beyond the scope of the petition for designation as Eligible Telecommunications Carrier. In addition, considering the relevant issues involved in this proceeding, the request is not designed to lead to, discover or elicit relevant or admissible evidence.]

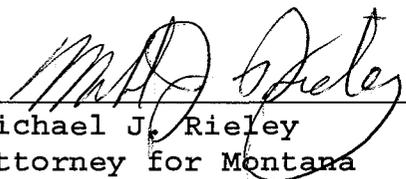
One more time, MRC cannot refuse to provide responses based upon its unilateral assertion as to relevancy and admissibility, as well as what is reasonably calculated to lead to the discovery of admissible evidence. See Rule M. R. Civ. P. 26(b)(1). This data request is based upon this Commission's need to make a "public interest" determination.

WHEREFORE, MTA requests an order be issued from this Commission overruling MRC's objections and compelling MRC to provide truthful and responsive answers to MTA's data requests.

Respectfully submitted this 19<sup>th</sup> day of November, 2003.

MICHAEL J. RIELEY, P.C.

By

  
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CERTIFICATE OF SERVICE

I do hereby certify that I served a copy of the foregoing Montana Telecommunications Association's Motion to Compel Responses to Data Requests on the parties in the above entitled action on the 19<sup>th</sup> day of November, 2003, by mailing or e-mailing copies addressed as follows:

Ms. Kate Whitney  
Montana Public Service Commission  
1701 Prospect Avenue  
P.O. Box 202601  
Helena, MT 59620-2601

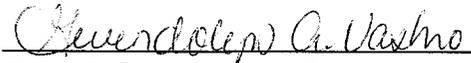
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