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January 21, 2004

FEDERAL EXPRESS

Steve Vick
Montana Public Service Commission
1701 Prospect Avenue
Helena, MT 59620-2601

RE: In the Matter of Cable and Communications Corporation's dba Mid-Rivers Cellular
Petition for ETC
Our File No. 12540,010

Dear Mr. Vick:

Enclosed herewith please find the original and ten (10) copies of Cable and Communications Corporation's, dba Mid-Rivers Cellular, Response Brief to Motions to Compel of Montana Telecommunications Association and Montana Independent Telecommunications Systems. I have also enclosed a disk with the brief and attachment thereto in Pdf format.

Thank you for your assistance. If you have any questions, please feel free to contact me.

Sincerely,

MOULTON, BELLINGHAM, LONGO
& MATHER, P.C.

By


THOMAS E. SMITH

TES/mt
Enclosure
cc. Gerry Anderson w/enc.

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DEPARTMENT OF PUBLIC SERVICE REGULATION 2004 JAN 22 AM 8:53
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

PUBLIC SERVICE COMMISSION

* * * * *

In the Matter of Cable &)	
Communications Corporation, dba.)	Utility Division
Mid-Rivers Cellular, Petition for)	
Designation as an Eligible)	Docket No. D2003.8.105
Telecommunications Carrier)	

**CABLE & COMMUNICATIONS CORPORATION'S, dba MID-RIVERS CELLULAR,
RESPONSE BRIEF TO MOTIONS TO COMPEL OF MONTANA
TELECOMMUNICATIONS ASSOCIATION AND MONTANA INDEPENDENT
TELECOMMUNICATIONS SYSTEMS**

INTRODUCTION

COMES NOW Cable & Communications Corporation, dba Mid-Rivers Cellular (hereinafter "Mid-Rivers Cellular"), and hereby submits this Response Brief to the Motions to Compel Responses to Data Requests filed herein by Montana Telecommunications Association (hereinafter "MTA") and Montana Independent Telecommunications Systems (hereinafter "MITS").

SUMMARY OF CASE AND PROCEDURE

On August 6, 2003, Mid-Rivers Cellular, a cellular or wireless service provider, filed a petition before the Montana Public Service Commission (hereinafter "Commission") to be designated as an Eligible Telecommunications Carrier (hereinafter "ETC") within Mid-Rivers Cellular's service areas covering local telephone exchange areas served by Mid-Rivers Telephone Cooperative, Inc. (i.e., Ekalaka, Baker, Carlyle, Richey, Lambert, Circle, Jordan, Lindsay, Fallon, Bloomfield, Plevna, Rock Springs, Musselshell, Melstone, South

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Wolf Point) and Range Telephone Cooperative, Inc. (i.e., Broadus, Ashland, including a portion of the Northern Cheyenne Indian Reservation), and any remaining portion of the rural company study areas through resale of landline facilities, to better serve the public interest. On September 11, 2003, the Commission issued the Notice of Application and Intervention Deadline. On October 8, 2003, the Commission granted intervention in the proceeding to MTA and MITS, as well as Montana Consumer Counsel, Range Telephone Company and Ronan Telephone Company. On October 24, 2003, the Commission issued the Procedural Order for this docket, which provided for discovery between the parties through the use of data requests. (See Order No. 6518, Docket No. D2003.8.105)

Discovery through data requests has been conducted in the proceeding. The Commission staff submitted Data Requests PSC-001 through PSC-013 (which actually constituted 39 requests if subparts of each request are included). Mid-Rivers Cellular responded to each of the Commission staff's data requests without objection. MTA served 52 data requests (which actually constituted 71 requests if subparts of each request are included) and MITS served 46 data requests (which actually constituted 132 requests if subparts of each request are included). Mid-Rivers Cellular provided responses, with objections, to both MTA and MITS.

MTA submitted to the Commission a Motion to Compel Responses to Data Requests dated November 19, 2003, which requested:

... an order from this Commission overruling the objection of Cable and Communications Corporation's, 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's Motion to Compel Responses to Data Requests, p.1.) MITS submitted to the Commission a Motion to Compel Responses to Data Requests dated December 3, 2003, which requested:

...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-21b, c and e; MITS-029b; MITS-032c; MITS-035; MITS-037; MITS-042a; MITS-043; and MITS-044a.

(MITS' Motion to Compel Responses to Data Requests, p.1.) The Commission's Procedural Order established the procedure and schedule to be followed in the above-referenced Docket for discovery disputes. The Order provided:

12. Any requesting party dissatisfied with the response to any written discovery or data request and desiring PSC action to compel, must within five days after receipt of such response, file before the PSC and serve all parties, the objection or motion and identify the relief requested. The PSC may dispose of such objection by prompt ruling or may schedule argument. The PSC will act to either sustain or overrule the objections. If an objection is sustained, a time period will be set within which a satisfactory response must be made.

Mid-Rivers Cellular considered the issue presented by the Motions to Compel to be extremely important as it related to the permissible scope and review of an additional ETC designation in an area served by rural telephone companies. Therefore, Mid-Rivers Cellular submitted a motion and argument to the Commission requesting that a briefing schedule be set to address the motions to compel and that oral argument be scheduled. Following a telephone conference between the counsels for Mid-Rivers Cellular, MTA and MITS and the Commission's staff, it was agreed and stipulated that Mid-Rivers Cellular's Response Brief to both MTA and MITS' Motions to Compel would be filed with the

Commission on or before January 22, 2004, and that MTA and MITS' Reply Briefs would be filed with the Commission on or before February 12, 2004. It was further agreed that the Procedural Order (Order No. 6518, Docket No. D2003.8.105) was suspended and oral argument would be scheduled by the Commission's staff after all briefs were submitted.

ARGUMENT

Mid-Rivers Cellular believes the Commission's decision regarding whether to sustain or overrule the objections and responses to MTA and MITS' data requests will significantly impact not only this ETC designation proceeding, but also any and all future additional ETC designation proceedings for an area served by a rural telephone company. The issue presented by the Motions to Compel, and any ruling upon the adequacy of Mid-Rivers Cellular's objections and responses, is the permissible scope of the entire ETC petition and approval process by the Commission. Pursuant to Montana law, the Commission is authorized to designate telecommunication carriers as eligible for federal universal service support in accordance with 47 U.S.C. § 214(e)(1) and 47 U.S.C. § 254. (See Section 69-3-840, MCA.) Section 69-3-840(2), MCA, provides:

(2) Upon the petition of a telecommunications carrier or upon its own motion, the **commission shall designate a telecommunications carrier that meets the requirements of 47 U.S.C. § 214(e)(1) as an eligible telecommunications carrier** for a service area designated by the commission....

