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December 2, 2003

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

Re: Docket D2003.8.105
Cable & Communications Corporation dba Mid-Rivers Cellular petition for ETC
designation

Dear Ms. Whitney:

Enclosed please find an original and ten copies of "Montana Independent
Telecommunications Systems' Motion to Compel Responses to Data Requests" in the above-
referenced docket.

If there are questions, you may call me 443-1940. Thank you.

Sincerely,

Michael C. Strand
CEO and General Counsel

cc: Parties of Record

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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 AND)	UTILITY DIVISION
COMMUNICATIONS CORPORATION, dba)	
MID-RIVERS CELLULAR, Petition for)	DOCKET NO. D2003.8.105
Designation as an Eligible)	
Telecommunications Carrier)	

MONTANA INDEPENDENT TELECOMMUNICATIONS SYSTEMS'
MOTION TO COMPEL RESPONSES
TO DATA REQUESTS

I. INTRODUCTION

On November 17, 2003, Mid-Rivers Cellular ("MRC") provided responses to discovery by Montana Independent Telecommunications Systems ("MITS") and Montana Telecommunications Association ("MTA") in this matter. MRC objected to a large number of the data requests and refused to provide responsive answers to others. MITS respectfully moves that the Montana Public Service Commission ("PSC") compel MRC to provide adequate responses to these data requests, which include: MITS-001b and c; MITS-004b and c; MITS-5a and c; MITS-006; MITS-013; MITS-014a, b and c; MITS-020c; MITS-021b, c and e; MITS-029b; MITS-032c; MITS-035; MITS-037; MITS-042a; MITS-043; and MITS-044a.

II. ARGUMENT

Each data request to which MRC either objected or provided a non-responsive answer are addressed individually on the following pages.

MITS-001b & MITS-001c

Regarding: Service Area

Witness: No testimony has been submitted by Applicant

Mid-Rivers Cellular in its petition for ETC designation indicated its licensed service area includes the Mid-Rivers exchanges of Ekalaka, Baker, Carlyle, Richey, Lambert, Circle, Jordan, Lindsay, Fallon, Bloomfield, Plevna, Rock Springs, Musselshell, Melstone and South Wolf Point, as well as the Range Telephone Cooperative Inc. exchanges of Broadus and Ashland. Mid-Rivers Cellular also provides service to a portion of the Northern Cheyenne Indian Reservation.

- b. Are there any dead spots in Mid-Rivers Cellular's coverage of the identified service area that would prevent it from providing the FCC's supported services in such spots?
- c. Please provide evidence of the quality of Mid-Rivers Cellular's signal strength in each of the licensed service areas identified.

MRC's responses to these data requests reference a sketchy black and white map that was provided to MITS as Attachment #2 to MRC's *Responses and Objections to Montana Telecommunications Association Data Requests*.

Due to the poor quality of the map provided, MITS believes MRC's answer to this data request is unresponsive. MITS requests that MRC provide a more useful response (such as a higher quality, color map).

MITS-004b and MITS-004c

Regarding: Exhibits 2

Witness: No testimony has been submitted by Applicant

- b. Please indicate any site changes, including additional sites, in the current business plans of Mid-Rivers Cellular.
- c. Please indicate any site changes, including additional sites, in the current business plans of Mid-Rivers Cellular should it be successful in obtaining ETC designation.

MRC objected to these questions stating that the questions seek information beyond the scope of its petition. It added that responding to the questions would not lead to the discovery of relevant or admissible evidence and that the questions seeks proprietary information the disclosure of which is not relevant to the subject matter involved and may result in the competitive disadvantage of MRC if disclosed.

MITS believes that, pursuant to Montana statutes, a decision by the PSC to designate additional ETCs in rural service areas can only occur after a finding that the designation is in the public interest, convenience and necessity. The information requested in these data requests is directly

MIT S Motion to Compel Responses to Data Requests
Docket D2003.8.105

relevant to the ability and intentions of MRC to provide the required services in the service areas for which it seeks ETC designation. The information requested is relevant to developing a record on which the public interest determination required by MRC's petition can be based.

MIT S-005a

Regarding: Exhibits 2

Witness: No testimony has been submitted by Applicant

- a. For each site identified in Exhibit 2 and, if applicable, in your response to MIT S-004, indicate whether it is owned by Mid-Rivers Cellular or whether it is leased. If leased, indicate the lessor and lessee, the length of the lease (term) and the termination date.

