



MONTANA
TELECOMMUNICATIONS
ASSOCIATION

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Geoffrey A. Feiss, General Manager

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PUBLIC SERVICE
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April 18, 2005

Hand-Delivered

Ms. Kate Whitney
Montana Public Service Commission
1701 Prospect Avenue
Helena, Montana 59601

*RE: D2003.8.105. In the Matter of Cable & Communications Corporation,
dba Mid-Rivers Cellular, Petition for Designation as an Eligible
Telecommunications Carrier—MTA Motion for Reconsideration*

Dear Ms. Whitney,

Enclosed for filing in the above Docket No. D2003.8.105, please find an original and ten copies of the Montana Telecommunications Association's Motion for Reconsideration.

Thank you for your attention to this matter. Please feel free to call me if you have any questions.

Best regards,



Geoff Feiss

Enclosure

Service Date: April 18, 2005

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

PUBLIC SERVICE
COMMISSION

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

**MOTION FOR RECONSIDERATION
OF THE
MONTANA TELECOMMUNICATIONS ASSOCIATION**

The Montana Telecommunications Association ("MTA") respectfully submits this Motion for Reconsideration following the Public Service Commission's ("PSC's") Final Order in the above captioned matter.

BRIEF

I. INTRODUCTION

On April 7, 2005 the PSC issued a Final Order designating Mid-Rivers Cellular ("MRC") an eligible telecommunications carrier ("ETC") in the study areas of Mid Rivers Telephone Cooperative ("MRTC") and Range Telephone Cooperative ("RTC"). According to the rules, within 10 days after an order or decision has been made by the PSC, a party may apply for reconsideration with respect to any matter determined therein. Such motion shall set forth specifically the ground or grounds on which the movant considers said order or decision to be unlawful, unjust or

reasonable.¹ For the reasons discussed below, this Order is both unlawful and unreasonable. Thus, MTA urges the PSC to abrogate its Order and deny MRC's application for designation as an ETC.

II. THE ORDER IS PROCEDURALLY DEFICIENT

MRC submitted to the PSC its application for designation as an ETC in August, 2003. MRC did not submit prefiled direct testimony. MRC's application was for designation as an ETC in 12 distinct areas, identified by circles on its application. These 12 areas were scattered throughout the study areas of MRTC (a member of MRC's corporate family) and RTC. At the hearing, MRC stated that it had expanded its application through a response to a data request submitted to it by MITS to include all of the study areas of MRTC and RTC, including areas outside the circles identified in its application. MRC stated that it needed this additional authority due to, among other things, concerns about disaggregation.

The rules require that all applications include "a clear and concise statement of the authorization of other relief sought" and a "concise and explicit statement of the facts which said party is prepared to prove by competent evidence and upon which the commission is expected to rely in granting authorization."² The rules also state that, after notice of a hearing is issued, motion for leave to amend any pleading or document may be filed with the commission and allowed. In the event the commission authorizes a post-notice amendment, however, the rules clearly state that the commission shall afford the parties **notice of the approval and adequate opportunity to prepare for hearing** (emphasis

¹ ARM 38.2.4806

² ARM 38.2.1202

added).³ The PSC violated these rules. First, the PSC permitted MRC to proceed to hearing without submission of pre-filed testimony. Second, the PSC improperly permitted MRC to expand the scope of its application without notice to any of the parties. These deficiencies denied the parties an adequate opportunity to prepare for the hearing and resulted in an insufficient record for the PSC's Order in this matter.

The rules are intended to ensure that parties have an opportunity to adequately prepare for hearing, cross-examine witnesses and fully explore the implications of the applicant's request so that decisions are based on a full evidentiary record and that no parties are denied their due process.⁴ The PSC, having allowed MRC to proceed at hearing with only a bare bones application and responses to data requests for background, failed to meet its obligation to allow the parties an adequate opportunity to prepare for hearing. Added to this failure is the PSC's willingness to permit MRC to expand the scope of its application in midstream. The PSC even states in the Order, "the MPSC is acutely aware of the difference between MRC's initial petition and MRC's amendment **in hearing** to revise the initial petition (emphasis added)."⁵

The PSC goes to great lengths in its Order to defend its decision to grant the expanded application. Nonetheless, the PSC's explanation does not, in any way, satisfy the requirement to afford parties notice of

³ ARM 38.2.1202

⁴ In fact, there is simply no substantial, reliable or probative evidence anywhere in the record that MRC's designation as an ETC will have any affect whatsoever on the provision of telecommunications services in the state of Montana. Instead, the record indicates only that "it is both the expectation of the MPSC and the public witnesses...that more extensive wireless coverage will result from designating MRC an ETC in the study areas of each of MRTC and RTC." (Order, p.34.) How MRC intends to expand coverage beyond existing "fill-in" territories to meet the expectations of the PSC and the public is not determined by evidence in the record.

⁵ Order No. 6518a, Docket No. D2003.8.105, page 32

changes to the application and an opportunity to adequately prepare for hearing.

This failure is particularly acute in the case of RTC. RTC, an intervenor in this case, elected to participate in the hearing through MTA, its trade association. Had RTC been given notice of MRC's intent to expand the scope of its application to include all of RTC's study area instead of only two "circles," RTC may have opted to participate individually in this matter. RTC may have presented its own witnesses at the hearing to discuss the implications of MRC's expanded ETC application. MRC, and subsequently, the PSC, denied RTC this opportunity by providing an insufficient and ever-morphing record in this proceeding. Such procedural defects are unlawful and should not be permitted.

CONCLUSION

WHEREFORE, for the foregoing reasons, MTA respectfully requests that the Commission abrogate its Order and deny MRC's request for ETC designation in this proceeding.

Respectfully submitted this 18th day of April, 2005.

DSmith & Associates, LLC

A handwritten signature in black ink, appearing to read "Diane Smith", is written over a horizontal line.

Diane Smith, Attorney for
Montana Telecommunications Association
P.O. Box 5089
Whitefish, Montana 59937