(Emphasis added.) Section 69-3-840(3), MCA, continues by stating:

(3) **Upon receiving a petition from a telecommunications carrier and consistent with the public interest, convenience, necessity, the commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than**

one telecommunications carrier for a service area, so long as each additional requesting telecommunications carrier meets the requirements of 47 U.S.C. § 214(e)(1)....

(Emphasis added.) Therefore, pursuant to Montana law there is a two-prong test for ETC designation in an area served by rural telephone companies. The first test is whether the telecommunications carrier meets the statutorily mandated services. (See 47 C.F.R. §54.101.) The second test is whether an additional ETC designation is consistent with public interest, convenience or necessity.

In accord with the applicable state and federal law, Mid-Rivers Cellular contends that the only proper discovery or data requests that it, or any other petitioner for ETC status in an area served by rural telephone companies, must respond to are inquiries involving: (1) the provision of statutorily mandated services; and (2) whether an additional ETC is consistent with the public interest, convenience or necessity. The data requests that are the subject of the Motions to Compel are not within the proper or permissible scope as defined by the statutes. As such, Mid-Rivers Cellular believes MTA and MITS' requests are clearly objectionable pursuant to Rule 26(b)(1), M.R.Civ.P., as requests for information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Mid-Rivers Cellular is not, and should not be, required to respond to data requests which are in no way related to the provision of mandated services or the public interest, convenience or necessity. MTA and MITS' assertion in the Motions to Compel that the subject data requests are related to public interest, convenience or necessity is a mere fiction.

I. MID-RIVERS CELLULAR PETITION IS PROPER AND THE OBJECTIONS SHOULD BE SUSTAINED AS THE OBJECTIONS ARE IN COMPLIANCE WITH EXISTING LAW

The only evidence relevant to this proceeding is whether Mid-Rivers Cellular satisfies the existing criteria required to obtain ETC designation, including a finding that such a petition is in the public interest.

A. 47 U.S.C. § 214(e) establishes the criteria to be satisfied for ETC designation.

In order to determine whether Mid-Rivers Cellular's Petition should be granted, it is necessary to determine if Mid-Rivers Cellular satisfies existing legal criteria. The existing legal criteria establishes the boundaries for the permissible scope of review, and thereby the propriety of discovery and admissibility of evidence. As noted above, 47 U.S.C. § 214(e)(2) of the Communications Act of 1934, as amended, sets forth the criteria to be utilized for ETC designation. 47 U.S.C. § 214(e)(1) provides:

(1) Eligible telecommunications carriers. A common carrier designated as an eligible telecommunications carrier under paragraph ... (2) ... shall be eligible to receive universal service support in accordance with section 254 [47 USCS §254] and shall, throughout the service area for which the designation is received -

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) [47 USCS §254(c)], either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and
(B) advertise the availability of such services and the charges therefore using media of general distribution.
(Emphasis added.)

Thus, in order for Mid-Rivers Cellular to be successful, it must be demonstrated that Mid-Rivers Cellular is a common carrier that will advertise and offer the supported services either through its own facilities or a combination of its own facilities and resale throughout its designated service area. Finally, since the service area is served by rural telecommunications carriers, it must be demonstrated that designating Mid-Rivers Cellular as an ETC is in the public interest.

1. Mid-Rivers Cellular is a common carrier.

Pursuant to 47 U.S.C. § 153(10), a “common carrier” is a person engaged as a common carrier on a for-hire basis in interstate communications by wire or radio. Additionally, §20.9(1)7 of the Federal Communications Commission’s (“FCC”) Rules provides that cellular service is a common carrier service. (47 C.F.R. §20.9(a)(7).) Mid-Rivers Cellular is a common carrier consistent with these federal provisions. As noted Mid-Rivers Cellular’s Petition, Mid-Rivers Cellular is authorized by FCC licenses to provide cellular service in the following Montana rural areas: Ekalaka, Baker, Carlyle, Richey, Lambert, Circle, Jordan, Lindsay, Fallon, Bloomfield, Plevna, Rock Springs, Musselshell, Melstone, South Wolf Point, Broadus, Ashland, including a portion of the Northern Cheyenne Indian Reservation. (Petition, pages 1 and 2; Mid-Rivers Cellular’s Response to PSC-001; Mid-Rivers Cellular’s Response to MTA-001; and Mid-Rivers Cellular’s Response to MITS-020.) Furthermore, if designated as an ETC, Mid-Rivers Cellular will provide service to the remaining portion of rural telephone company study areas through resale of landline facilities, to better serve the public interest. (Mid-Rivers Cellular’s Responses to MTA-003 and MTA-004; and Mid-Rivers Cellular’s Response to MITS 003.)

Thus, Mid-Rivers Cellular is a common carrier consistent with the federal provisions set out above for purposes of obtaining ETC designation.

2. **Mid-Rivers Cellular will advertise and offer the supported services throughout its designated service areas.**

Under 47 C.F.R. §54.101(a), the FCC has identified nine services and functionalities as the core services to be offered by an ETC and supported by federal universal service support mechanism (“supported services”). As stated in the Petition and Mid-Rivers Cellular’s multiple responses, without objection, to data requests from the Commission’s staff, MTA and MITS, Mid-Rivers Cellular currently offers and is able to provide within its designated service areas the nine supported services. (Petition, pages 2 and 3.)

The first supported service is voice-grade access to the public switched telephone network, which means the ability to make and receive telephone calls. (See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, First Report and Order, 12 FCC Rcd 8776, at 8810-8811 (1997) (“Universal Service First Report and Order.”) Mid-Rivers Cellular provides such voice-grade access and all of its customers are, through Mid-Rivers Cellular’s interconnection arrangements, able to make and receive telephone calls on the public switched telephone network. (Petition, page 2; and Mid-Rivers Cellular’s Responses to MTA-014 and MTA-042B.)