MRC objected to this question stating that the question seeks information beyond the scope of its petition. It added that responding to the question would not lead to the discovery of relevant or admissible evidence and that the question seeks proprietary information the disclosure of which is not relevant to the subject matter involved and may result in the competitive disadvantage of MRC if disclosed.

MIT S believes that, pursuant to Montana statutes, a decision by the PSC to designate additional ETCs in rural service areas can only occur after a finding that the designation is in the public interest, convenience and necessity. The information requested in this data request is directly relevant to the ability and intentions of MRC to provide the required services in the service areas for which it seeks ETC designation, and therefore relevant to the public interest determination required by MRC's petition.

MIT S-005c

Regarding: Exhibits 2

Witness: No testimony has been submitted by Applicant

- c. Please indicate the costs for each tower identified in Exhibit 2 and, if applicable, in your response to MIT S-004.

MRC objected to this question stating that the question seeks information beyond the scope of its petition. It added that responding to the question would not lead to the discovery of relevant or admissible evidence and that the question seeks proprietary information the disclosure of which is not relevant to the subject matter involved and may result in the competitive disadvantage of MRC if disclosed.

MIT S believes that, pursuant to Montana statutes, a decision by the PSC to designate additional ETCs in rural service areas can only occur after a finding that the designation is in the public interest, convenience and necessity. MIT S believes certain of MRC's costs are directly relevant

MIT S Motion to Compel Responses to Data Requests
Docket D2003.8.105

to a public interest determination and are appropriate to include in this proceeding. For example, since MRC is proposing to utilize a different technology platform, cellular service, than that used by the incumbent ETC, MRC's cost structure may be such that it does not need universal service support at levels received by the current ETC, or it may not require any USF support at all to enable it to continue offering its services.

To the extent an additional ETC designation in the study areas for which MRC is requesting such designation exerts unnecessary upward pressure on the overall size of the fund, the public interest would not be served. Such a result would inappropriately increase the amount of money required to fund the universal service program resulting in undue increased rates for telecommunications consumers.

MIT S-006

Regarding: Exhibits 1 and 2

Witness: No testimony has been submitted by Applicant

For each of Mid-Rivers Cellular cellular sites, please indicate the capacity limits in terms of the number of lines or voice communications channels each is able to serve simultaneously, and power authorizations, as well as actual power output records.

MRC objected to this question stating that the question seeks information beyond the scope of its petition. It added that responding to the question would not lead to the discovery of relevant or admissible evidence and that the question seeks proprietary information the disclosure of which is not relevant to the subject matter involved and may result in the competitive disadvantage of MRC if disclosed.

MIT S believes that, pursuant to Montana statutes, a decision by the PSC to designate additional ETCs in rural service areas can only occur after a finding that the designation is in the public interest, convenience and necessity. The information requested in this data request is directly relevant to the ability and intentions of MRC to provide the required services in the service areas for which it seeks ETC designation, and therefore relevant to the public interest determination required by MRC's petition.

MIT S-008a through MIT S-008c

Regarding: Exhibits 1 and 2

Witness: No testimony has been submitted by Applicant

Please identify on a map showing Mid-Rivers Cellular service areas where Mid-Rivers Cellular services are analog and where they are digital. In those locations where the services are analog, with specificity please identify as follows:

- a. Those areas where Mid-Rivers Cellular's network capacity is less than 10 voice channels;

MITS Motion to Compel Responses to Data Requests
Docket D2003.8.105

- b. Those areas where Mid-Rivers Cellular's network capacity is 10 to 16 voice channels;
and
- c. Those areas where Mid-Rivers Cellular's network capacity is greater than 16 voice
channels.

MRC objected to these questions stating that the questions seek information beyond the scope of its petition. It added that responding to the questions would not lead to the discovery of relevant or admissible evidence and that the questions seek proprietary information the disclosure of which is not relevant to the subject matter involved and may result in the competitive disadvantage of MRC if disclosed.

MITS believes that, pursuant to Montana statutes, a decision by the PSC to designate additional ETCs in rural service areas can only occur after a finding that the designation is in the public interest, convenience and necessity. The information requested in these data requests is directly relevant to the ability and intentions of MRC to provide the required services in the service areas for which it seeks ETC designation, and therefore relevant to the public interest determination required by MRC's petition.

MITS-013

Regarding: Mid-Rivers Cellular operations

Witness: No testimony has been submitted by Applicant

Please describe any facilities including networks, as well as staff, operational support systems, billing and collection systems, and other administrative functions shared by Mid-Rivers Cellular and Mid-Rivers Telephone Cooperative, Inc.

