

Montana Consumer Counsel

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September 15, 2004

TO: Ms. Kate Whitney
FROM: Mandi Shulund
RE: Docket No. D2003.8.105 – Mid Rivers Cellular Petition for ETC Designation

Enclosed are the original and ten copies of the Direct Testimony of Allen G. Buckalew on behalf of The Montana Consumer Counsel in the above matter.

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

* * * * *

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

DIRECT TESTIMONY OF

ALLEN G. BUCKALEW

ON BEHALF OF

MONTANA CONSUMER COUNSEL

SEPTEMBER, 2004

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1 **I. QUALIFICATIONS AND INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME, OCCUPATION, AND BUSINESS**
3 **ADDRESS.**

4 A. My name is Allen G. Buckalew. I am an Economist specializing in the
5 telecommunications industry at J. W. Wilson & Associates, Inc. Our
6 offices are located at 1601 North Kent Street, Suite 1104, Arlington,
7 Virginia 22209.

8 **Q. PLEASE OUTLINE YOUR EDUCATIONAL BACKGROUND.**

9 A. I hold an A.A. and a B.S. degree with high honors, both from the
10 University of Florida, and an M.S. degree from George Washington
11 University. My major areas of concentration were economics and
12 telecommunications.

13 **Q. HOW HAVE YOU BEEN EMPLOYED IN THE PAST?**

14 A. Before I entered the University of Florida, I worked in Naval
15 Telecommunications for four years. After graduating from the University
16 of Florida, I worked at the Federal Communications Commission ("FCC")
17 for four years as an Industry Economist in the Common Carrier Bureau and
18 was employed extensively in areas involving telecommunications,
19 economics, accounting, engineering, and policy matters. A sample of my

1 major projects completed while at the FCC includes: “The Economic
2 Implications and Interrelationships Arising from Policies and Practices
3 Relating to Customer Interconnection, Jurisdictional Separations and Rate
4 Structures,” (Docket 20003), “Communications Satellite Corporation,
5 Investigation into Charges, Practices, Classifications, Rates and
6 Regulations,” (Docket 16070), “Common Carrier Industry Structure
7 Reports to Congress,” and many others. My major responsibility was to
8 serve as economic advisor and analyst for the Common Carrier Bureau.

9 After leaving the FCC, I was appointed Associate Director for
10 Telecommunications Research of the National Regulatory Research
11 Institute (“NRRI” or “the Institute”) at Ohio State University. My
12 responsibilities at NRRI focused on telecommunications policy, as seen
13 from an analytical perspective, which combined accounting, engineering,
14 and economic disciplines. During my employment at the Institute, I
15 completed several studies for state public utility commissions, including,
16 “The Impact of Measured Telephone Rates on Telephone Usage of
17 Government and Nonprofit Organizations” (for the Public Utilities
18 Commission of Ohio) and, “Toward An Analysis of Telephone License
19 Contracts and Measured Rates” (for the Maryland Public Service
20 Commission). In addition, I have provided several State Commissions with
21 on-site technical and economic assistance. This assistance was related to

1 identifying, explaining and analyzing major issues in telephone cases.
2 Since joining J. W. Wilson & Associates, Inc. in May of 1980, I have
3 provided economic analysis in numerous proceedings in most of the States
4 of the United States, Canada, Nepal, Egypt, and Tanzania. I have also
5 provided analysis for the Federal Communications Commission and the
6 United States Department of Justice. I testified on behalf of the
7 Department of Justice in the case that disaggregated the Bell system. In
8 addition, I evaluated the merger proposal of Bell Atlantic and NYNEX for
9 the National Association of Attorneys General and the merger of MCI and
10 WorldCom for the California Public Utilities Commission. I have also
11 addressed antitrust issues in other cases. A copy of my resume is provided
12 as an Attachment to this testimony. As my resume indicates, I have also
13 been an expert witness in numerous state proceedings in all areas of
14 telecommunications regulation.

15 **Q. ARE YOU A MEMBER OF ANY PROFESSIONAL**
16 **ORGANIZATIONS AND HONOR SOCIETIES?**

17 **A.** Yes. I am a member of the Society of Depreciation Professionals, the
18 American Economic Association, Omicron Delta Epsilon (an international
19 honor society in economics) and Beta Gamma Sigma (an honor society in
20 business).