Beyond providing access to the public switched network, an ETC secondly must include local usage as part of its universal service offering. Although the FCC has not quantified a minimum amount of local usage that must be required in a universal service offering, the FCC has initiated a proceeding to review this issue. (See

Federal and State Joint Board on Universal Service Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252 (1998) (“October 1998 NPRM”).) In the October 1998 NPRM, the FCC sought comments from interested parties with respect to how much, if any, local usage should be required to be provided to customers as part of a universal service offering. (See October 1998 NPRM, pages 21277-21281.) While the FCC deferred a determination on the required amount of local usage (See Universal Service First Report and Order, page 8813), any minimum local usage requirement established by the FCC through its October 1998 NPRM will be applicable to all designated ETCs, and not just wireless service providers. Once designated an ETC, Mid-Rivers Cellular will comply with all minimum local usage requirements adopted by the FCC and will meet such requirements by including local usage plans as part of its universal service offering. (Petition, page 3; Mid-Rivers Cellular’s Response to MITS-042b.)

The third supported service is dual-tone, multi-frequency (“DTMF”) signaling or its functional equivalent, which is a method of signaling that facilitates the transportation of call set-up and call detail information. Mid-Rivers Cellular provides this service as well. (Petition, page 3.)

The fourth supported service, which is single-party service or its functional equivalent, requires that only one party be served by a subscriber loop or access line in contrast to a multi-party line. (See Universal Service First Report and Order, page 8810.) The FCC has concluded that a wireless provider offers the equivalent of single-party service when it offers a dedicated message path for the length of a user’s particular transmission. (See Universal Service First Report and Order, page 8810.) Mid-Rivers Cellular has stated that this service is provided presently. (Petition, page 3.)

The fifth supported service is that designated ETCs must provide access to emergency services, which access includes the ability to reach a public emergency service provider by dialing 911. Enhanced 911 emergency services are only required if a public emergency service provider makes arrangements with the local provider for the delivery of such information. Mid-Rivers Cellular has stated that it currently provides all of its customers with access to emergency service by dialing 911 in satisfaction of the basic 911 requirement. (Petition, page 3; Mid-Rivers Cellular's Responses to PSC-003; Mid-Rivers Cellular's Response to MTA-020; and Mid-Rivers Cellular's Responses to MITS-022.) Mid-Rivers Cellular does not presently provide subscribers with enhanced 911 services because it has not received any requests from public emergency providers to do so. (Mid-Rivers Cellular's Responses to PSC-003; Mid-Rivers Cellular's Response to MTA-020; and Mid-Rivers Cellular's Responses to MITS-021.)

The sixth supported service is access to operator services, which access is defined as any automatic or live assistance provided to a consumer to arrange for the billing or completion, or both, of a telephone call. (See Universal Service First Report and Order, pages 8817-8818.) Mid-Rivers Cellular has stated and provided data request responses that it provides all of its customers with access to operator services either itself or through arrangements with other entities. (Petition, page 3; Mid-Rivers Cellular's Response to PSC-005a; Mid-Rivers Cellular's Responses to MITS-022, MITS-023, MITS-024 and MITS-025.)

The seventh supported service is access to interexchange service to make and receive toll or interexchange calls. However, equal access to interexchange service is not required by the FCC. (See Universal Service First Report and Order, page

8819.) Mid-Rivers Cellular has stated and submitted responses to data requests that it currently provides all of its customers with the ability to make and receive interexchange or toll calls through Mid-Rivers Cellular direct interconnection arrangements with IXCs. (Petition, page 3; and Mid-Rivers Cellular's Responses to MTA-042 and MTA-050.)

The eighth supported service is access to directory assistance, which means the ability to place a call to directory assistance. (See Universal Service First Report and Order, page 8821.) Mid-Rivers Cellular stated and responded that it provides all of its customers with access to directory assistance by dialing "411" or "555-1212" in satisfaction of this requirement. (Petition, page 3; Mid-Rivers Cellular's Response to PSC-005; Mid-Rivers Cellular's Response to MITS-025.)

The ninth and final supported service is toll limitation for qualifying low-income consumers, whereby ETCs offer either toll control or toll blocking services to qualifying Lifeline consumers at no charge. Pursuant to 47 C.F.R. §54.101(a)(9), the FCC no longer requires ETCs to provide both toll control and toll blocking as part of the toll limitation service. (See Universal Service Fourth Order on Reconsideration, CC Docket No. 96-45 and Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318 (1997).) Mid-Rivers Cellular must provide toll blocking, thereby allowing customers to block the completion of outgoing toll calls. (See Universal Service First Report and Order, pages 8821-8822.) Mid-Rivers Cellular provides toll blocking and will participate in the Lifeline program in satisfaction of the FCC's requirement. (Petition, page 3; and Mid-Rivers Cellular's Responses to PSC-004.)

Finally, in order to satisfy the requirements of 47 U.S.C. § 214(e)(1)(B), Mid-Rivers Cellular must advertise the availability of the supported services and the associated charges using media of general distribution. Mid-Rivers Cellular currently advertises its wireless services through various media forms and will use these media of general distribution that it currently employs in order to also advertise its universal service offerings throughout its designated service areas. Mid-Rivers Cellular will expand on these advertising and promotional efforts, as necessary, to ensure that customers within the service area are fully informed of Mid-Rivers Cellular's universal service offerings. (Petition, page 3; and Mid-Rivers Cellular's Responses to PSC-004.)

3. Designation of Mid-Rivers Cellular as an ETC in an area served by rural telephone companies is in the public interest.

A discussion of public interest is necessary in determining whether the criteria have been met for designating Mid-Rivers Cellular as an ETC in an area served by rural telephone companies. (47 U.S.C. § 214(e)(2).) As noted above, this Commission is specifically authorized to designate a wireless carrier as an ETC pursuant to Section 69-3-840(2), MCA, and may designate an additional ETC in the service area of rural telephone company pursuant to Section 69-3-840(3), MCA. Montana law with respect to designating additional ETCs in the service areas of rural telephone companies is consistent with federal law. Pursuant to federal provisions under 47 U.S.C. § 214(e)(2), the Commission must make a finding of public interest before designating an additional ETC in an area served by a rural telephone company.