MRC objected to this question stating that the question seeks information beyond the scope of its petition. It added that responding to the question would not lead to the discovery of relevant or admissible evidence and that the question seeks proprietary information the disclosure of which is not relevant to the subject matter involved and may result in the competitive disadvantage of MRC if disclosed.

MITS believes that, pursuant to Montana statutes, a decision by the PSC to designate additional ETCs in rural service areas can only occur after a finding that the designation is in the public interest, convenience and necessity. The information requested in this data request is directly relevant to the ability and intentions of MRC to provide the required services in the service areas for which it seeks ETC designation, and therefore relevant to the public interest determination required by MRC's petition.

MITS-014a through MITS-014c

Regarding: Mid-Rivers Cellular operations

Witness: No testimony has been submitted by Applicant

For each exchange listed on Mid-Rivers Cellular's petition, please identify:

- a. The names, location and qualifications of the technical personnel that will be called upon to repair or maintain Mid-Rivers Cellular's facilities used to provide "universal services".
- b. The names, location and qualifications of the technical personnel that will be called upon for ordering, provisioning and installation of Mid-Rivers Cellular's "universal service" offering.
- c. The names, location and qualifications of the customer service personnel that will be called upon to respond to consumer complaints and disputes.

MRC objected to these questions stating that they seek information beyond the scope of its petition. It added that responding to the questions would not lead to the discovery of relevant or admissible evidence and that the questions seek proprietary information the disclosure of which is not relevant to the subject matter involved and may result in the competitive disadvantage of MRC if disclosed. MRC also claims the questions seek information about private individuals or employees who haven't been designated by MRC as experts in this proceeding. MRC claims providing the requested information would violate those individual's constitutional rights to privacy.

MIT S believes that, pursuant to Montana statutes, a decision by the PSC to designate additional ETCs in rural service areas can only occur after a finding that the designation is in the public interest, convenience and necessity. The information requested in these data requests is directly relevant to the ability and intentions of MRC to provide the required services in the service areas for which it seeks ETC designation, and therefore relevant to the public interest determination required by MRC's petition. MIT S is willing to remove the requests for the names of MRC personnel, but believes information regarding the qualifications and locations of such personnel is clearly relevant to public interest considerations and requests such information be provided by MRC.

MIT S-020c

Regarding: Universal Service Supported Services

Witness: No testimony has been submitted by Applicant

- c. Please provide a visual diagram or graphic indicating, for each of the exchanges or partial exchanges in your ETC petition, the specific areas which Mid-Rivers Cellular has targeted for facility and network build-out and/or upgrades within the next five years if the PSC grants it ETC designation.

MRC objected to this question stating that the question seeks information beyond the scope of its petition. It added that responding to the question would not lead to the discovery of relevant or admissible evidence and that the question seeks proprietary

information the disclosure of which is not relevant to the subject matter involved and may result in the competitive disadvantage of MRC if disclosed.

MITS believes that, pursuant to Montana statutes, a decision by the PSC to designate additional ETCs in rural service areas can only occur after a finding that the designation is in the public interest, convenience and necessity. The information requested in this data request is directly relevant to the ability and intentions of MRC to provide the required services in the service areas for which it seeks ETC designation, and therefore relevant to the public interest determination required by MRC's petition.

MITS-021b, MITS-021c and MITS-021e

Regarding: Universal Service Supported Services

Witness: No testimony has been submitted by Applicant

b. Is it your opinion that Mid-Rivers Cellular meets the criteria for voice-grade access to the public switched network if calls received by subscribers are blocked, dropped, or default to their voice mail due to network congestion or other facility problems at a rate greater than that of Mid-Rivers' wireline network?

c. Please describe Mid-Rivers Cellular's internal standards regarding the criteria for voice-grade access to the public switched network if subscribers making calls hear "busy signals" and/or are unable to complete calls due to network congestion or other facility problems?

e. What level does Mid-Rivers Cellular consider "acceptable" for customers to have the ability to make or receive calls (blocked and dropped calls or calls defaulted to voice mail due to network congestion not being considered a call-completion)?

MRC objected to these questions stating that the questions seek information beyond the scope of its petition. It added that responding to the questions would not lead to the discovery of relevant or admissible evidence and that the questions seek proprietary information the disclosure of which is not relevant to the subject matter involved and may result in the competitive disadvantage of MRC if disclosed.