1 **Q. COULD YOU BRIEFLY SUMMARIZE YOUR PROFESSIONAL**
2 **RESPONSIBILITIES TO DATE?**

3 A. Yes. My primary responsibilities have been to supervise and actively
4 participate in public utility regulatory policy research, especially in the
5 telecommunications field. These responsibilities required the use and
6 application of economic, accounting, and engineering analyses.

7 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING?**

8 A. I present this testimony on behalf of the Montana Consumer Counsel.

9 **Q. WHAT IS THE PURPOSE OF THIS TESTIMONY?**

10 A. The purpose of this testimony is to present my analysis of Mid-Rivers
11 Cellular's ("MRC's") request to be designated an Eligible
12 Telecommunications Carrier ("ETC"). The analysis and recommendations
13 in this testimony would apply to any wireline or wireless carrier that desires
14 an ETC designation.

15 **Q. WHY ARE ETCs NEEDED?**

16 A. An ETC agrees to provide service to any customer in its designated service
17 area. In exchange for that, the ETC is allowed compensation from
18 universal service funds to subsidize below cost rates. ETCs are important
19 because they provide service to customers that would not otherwise receive

1 service. As identified by the FCC, the services that the ETC must provide
2 in order to draw from the Federal universal service fund are:

- 3 1. Voice-grade access to the public switched telephone
4 network;
- 5 2. Local usage;
- 6 3. Dual tone multi-frequency signaling or its functional
7 equivalent;
- 8 4. Single-party service or its functional equivalent;
- 9 5. Access to emergency services;
- 10 6. Access to operator services;
- 11 7. Access to interexchange service;
- 12 8. Access to directory assistance; and
- 13 9. Toll limitation for qualifying low-income consumers (47
14 C.F.R. § 54.101(a)).

15 Many regulatory entities, including this one, have examined the possible
16 public benefits derived by designating multiple carriers as ETCs. It is
17 widely agreed that the competitiveness of the local exchange market will be
18 significantly improved by including multiple carriers. For example, the
19 FCC has found that wireless carriers must be considered for ETC status. I
20 concur, provided that wireless carriers agree to the same terms and
21 conditions imposed on the existing ETC.

22 Pursuant to Section 214(e) of the Federal Telecommunications Act of 1996
23 and to the FCC's Universal Service Report and Order released on May 8,

1 1997, state commissions must, either upon their own motion or upon
2 request, designate a common carrier that meets the requirements of Section
3 214(E) (1) “as an eligible telecommunications carrier for a service area
4 designated by the State commission.” Upon notice to the State, the
5 Commission shall permit eligible carriers to relinquish their designation as
6 an eligible carrier in areas that are served by more than one eligible carrier.

7 Eligible telecommunications carriers have the ability to access funds for
8 universal service, interstate funds, or a state fund if one is created. The
9 Commission has already designated the existing ILECs as ETCs. However,
10 with only one carrier, there may be no competition in certain areas or for
11 high-cost customers, which leaves no market forces to drive down costs.
12 Alternatives to the LEC, that is, viable CLECs and wireless carriers, need
13 to exist in each exchange area for competition to work for all Montanans.
14 Likewise, ETCs, be they ILECs or competitive ETCs, need to know the
15 rules.

16 **Q. ARE THERE RULES FOR ETCs IN MONTANA?**

17 A. No. That is why we recommended in an earlier docket that rules be
18 adopted, including an annual “check-up” to ensure that eligible carriers are
19 actually undertaking this Commission’s policy goals of universal service.
20 The existing ETCs should be assured to continue as an ETC unless the

1 annual check-up demonstrates that the ETCs are not undertaking the policy
2 goals of universal service. Initially, and on an annual basis, ETCs should
3 demonstrate the following:

4 • Each ETC must be willing and able and must certify its
5 commitment to provide the defined services supported by the
6 USF to any requesting customer's location within the designated
7 service area.

8 • Each ETC must show that it advertises the availability of such
9 services and the charges.