The Petition filed herein and Mid-Rivers Cellular responses to data requests presented in this proceeding have demonstrated clearly that Mid-Rivers Cellular

Petition for ETC designation is in the public interest. Mid-Rivers Cellular's Petition sets forth its reasoning that an additional ETC designation in an area served by rural telephone companies would be in the public interest. At pages 4 and 5 of the Petition, Mid-Rivers Cellular stated:

Mid-Rivers Cellular seeks to be designated as an ETC in an area served by rural telephone companies, i.e. Mid-Rivers Telephone Cooperative, Inc. and Range Telephone Cooperative, Inc. As such, in addition to providing the statutorily mandated services noted above, an additional ETC designation must be in the public interest.

The Commission's designation of Mid-Rivers Cellular as an ETC will clearly serve the public interest by providing the customers in the Mid-Rivers Cellular service area a choice of communications providers and communication technologies. Mid-Rivers Cellular serves "fill-in" cellular markets, i.e. areas abandoned by the original cellular licenses, presumably for economic reasons. The customers in this most rural area of Montana must be able to avail themselves of telecommunications services comparable to those in urban areas at rates also comparable to those in urban areas as prescribed by the Act. The designation of Mid-Rivers Cellular as an ETC would afford Mid-Rivers Cellular the financial ability to continue to provide universal service offerings to these customers. Mid-Rivers Cellular service is essential to public safety in the area it serves. Designation of Mid-Rivers Cellular as an ETC would enhance Mid-Rivers Cellular's ability to contribute to public safety needs in further satisfaction of the public interest standard. [Footnotes deleted]

Furthermore, when Mid-Rivers Cellular was served with data requests which truly sought information regarding public interest, Mid-Rivers Cellular provided full responses without objection. One example was Mid-Rivers Cellular's response to PSC-002c, which was as follows:

In what manner is Mid-Rivers Cellular service "essential to public safety in the area in which it serves?"

Mid-Rivers Cellular provides cellular service to a vast and remote area of Eastern Montana. As residents of this area conduct their every day affairs they at many times throughout the day do not have landline telephone service available. At these times Cellular service is essential to meet safety needs, both personal and public. These needs could be of a medical or law enforcement nature. An example could be the recent fires for which cellular service was available for the firefighters and residents.

One of the principal goals of the Telecommunications Act is to "promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." (See Telecommunications Act of 1996, Public Law, 104, 100 Stat. 56 (1996).) The FCC has also recognized the advantages that wireless carriers bring to the universal service program and found that imposing additional burdens on wireless entrants would be particularly harmful to competition in rural areas where wireless carriers could potentially offer service at much lower costs than traditional wireline service. (See Universal Service First Report and Order, pages 8881-8882.) In short, Congress and the FCC believe competition to be in the public interest. This is a reasonable conclusion given that competition expands consumers' choices and generally results in lower prices and advanced technologies.

B. MTA and MITS' Motions to Compel should be denied and Mid-Rivers Cellular's Objections sustained because the subject Data Requests seek information beyond the permissible scope of review, and thereby the propriety of discovery and admissibility of evidence.

Both MTA and MITS contend in their Motions to Compel that they are entitled to orders from this Commission overruling Mid-Rivers Cellular's objections and compelling

Mid-Rivers Cellular to provide adequate responses. However, the only legal authority provided in support of this position is an extended quote from 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, with which Mid-Rivers Cellular does not disagree. However, neither MTA nor MITS submits any legal authority which states the legal criteria established under both state and federal law may be ignored and that information beyond the scope the legal criteria may be obtained. The objections of Mid-Rivers Cellular are valid under Rule 26(b)(1), M.R.Civ.P., because the information sought is not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Additionally, although almost completely ignored by MTA and MITS in the Motions to Compel, the objectionable data requests were not only objected to pursuant to Rule 26(b)(1), but further objected to upon other grounds. These other grounds of objection included proprietary business, commercial and development information of Mid-Rivers Cellular which if disclosed may result in a competitive business disadvantage, as well as the disclosure of the requested information would constitute a violation of employees or individual's Right of Privacy as set forth in The Constitution of the State of Montana, Article II, Section 10.

It is obvious even from a cursory review of the various data requests that the information sought does not involve (1) the provision of statutorily mandated services, or (2) whether an additional ETC designation is consistent with the public interest, convenience or necessity. MTA-011 sought the details of how Mid-River Telephone Cooperative, Inc.'s USF support compares to the cost of Mid-Rivers Cellular's service offering. MTA-030 sought information regarding expense /contribution levels for multiple

ETCs. MTA-043, MTA-044 and MTA-045 each sought information on competitive neutrality. None of the information sought addresses the proper scope of review as proscribed by the state and federal criteria. MTA's Motion also requested that Mid-Rivers Cellular be directed to provide a "responsive answer" to MTA-023 regarding purposes for which any USF will be used and MTA-025 regarding why Mid-Rivers Cellular is seeking USF support. However, the information provided fully responded to the requests. The USF funds will be used, as required by law, for those purposes allowed under 47 U.S.C. § 254(e) (the mandated services), and Mid-Rivers Cellular requested support to continue to provide the mandated services.

MITS-001 sought information regarding "dead spots" in Mid-Rivers Cellular's coverage of the service area. Mid-Rivers Cellular provided the best information it had which was a map of the area. MITS-004 sought Mid-Rivers Cellular's current business plans, including site changes and additional sites. MITS-005a sought information regarding Mid-Rivers Cellular's "sites" and real property interests, including details of type of estate interest held by Mid-Rivers Cellular, the names of any lessors and lessees, and the duration of leases. MITS-005c sought the costs for each tower in which Mid-Rivers Cellular has an interest. MITS-006 sought voice capacity limits or voice communications channels each site is able to serve simultaneously, as well as power authorizations and power output records. MITS-008 sought detailed information regarding network capacity. MITS-013 sought information describing any facilities, staff, operational support systems or other administrative functions shared by Mid-Rivers Cellular and Mid-Rivers Telephone Cooperative, Inc. MITS-014 sought the names, locations and qualifications of technical personnel who would work with "universal service." MITS-020 sought a diagram and

graphic for each exchange or partial exchange detailing for facility and build-out and/or upgrades in the next five years if ETC designation is granted. MITS-021 requested Mid-Rivers Cellular internal standards regarding voice-grade access and Mid-Rivers Cellular's "opinion" regarding voice-grade access, etc., as well as Mid-Rivers Cellular's opinion as to an "acceptable" level for customers inability to make calls. MITS-029 sought the number of Mid-Rivers Cellular's customers broken down to each exchange. MITS-032 sought a copy of each contract offered to Mid-Rivers Cellular's customers. MITS-035 requested the average total costs per subscriber. MITS-037 and MITS-038 requested a five-year estimate and projection of USF revenue if ETC was granted. MITS-043 sought income statements and balance statements for Mid-Rivers Cellular for the last five years. And MITS-044 sought a list of employees in Montana for Mid-Rivers Cellular, including affiliates, subsidiaries, etc., their locations, job titles and salary. Again, these data requests sought information which does not involve (1) the provision of statutorily mandated services, or (2) whether an additional ETC designation is consistent with the public interest, convenience or necessity, and are therefore well outside the proper scope of this ETC proceeding and allowable discovery.