MITS believes that, pursuant to Montana statutes, a decision by the PSC to designate additional ETCs in rural service areas can only occur after a finding that the designation is in the public interest, convenience and necessity. The information requested in this data request is directly relevant to the ability and intentions of MRC to provide the required services in the service areas for which it seeks ETC designation, and therefore relevant to the public interest determination required by MRC's petition.

MITS-029a and MITS 029b

Regarding: Subscribers

Witness: No testimony has been submitted by Applicant

- a. How many customers in Montana currently subscribe to service from Mid-Rivers Cellular?
- b. Please provide for each of the exchanges listed on Mid-Rivers Cellular's ETC petition the number of current Mid-Rivers Cellular's service subscribers.

MRC objected to these questions stating that the questions seek information beyond the scope of its petition. It added that responding to the question would not lead to the discovery of relevant or admissible evidence and that the questions seek proprietary information the disclosure of which is not relevant to the subject matter involved and may result in the competitive disadvantage of MRC if disclosed.

To the extent an additional ETC designation in the study areas for which MRC is requesting such designation exerts unnecessary upward pressure on the overall size of the fund, the public interest would not be served. Such a result would inappropriately increase the amount of money required to fund the universal service program resulting in undue increased rates for telecommunications consumers. In part, these data requests are designed to try to estimate the impact MRC's ETC designation would have on the fund size.

MIT S-032c

Regarding: Service

Witness: No testimony has been submitted by Applicant

- c. Are Mid-Rivers Cellular customers required to enter into contracts with Mid-Rivers Cellular? If so, please provide a copy of each contract offered.

MRC's response was "Yes" to the question, however the company objected to the request for contracts.

MIT S does not want a copy of each executed contract with individual customers. MIT S requests copies of the contract forms it requires its cellular customers to sign.

MIT S-035

Regarding: Cost of Service

Witness: No testimony has been submitted by Applicant

Please provide Mid-Rivers Cellular's average total costs per subscriber for its proposed universal service offering.

MRC objected to this question stating that the question seeks information beyond the scope of its petition. It added that responding to the question would not lead to the

MIT'S Motion to Compel Responses to Data Requests
Docket D2003.8.105

discovery of relevant or admissible evidence and that the question seeks proprietary information the disclosure of which is not relevant to the subject matter involved and may result in the competitive disadvantage of MRC if disclosed.

MIT'S believes that, pursuant to Montana statutes, a decision by the PSC to designate additional ETCs in rural service areas can only occur after a finding that the designation is in the public interest, convenience and necessity. MIT'S believes certain of MRC's costs are directly relevant to a public interest determination and are appropriate to include in this proceeding. For example, since MRC is proposing to utilize a different technology platform, cellular service, than that used by the incumbent ETC, MRC's cost structure may be such that it does not need universal service support at levels received by the current ETC, or it may not require any USF support at all to enable it to continue offering its services.

To the extent an additional ETC designation in the study areas for which MRC is requesting such designation exerts unnecessary upward pressure on the overall size of the fund, the public interest would not be served. Such a result would inappropriately increase the amount of money required to fund the universal service program resulting in undue increased rates for telecommunications consumers.

MIT'S-037

Regarding: Universal Service Funding

Witness: No testimony has been submitted by Applicant

What is Mid-Rivers Cellular's total estimated five-year Universal Service funding revenue if granted ETC designation in Montana?

MRC objected to this question stating that the question seeks information beyond the scope of its petition. It added that responding to the question would not lead to the discovery of relevant or admissible evidence and that the question seeks proprietary information the disclosure of which is not relevant to the subject matter involved and may result in the competitive disadvantage of MRC if disclosed.

To the extent an additional ETC designation in the study areas for which MRC is requesting such designation exerts unnecessary upward pressure on the overall size of the fund, the public interest would not be served. Such a result would inappropriately increase the amount of money required to fund the universal service program resulting in undue increased rates for telecommunications consumers. In part, this data request is designed to try to estimate the impact MRC's ETC designation would have on the fund size.

MIT'S-042a

Regarding: Universal Service Funding

Witness: No testimony has been submitted by Applicant

MITTS Motion to Compel Responses to Data Requests
Docket D2003.8.105

- a. Based on the latest information available from USAC or NECA, please identify the amount of universal service funding Mid-Rivers Cellular projects it will receive for each of the exchanges listed on its petition for ETC designation.

MRC objected to this question stating that the question seeks information beyond the scope of its petition. It added that responding to the question would not lead to the discovery of relevant or admissible evidence and that the question seeks proprietary information the disclosure of which is not relevant to the subject matter involved and may result in the competitive disadvantage of MRC if disclosed.