10 • Each ETC must provide its services at not more than the
11 Commission-authorized maximum stand-alone rates for the
12 defined basic local exchange telecommunications service and
13 must meet all service quality and provision rules established by
14 the Commission for universal services.

15 • Each ETC may satisfy its obligation to provide the defined
16 services over its own facilities or a combination of its own
17 facilities and resale of another carrier's services. The ETC may
18 also satisfy its obligation to provide the defined services in part
19 through the lease of unbundled network elements ("UNEs"). A
20 carrier that provides service solely through the resale of other

1 carriers' facilities is not entitled to universal service support. The
2 Commission may want to define a minimum percentage of
3 owned facilities and/or leased UNEs for qualification as an ETC.

- 4 • Each ETC applicant must show that provision of their services as
5 an ETC is in the public interest.

6 **Q. WHAT NEEDS TO BE SHOWN IN THIS CASE TO**
7 **DEMONSTRATE THAT THE APPLICATION IS IN THE PUBLIC**
8 **INTEREST?**

9 A. First, every requirement placed on ILEC ETCs should also be placed on all
10 new ETCs, for example, the same criteria discussed above. Second, each
11 ETC must designate a specific service area or areas that it wishes to serve.
12 The service area in this case seems to include Mid-Rivers Co-op territory
13 and other exchanges; however, it is not clear from the responses the specific
14 areas where MRC seeks ETC status. Third, ETCs must agree to provide
15 documentation that demonstrates that for each line that it seeks
16 compensation, the customer is new and not currently being served by the
17 existing ETC or that the customer is a former ETC customer and not using
18 ETC services. Customers that merely add wireless services to existing
19 wireline services should not be considered for compensation. Fourth, each
20 ETC must file with the Commission, and as I have stated, advertise after

1 approval, the exact ETC rates it wants to offer for the service included in
2 universal service in the ETC areas. This will be a continuing requirement
3 for any future changes to ETC rates as long as the market is less than
4 workably competitive. The ETC should also submit its plans for
5 advertising the service. Fifth, all ETCs must submit their rates to the
6 Commission for approval until the Commission determines that the ETC
7 area is competitive. In addition, the rates must be equal to or less than the
8 ILEC's existing rates for lifeline customers. The Commission needs to
9 investigate and determine the appropriate single-party residential and
10 single-line business rates for Montana in a costing proceeding. In this
11 proceeding we should use the incumbent ETC's existing rate. The
12 Commission should consider establishing statewide rates for the purpose of
13 determining universal service support levels or area-specific rates. These
14 rates represent the maximum rate that an ETC is authorized to charge an
15 end user customer for the supported basic local exchange
16 telecommunications service. An appropriate transitional period should be
17 established to allow a reasonable time period for end user rates for the
18 supported services to be adjusted to this rate. Sixth, ETCs must establish
19 "Lifeline" and "Link Up" programs for low-income subscribers. Each new
20 ETC should be required to file its low-income rates before it is designated
21 as a competitive ETC. "Lifeline" service includes universal services and
22 functionalities available to qualifying low-income consumers. The "Link

1 Up” program reduces the installation and initiation service charges for low-
2 income consumers. In order for new ETCs to pass the public interest test,
3 the Commission needs to see these low-income rates before allowing
4 carriers to be ETCs. Specifically, ETCs should be required to adhere to the
5 following regarding low-income consumers:

- 6 • Lifeline and Linkup programs must be offered.
- 7 • The Lifeline and Link-up programs for low-income consumers
8 shall not be inconsistent with federal guidelines.
- 9 • A consumer’s qualification for support should be determined by
10 the Commission.
- 11 • Consumers meeting qualifying criteria should be free to select
12 any eligible provider of their choice.
- 13 • Subscribers to lifeline service must not be allowed to get service
14 from more than one ETC.

15 **Q. SHOULD MRC BE REQUIRED TO SUBMIT FUND USE**
16 **INFORMATION TO THE COMMISSION, AND IF SO, WHAT**
17 **SHOULD THAT INFORMATION INCLUDE?**

18 A. Yes. All ETCs should be required to show the amount of funds received
19 and how those funds were used to support specific universal services. The

1 carriers should produce documentation of the total funds received, revenue
2 received from benefited customers, costs and expenses for specific
3 universal services, and where/how the funds were applied or used.