CONCLUSION

Under the applicable state and federal law, the only proper discovery or data requests that Mid-Rivers Cellular, or any other petitioner for ETC status in an area served by rural telephone companies, must respond to are inquiries involving: (1) the provision of statutorily mandated services; and (2) whether an additional ETC is consistent with the public interest, convenience or necessity. Mid-Rivers Cellular has provided responses to

those data requests which are within the proper purview of this proceeding. Further, Mid-Rivers Cellular has acknowledged in its responses that if and when the new standards are adopted affecting ETC designation, Mid-Rivers Cellular will comply with lawful requirements and implementing regulations. (Mid-Rivers Cellular's Responses to MTA-012 [support based upon ETC's costs — cost/benefit analysis] and MTA-046 [competitive neutrality quality-of-service guidelines]; and Mid-Rivers Cellular's Responses to MITS-016 [competitive neutrality quality-of-service guidelines] and MITS-046 [audit procedures applicable to all ETCs].) If new standards are adopted, then discovery may be sought in an ETC designation proceeding to determine an applicant's compliance with such lawful requirements and implementing regulations. However, no such new standards have been adopted and the data requests that are the subject of the Motions to Compel are not within the proper or permissible scope as defined by the statutes. As such, the information requested was not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Mid-Rivers Cellular is not, and should not be, required to respond to data requests which are in no way related to the provision of mandated services or the public interest, convenience or necessity. (See attached Order, In the Matter of the Application of Alltel Communications, Inc. for Designation as Eligible Telecommunications Carrier Pursuant to Section 214(e) of the Communications Act of 1934, Arkansas Public Service Commission, Docket No. 03-138-U, Order No. 5.)

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DATED this 21st day of January, 2004.

MOULTON, BELLINGHAM, LONGO
& MATHER, P.C.

By



THOMAS E. SMITH

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ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION OF)
ALLTEL COMMUNICATIONS, INC. FOR)
DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER PURSUANT)
TO SECTION 214(e)(2) OF THE)
COMMUNICATIONS ACT OF 1934)

FILED
DOCKET NO. 03-138-U
ORDER NO. 5

ORDER

On August 14, 2003, ALLTEL Communications, Inc. ("ALLTEL") filed an application for designation as an Eligible Telecommunications Carrier ("ETC") pursuant to § 214(e)(2) of the Communications Act of 1934, as amended¹. ALLTEL seeks ETC designation for Federal Universal Service Fund ("USF") support throughout its licensed service areas in the State of Arkansas in wire centers served by SBC²; CenturyTel of Northwest Arkansas, LLC; and CenturyTel of Central Arkansas, LLC (together "CenturyTel"). ALLTEL provides Commercial Mobile Radiotelephone Service ("CMRS")³ in Arkansas Cellular Market Areas ("CMAs") 92 (Little Rock/North Little Rock), 165 (Fort Smith), 182 (Fayetteville/Springdale), 291 (Pine Bluff), and Arkansas Rural Service Areas ("RSAs") 1-12 (CMAs 324-331). ALLTEL proposes to advertise and provide the USF supported services designated in 47 U.S.C. § 214(e)(6). In support of its application ALLTEL has submitted the affidavit of Steve R. Mowery, Vice President, State Government Affairs for ALLTEL, certifying that ALLTEL will advertise and provide the required services. In accordance with Order No. 3 of this docket comments were

¹ 47 U.S.C. § 214(e)(6).

² Referring to Southwestern Bell Telephone LP.

³ Also referred to as wireless or cellular service.

filed on October 3, 2003 by three groups of incumbent local exchange carriers (“ILECS”)⁴, and reply comments were filed by ALLTEL on October 10, 2003. In accordance with Order No. 4 of this docket, a hearing was held on November 5, 2003 and post hearing briefs were filed on November 26, 2003.

The rural ILECs argue that if ALLTEL takes a customer from an ILEC, the rural ILECs will lose terminating access charges which would have been paid to rural ILECs for terminating the toll calls of the customer taken by ALLTEL. The rural ILECs acknowledge that ALLTEL would pay terminating access charges to rural ILECs for termination of toll calls from ALLTEL customers, however, the rural ILECs assert that the terminating access rates paid by wireless carriers are substantially less than those paid by other ILECs or interexchange carriers (“IXCs”), and the resulting reduction in access charges paid to the rural ILECs could affect their profitability. The rural ILECs also assert that some ILECs have no agreement with CMRS carriers for termination of minutes and receive no revenue from CMRS carriers, including ALLTEL. The rural ILECs state that, “As wireless carriers capture market share in Arkansas, the revenue of each of the ILECs decline as traffic is moved from ILEC to ILEC or IXC to ILEC to CMRS to ILEC.”⁵ However, the rural ILECs also state that, “Even if Alltel Wireless is not an

⁴ The commenting parties are three groups of ILECS which will be referred to as (1) “the rural ILECS”, which consist of Arkansas Telephone Company, Inc.; Central Arkansas Telephone Cooperative, Inc.; Madison County Telephone Company; Magazine Telephone Company; Northern Arkansas Telephone Co.; Pinnacle Communications; Prairie Grove Telephone Company; Rice Belt Telephone Company; South Arkansas Telephone Company, Inc.; Southwest Arkansas Telephone Cooperative, Inc.; Walnut Hill Telephone Company; and Yell County Telephone Company (2) “the Ritter companies”, which consist of Ritter Communications Holdings, Inc. on behalf of its wholly owned subsidiaries Ritter Telephone Company and Tri-County Telephone Company, along with Yelcot Telephone Company and Mountain View Telephone Company and (3) “the CenturyTel companies” which consist of CenturyTel of Central Arkansas, LLC; CenturyTel of Northwest Arkansas, LLC; CenturyTel of Arkansas, Inc.; CenturyTel of Mountain Home, Inc.; CenturyTel of Redfield, Inc.; CenturyTel of South Arkansas, Inc.; Cleveland County Telephone Company, Inc.; and Decatur Telephone Company, Inc.