To the extent an additional ETC designation in the study areas for which MRC is requesting such designation exerts unnecessary upward pressure on the overall size of the fund, the public interest would not be served. Such a result would inappropriately increase the amount of money required to fund the universal service program resulting in undue increased rates for telecommunications consumers. In part, these data requests are designed to try to estimate the impact MRC's ETC designation would have on the fund size.

MITTS-043

Regarding: ETC Designation – Financial Fitness
Witness: No testimony has been submitted by Applicant

Please provide income statements and balance sheets for Mid-Rivers Cellular for the last five years.

MRC objected to this question stating that the question seeks information beyond the scope of its petition. It added that responding to the question would not lead to the discovery of relevant or admissible evidence and that the question seeks proprietary information the disclosure of which is not relevant to the subject matter involved and may result in the competitive disadvantage of MRC if disclosed.

MITTS believes that, pursuant to Montana statutes, a decision by the PSC to designate additional ETCs in rural service areas can only occur after a finding that the designation is in the public interest, convenience and necessity. The information requested in this data request is directly relevant to the ability and intentions of MRC to provide the required services in the service areas for which it seeks ETC designation, and therefore relevant to the public interest determination required by MRC's petition.

MITTS-044a

Regarding: ETC Designation – Financial Fitness
Witness: No testimony has been submitted by Applicant

- a. Please list the number of employees in Montana for Mid-Rivers Cellular, including affiliates, subsidiaries, etc, their locations, job titles, and salary.

MRC objected to this question stating that the question seeks information beyond the scope of its petition. It added that responding to the question would not lead to the discovery of relevant or admissible evidence and that the question seeks proprietary information the disclosure of which is not relevant to the subject matter involved and may result in the competitive disadvantage of MRC if disclosed. MRC also claims the question seeks information about private individuals or employees who haven't been designated by MRC as experts in this proceeding. MRC claims providing the requested information would violate those individual's constitutional rights to privacy.

MIT'S believes that, pursuant to Montana statutes, a decision by the PSC to designate additional ETCs in rural service areas can only occur after a finding that the designation is in the public interest, convenience and necessity. The information requested in this data request is directly relevant to the ability and intentions of MRC to provide the required services in the service areas for which it seeks ETC designation, and therefore relevant to the public interest determination required by MRC's petition. MIT'S is not asking for names of MRC personnel in this data request.

I. CONCLUSION

The purpose of most of the data requests referenced in this document is to gather information that can be used to help make a determination of whether or not granting MRC's ETC petition is in the public interest. As stated by the PSC on Page 4 of its *Notice of Commission Action on Discovery*, dated September 9, 1999 in Docket No. D98.8.190, in the matter of Western Wireless' application for ETC designation:

Whether it arises from the § 214(e) public interest element or is a state-imposed additional eligibility requirement, [the] ability of an ETC applicant to provide the required services in terms of both quality and scope (i.e., throughout the intended service areas) and to further the related objectives of Telecommunications Act of 1996 will be critically important. Many of the data requests objected to by Western seek information which is relevant to service quality and ability to provide service throughout the intended service area, to which the costs and revenues involved are also related. One of the principal purposes of universal service support is that there be quality service at affordable rates and it is unlikely a state commission, in designating an additional ETC, could issue a credible order without some analysis of information bearing on these things.

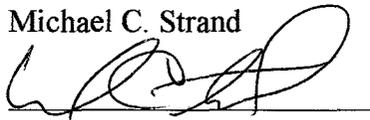
The PSC has already grappled with many of the same issues raised in these data requests (see the record in Docket D98.8.190). The PSC decided that data requests seeking information to test the applicant's promises and assurances that it can and will do all that is required as an ETC are relevant (see Page 10 of the *Notice of Commission Action* dated September 9, 1999 in Docket D98.8.190). Similarly, in that same docket the PSC decided that data requests related to costs, plant and facilities and operating policies of the applicant were also relevant and the objections to those data requests by the applicant were overruled.

To the extent that MRC is concerned about making public information that is confidential or otherwise potentially competitively disadvantage the company, MTS suggests it request a *Protective Order* allowing it to have certain proprietary information treated as "confidential."

MTS believes that ensuring additional ETC designations in rural study areas are not contrary to the public interest is as significant a policy consideration as it was back in 1999. MTS requests the PSC to compel MRC to answer the data requests listed in this Motion.

Respectfully submitted this 3rd day of December, 2003.

Michael C. Strand



Attorney for:

Montana Independent Telecommunications Systems
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P.O. Box 5237
Helena, MT 59604-5237