4 **Q. IS IT IN THE PUBLIC INTEREST TO DESIGNATE MRC AS A**
5 **COMPETITIVE ETC?**

6 A. No. MRC claims that its application is in the public interest based solely
7 on the fact that customers will have a choice. I agree that increasing choice
8 is in the public interest. However, MRC is not another choice for provision
9 of service. MRC is the cellular affiliate for the existing ETC in some of the
10 areas that MRC wants ETC approval. MRC is not an independent and
11 competitive alternative to MRC Co-op because it is an affiliate of the Co-op
12 and 100% owned. In effect, this application asks the Commission to give
13 ETC authority to the same company, albeit the Co-op's affiliate in this case.
14 It do not believe this was what was contemplated when Congress thought
15 about multiple ETCs. MRC has not demonstrated that its application is in
16 the public interest.

17 **Q. ARE THERE OTHER REASONS WHY MRC SHOULD NOT BE**
18 **GIVEN ETC STATUS?**

19 A. Yes. MRC's application is not in the public interest for several other
20 reasons. No lifeline rates have been filed by MRC. No method has been

1 filed to determine how lifeline customers of the landline company will not
2 receive cellular service at the same time or vice versa. No advertising of
3 lifeline service has been offered. And no amount of local free calling has
4 been included in MRC rates. MRC rates are also significantly higher than
5 basic local exchange service for residence. Promoting universal service
6 should promote the lowest rates for service, that is, other customers should
7 not be asked to subsidize higher cost choices.

8 **II. RECOMMENDATIONS AND CONCLUSION**

9 **Q. ALTHOUGH YOU DO NOT RECOMMEND THE MRC BE GIVEN**
10 **ETC STATUS, DO YOU HAVE ANY RECOMMENDATIONS ON**
11 **HOW A WIRELESS ETC SHOULD OPERATE?**

12 **A.** Yes, my recommendations on how a wireless or competitive ETC should
13 operate when seeking compensation from any universal service pool are
14 discussed below.

15 First, every requirement placed on other ETCs should also be placed on
16 MRC. Likewise, for example, the same general waivers (such as the toll
17 limitation waiver) should be applied to MRC if they are needed. For
18 example, the same quality of service standards and reports need to be filed
19 by any company granted ETC status.

20 Second, ETC must designate a specific local service area or areas that it

1 wishes to serve detailing the existing ETC area that they are covering and
2 why completed coverage is not offered.

3 Third, an ETC must provide the number of lines it captures from the
4 incumbent LEC, since its universal service funding equals the incumbent
5 LEC's per access line level of funds. An ETC must be prepared to provide
6 documentation that demonstrates that for each line for which it seeks
7 compensation, the customer was a former incumbent customer or new
8 customer not having service before.

9 Fourth, the wireless carriers, like the wireline carriers, must submit their
10 ETC rates to the Commission for approval until the Commission
11 determines that the ETC area is competitive. The ETC should also submit
12 its plans for advertising the service. As a side note, this case presents the
13 Commission with multiple ETCs (under the same umbrella) that have never
14 undergone rate review by the Commission. The Commission has no way of
15 knowing whether the current rates by MRC or MRCo-op are higher than its
16 costs to provide local exchange services.

17 Fifth, ETCs must establish "Lifeline" and "Link Up" programs for low-
18 income subscribers. ETCs should be required to file their low-income rates
19 before they are designated as a competitive ETC and those rates must be
20 lower or equal to the existing ETCs' rates. "Lifeline" service includes

1 universal services and functionalities available to qualifying low-income
2 consumers. The “Link Up” program reduces the installation and initiation
3 service charges for low-income consumers.

4 **Q. ARE THE ABOVE SUGGESTIONS ANY DIFFERENT THAN THE**
5 **CURRENT FEDERAL RULES?**

6 A. No. The suggestions are the same as the Federal rules. These rules should
7 be applied on a state basis in case the Commission ever determines that a
8 state universal service fund is necessary.

9 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

10 A. Yes.