⁵ Initial Comments of Various Rural ILECs, p. 2, filed Oct. 3, 2003.

ETC in the Rural ILECs' area the loss of revenue occurs."⁶ The rural ILECs argue that wireless carriers offering of toll minutes in wireless plans could require the rural ILECS to expend money to carry the additional traffic volume, further detracting from their profitability, and that wireless carriers are essentially unregulated in Arkansas and do not provide their customers with the protections provided in the Arkansas Public Service Commission ("APSC" or "this Commission") Telecommunications Provider Rules because wireless carriers are not subject to those rules. The rural ILECs argue that because wireless carriers are not subject to the APSC's Telecommunications Provider Rules, and an ETC designation could result in lost toll or access revenues, and an ETC designation would require additional USF funding, it is not in the public interest to approve ALLTEL's ETC request.

The Ritter companies assert that granting ETC status to ALLTEL could detrimentally effect the USF, because the USF is funded by assessments on telecommunications providers' interstate revenue and as the size of the USF grows, as a result of commercial mobile radio service providers receiving ETC status, the customers of the Ritter companies will be charged increasing amounts to fund the USF and will receive no demonstrable benefit.

The Ritter companies also argue that CMRS providers are not subject to the same quality of service standards as ILECs and are not required to serve as a provider of last resort. The Ritter companies assert that the lack of these protections for ALLTEL's customers leads to the conclusion that ALLTEL's designation as an ETC is not in the public interest.

The Ritter companies' comments also point to the continuing activity by the Federal-State Joint Board on Universal Service ("Joint Board") and the United States House of Representatives Energy and Commerce Committee which are reviewing the operations of the

⁶ Id.

USF. The Ritter companies suggest that this Commission wait until the Joint Board and Congress have completed their reviews of the USF and make any necessary changes before granting ETC status to ALLTEL. The Ritter companies also question how ALLTEL will determine whether customers in certain exchanges are in fact CenturyTel or SBC customers, or Ritter customers, since Ritter has customers who have mailing addresses in towns with wire centers served by CenturyTel or SBC.⁷

The CenturyTel companies also raise many of the issues that are currently under review by the Joint Board, arguing that the availability of affordable high quality telephone services to consumers is at risk because of the ever-increasing demands on the USF from new carriers being granted ETC status. The CenturyTel companies request that the APSC deny the ETC request and initiate a generic proceeding to examine the policy and factual issues presented by the application or delay any decision until the Joint Board reports its findings regarding the USF to the Federal Communications Commission ("FCC"). The CenturyTel companies refer to the "spiraling" demands on the USF caused by the influx of ETC applications asserting that ALLTEL does not need USF support to be competitive and that granting ETC status to carriers that do not need USF support places the USF at risk.

The CenturyTel companies also argue that, when a carrier like ALLTEL receives an ETC designation, it can increase its revenues through USF support funds regardless of whether it adds any additional customers or obtains any customers from the ILEC serving the same area. CenturyTel suggests that this ability to artificially inflate revenues through Federal USF support when it cannot be shown that the revenues are needed is contrary to the public interest.

⁷ Comments of Ritter Communications, ¶ 8, filed Oct. 3, 2003.

The CenturyTel companies claim that ALLTEL has not shown that it is able to provide service in the entire study area of the effected ILECs, that ALLTEL is not required to serve as a carrier of last resort and is not subject to the APSC's Telecommunications Provider Rules. CenturyTel therefore asserts that it is not in the public interest to grant the ETC request.

ALLTEL's response to the comments filed by the ILECs asserts that it has met all of the criteria set forth in the Federal Act regarding ETC designation. ALLTEL emphasizes that differences in the manner in which ILECs and CMRS providers are regulated does not effect the specific requirements of the Federal Act regarding ETC designation.

Concerning the comments on how ALLTEL will determine a customer's location, Alltel notes that 47 C.F.R. § 54.307 requires that "Carriers providing wireless mobile service in an incumbent LEC's service shall use the customer's billing address for purposes of identifying the service location of a wireless customer in a service area." ALLTEL argues that it must comply with the cited provision and the argument against using that methodology therefore lacks merit.

ALLTEL also asserts that it is inappropriate to wait until a decision of the FCC or a congressional committee which may or may not take place at some future date, and that the benefits of competitive choice, mobility, larger calling scopes and improved network capability to Arkansas consumers provide sufficient benefits to determine that granting the ETC request is in the public interest.

Although the comments raise significant public policy issues, those issues are properly being addressed at the Congressional level and at the Federal Communications Commission. To the extent comments raise public policy issues such as the potential expansion of the Federal Universal Service Fund, these matters of public policy should be addressed at the Federal level and should not effect this Commission's decision in this case for two reasons.

First, this Commission has no jurisdiction to make changes in the Federal USF or the laws under which the Federal USF is established, and, second, this Commission is obliged to follow the requirements of Arkansas law which require this Commission to act consistently with the Federal Act. A.C.A. § 23-17-405 provides that the Commission may designate other telecommunications providers to be eligible for high-cost support consistent with 47 U.S.C. § 214(e) (2). This grant of authority to the Commission is conditioned on the telecommunications provider accepting responsibility to provide service to all customers in the ILEC's local exchange area through its own facilities or a combination of facilities, and the support will not begin until the telecommunications provider has the facilities in place to serve the area. The telecommunications provider may only receive funding for the portion of its facilities that it owns and maintains, the telecommunications provider must advertise the availability and charges for its services, and the Commission must determine that the designation is in the public interest.

There are essentially two issues presented in this docket. The first issue concerns ALLTEL's application for ETC status in areas served by SBC, a non-rural telephone company. The second issue concerns ALLTEL's request for ETC designation in the CenturyTel areas. CenturyTel is a rural telephone company as that term is used in 47 U.S.C. § 214(e)(6). Both CenturyTel and SBC are Tier 1 companies as that term is defined at A.C.A. § 23-17-403(26)(A) and used at A.C.A. § 23-17-405(d)(1).

A.C.A. § 23-17-405(b) states that this Commission may designate other telecommunications providers to be eligible for high-cost support, except in areas served by a rural telephone company, consistent with 47 U.S.C. § 214(e)(2). A.C.A. § 23-17-405 (d)(1) requires that, "For the entire area served by a rural telephone company, excluding tier one companies . . . there shall be only one (1) eligible telecommunications carrier. . ." Since both

SBC and CenturyTel are Tier 1 carriers, the single carrier requirement of A.C.A. § 23-17-405 (d)(1) is inapplicable and the issues are governed by the provisions of §23-17-405 (d)(1) which requires consistency with 47 U.S.C. §214(e)(2).

47 U.S.C. § 214(e)(2) states that:

A State Commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State Commission. Upon request and consistent with the public interest, convenience, and necessity, the State Commission may in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State Commission, so long as each additional requesting carrier meets the requirements of paragraph (1). 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.

(Emphasis added).

To the extent that ALLTEL seeks ETC designation in an area served by a non-rural telephone company, Section 214(e)(2) clearly directs the Commission to designate more than one common carrier as an ETC if the requirements of paragraph (1) are met. Sections 214 (e)(1)(A) and (B) require that the carrier seeking ETC status must “offer the services that are supported by Federal Universal Service support mechanisms under § 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications carrier); and advertise the availability of such services and the charges therefore using media of general distribution. The affidavit submitted by ALLTEL clearly indicates that ALLTEL has, or upon receiving ETC designation will, offer the services required and advertise the availability of those

services in compliance with § 214(e)(1) and § 254(c) thereby meeting the requirements of § 214(e)(2) of the Federal Act.

The comments suggest that an ETC should provide service to all customers in an ILEC's area. It should be noted that even the ILECs do not have the facilities in place to serve all customers, particularly those in remote areas, of their allocated territories. This fact was clearly recognized by the Arkansas Legislature in adopting an extension of facilities fund to extend telecommunications facilities to unserved customers.⁸ The FCC has also addressed this argument stating:

We believe that interpreting section 214(e)(1) to require the provision of service throughout the service area prior to ETC designation prohibits or has the effect of prohibiting the ability of competitive carriers to provide telecommunications service, in violation of section 253 (a) of the Act. We find that such an interpretation of section 214(e)(1) is not competitively neutral, consistent with section 254, and necessary to preserve and advance universal service, and thus does not fall within the authority reserved to the states in section 253(b). In addition, we find that such a requirement conflicts with section 214(e) and stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress as set forth in section 254. Consequently, under both the authority of section 253(d) and traditional federal preemption authority, we find that to require the provision of service throughout the service area prior to designation effectively precludes designation of new entrants as ETCs in violation of the intent of Congress.⁹

A.C.A § 23-17-405 requires this Commission to act in a manner which is "consistent with § 214(e)(2) of the Federal Act . . ." FCC precedent holds that the fact that ALLTEL has agreed to comply with § 214(e) in obtaining ETC designation in an area served by a non-rural carrier is sufficient to determine that granting ETC status is consistent *per se* with the public interest. *In the Matter of Federal-State Joint Board on Universal Service; Farmer's Cellular Telephone, Inc.*

⁸ Act 1771 of 2001, A.C.A. §23-17-404 (e)(7).

⁹ *In the Matter of Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, ¶ 2, CC Docket No. 96-45, adopted July 11, 2000, FCC 00-248.

Petition for Designation as an Eligible Telecommunications Carrier, 18 FCC Rcd 3848 (released March 12, 2003); *Cellco Partnership d/b/a Bell Atlantic Mobile Petitioned for Designation as an Eligible Telecommunications Carrier*, 16 FCC Rcd 39, ¶ 14 (2000); *Pine Belt Cellular and Pine Belt PCS, Inc. Petition for Designation as an Eligible Telecommunications Carrier*, 17 Rcd 9589, ¶ 13 (2002).

In adopting the Telecommunications Regulatory Reform Act of 1997(A.C.A § 23-17-401 *et seq.*), the General Assembly stated that its intent was to provide for a system of regulation, consistent with the Federal Act, that assists in implementing the national policy of opening the telecommunications market to competition on fair and equal terms. Many of the objections made to the granting of ETC status by the commenting parties suggest that the granting of ETC status could affect the profitability of those companies and possibly result in rate increases to their customers. They therefore argue that it is not in the public interest and is inconsistent with Arkansas law to approve the ETC request. This argument ignores the statutory intent to implement competition, which will obviously have an affect on the profitability of some companies, but will also provide competitive alternatives to customers. If the ILECs receive reduced terminating access charges from the contracts they have negotiated with wireless carriers, they should receive the benefit of paying reduced access charges for terminating their calls to the wireless networks. Additionally, the terminating access rates paid between ILECs and wireless carriers are negotiated rates which the ILECs have agreed to pay. The contracts between the ILECs and wireless carriers should not, therefore, provide a basis to deny ETC status to a wireless carrier.

The suggestion by the ILECs that granting ETC status could affect their profits and their customers' rates does not suggest that granting ETC status is not in the public interest. The

granting of ETC status to ALLTEL will provide a competitive alternative for customers in the area in which ALLTEL seeks to provide service. The effect on the ILECs in Arkansas, resulting from the funding of the USF through assessments on all carriers' interstate services, is essentially the same regardless of whether an ETC request is granted in Arkansas or by another state commission. There will be some effect on amounts paid by Arkansas ILECs, since all carriers' interstate revenues are assessed to support the USF; however, denying the request would prohibit a group of Arkansas consumers from having the competitive alternatives available to customers in other states even though those Arkansas consumers would be indirectly paying for the benefits to customers in other states through payments for interstate services which originate or terminate in Arkansas.

To the extent that the commenting parties have suggested that the Commission delay its decision pending resolution of some of the issues raised in the comments and currently pending or under consideration in United States Congressional committees or before the FCC's Joint Board, the request to delay would be inconsistent with the requirements of 47 U.S.C. § 214 (e)(2) which states that the Commission "shall" grant the ETC request if the requirements of the statute are met. Additionally, the issues raised by the commenting parties are best dealt with in the appropriate forums which have the jurisdiction to effect any changes which might be deemed necessary.

The commenting parties also argue that the ETC designation, if granted, should be conditioned on ALLTEL's agreement to submit to this Commission's jurisdiction for enforcement of the Commission's Telecommunications Provider Rules. This recommendation appears to be inconsistent with the requirements of A.C.A § 23-17-411(g), which substantially limits the Commission's jurisdiction over commercial mobile radio services. The

recommendation also lacks support under § 214(e) which requires the Commission to grant ETC status if the conditions set forth in the statute are met. In construing §214 (e) the FCC has stated:

We conclude that section 214 (e)(2) does not permit the Commission or the states to adopt additional criteria for designation as an eligible telecommunications carrier. As noted by the Joint Board, “[s]ection 214 contemplates that any telecommunications carrier that meets the eligibility criteria of section 214 (e)(1) *shall* be eligible to receive universal service support.” Section 214 (e)(2) states that “[a] state commission *shall* . . . designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier Section 214(e)(2) further states that “. . .the State commission *may*, in the case of an area served by a rural telephone company and *shall*, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, *so long as each additional requesting carrier meets the requirements of paragraph (1).*” Read together, we find that these provisions dictate that a state commission must designate a common carrier as an eligible carrier if it determines that the carrier has met the requirements of section 214(e)(1). Consistent with the Joint Board’s finding, the discretion afforded a state commission under section 214(e)(2) is the discretion to decline to designate more than one eligible carrier in an area that is served by a rural telephone company; in that context, the state commission must determine whether the designation of an additional eligible carrier is in the public interest.¹⁰

The difference between the request to provide service in SBC territory and the request to provide service in CenturyTel territories lies in the fact that CenturyTel is a rural telephone company. 47 U.S.C. § 214(e)(6) provides that the Commission may, with respect to an area served by a rural telephone company, designate more than one ETC and requires that the Commission determine that such designation is in the public interest. Likewise, A.C.A. § 23-17-405(b)(5) requires the Commission to determine that ETC designation is in the public interest. The “shall” provision in the Federal Statute is not applicable in determining whether ETC status should be granted in a rural telephone company territory.

¹⁰ In the Matter of Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, adopted May 7, 1997 ¶ 135, FCC 97-157. (Also see *id* at ¶ 142).

In determining whether to grant ETC status to ALLTEL in the areas served by CenturyTel a determination must be made of whether such a grant is in the public interest. The ILECs comments suggest that the potential harm to the ILECs, and possibly their customers, outweighs any benefits the customers may gain by having a competing ETC. ALLTEL's witness Mr. Krajci stated that ALLTEL's local calling area is "basically statewide." If ALLTEL is granted ETC status, customers, particularly Lifeline and Linkup customers, will have the benefits of a substantially increased local calling area. This could serve to reduce their toll bills and could make the service offered by an alternative ETC much more economically desirable. ALLTEL also asserts that its customers will have the benefit of mobility which the existing ETC does not currently provide. Granting ETC status to ALLTEL would also help open the telecommunications market to competition on fair and equal terms, consistent with the legislative intent of Act 77. The FCC has also stated that wireless carriers could potentially offer service at much lower cost than traditional wire line service, particularly in rural areas¹¹.

As for the potential harm to the ILECs resulting from the increased cost to the Universal Service Fund, ALLTEL notes that, for the 4th quarter of 2002, all competitive ETCs, both wireless and wire line, received only about 7% of the total USF disbursement. Therefore, it is logical to conclude that the impact on the USF from granting ALLTEL's application in this docket would be de minimis.

The customers who could benefit from the granting of this ETC request are currently contributing through rates, assuming they currently have telephone services, for the Federal USF. Since the USF is funded from assessments on all interstate services, these customers are

¹¹ In the Matter of Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, adopted May 7, 1997 ¶ 190, FCC 97-157.

contributing to the costs of ETCs in Arkansas, including the ILECs filing comments in this docket who have ETC status, and are also contributing to the costs of ETCs in other states, just as customers in other states would contribute to carriers granted ETC status in Arkansas. On page 8 of its reply comments ALLTEL cites an order of the Wisconsin Public Service Commission entered on September 9, 2003 in Docket No. 7131-T1-101, concerning ALLTEL's application for ETC status in Wisconsin. In that order the Wisconsin Commission notes that 18 other State Commissions and the FCC have approved wireless ETC applications in rural areas. Given that Arkansas consumers are already paying for ETCs in other states, Arkansas Consumers would undoubtedly find it to be in the public interest for them to be allowed the benefits of a competitive ETC that seeks to provide service in areas of Arkansas. As described by ALLTEL witness Mr. Krajci,

...[W]ireless customers do contribute to the Federal Universal Service Fund. And additionally, those costs will be spread not over Arkansas users but over everyone that pays into the Federal USF on a nationwide basis. So to the extent that there are costs associated with ALLTEL receiving Federal support in Arkansas, yes, there are. When one asks who pays for that, actually, all wire line and wireless telephone users in all of the United States pays for that. So the benefit is that what ever cost is associated with Arkansas' customers, the benefit is something greater than that cost.¹²

A determination that granting ETC status to ALLTEL in this proceeding is in the public interest is not merely a "pork barrel local determination."¹³ Rather it is a simply recognition of the fact that customers in Arkansas, just as customers in other states, would prefer to share the benefits for which they are paying .

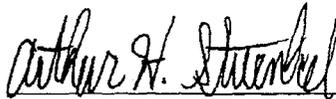
¹² Transcript p. 48.

¹³ Id at 49.

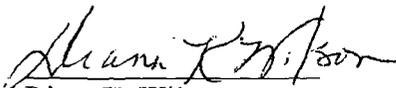
In view of the foregoing the request by ALLTEL Communications, Inc. for ETC status in wire centers served by SBC, CenturyTel of Northwest Arkansas, LLC and CenturyTel of Central Arkansas LLC located in cellular market areas 92, 165, 182, 291, and 324-331 is hereby granted.

BY ORDER OF THE PRESIDING OFFICER PURSUANT TO DELEGATION.

This 31st day of December, 2003.

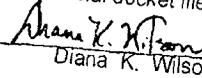


Arthur H. Stuenkel
Presiding Officer



Diana K. Wilson
Secretary of the Commission

I hereby certify that the following order issued by the Arkansas Public Service Commission has been served on all parties of record this date by the U.S. mail with postage prepaid, using the address of each party as indicated in the official docket file.


Diana K. Wilson

Secretary of the Commission

Date

12/31/03