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WRITER'S DIRECT DIAL

October 7, 2002

By Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-B204
Washington, DC 20554

Re: CC Docket No. 96-45
Petitions for Designation as an ETC in the State of Alabama
Filed By Cellular South Licenses, Inc. and RCC Holdings, Inc.

Dear Ms. Dortch:

We write in response to the *ex parte* letter submitted by the Alabama Rural Local Exchange Carriers (the "Alabama Rural LECs") on October 2, 2002¹ in the above-captioned proceeding.

In an *ex parte* filing on September 5, 2002,² the Alabama Rural LECs presented a white paper, authored by McLean & Brown ("M&B article"), which they had given to FCC staff members in a meeting on the previous day. The M&B article was provided as record evidence as to why a grant of the applications of Cellular South Licenses, Inc. and RCC Holdings, Inc. ("CS/RCC") for eligible telecommunications carrier ("ETC") status in Alabama would not serve the public interest. Neither CS/RCC nor their representative was present at the meeting. As we noted in our letter to you of September 20, 2002, we responded based on an outline of the meeting submitted by the Alabama Rural LECs.

¹ Alabama Rural LECs, *ex parte* filing, CC Docket No. 96-45 (filed Oct. 2, 2002) ("Oct. 2 *ex parte* filing")

² Alabama Rural LECs, *ex parte* filing, CC Docket No. 96-45 (filed Sept. 5, 2002) ("Sept. 5 *ex parte* filing")

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The outline of the meeting included statements such as “Cellular South and RCC have not established that they meet the requirements for ETC designation”. It could not be more clear that the purpose of the meeting was to oppose the CS/RCC applications and the M&B article was submitted in support of their position.

In response, CS/RCC retained Don J. Wood, an economist with many years of relevant wireline experience at BellSouth and as a consultant who has provided extensive testimony and comments in both state and federal universal service proceedings. Mr. Wood prepared a declaration (the “Wood Declaration”) detailing the M&B article’s many shortcomings. He demonstrated how the Alabama Rural LECs have understated the public benefits and significantly overstated the public costs of designating a competitive eligible telecommunications carrier (“CETC”) in a rural area. Additionally, he explained in detail why specific economic concepts and the likely market outcomes espoused in M&B article are so unreliable that it should be entirely disregarded as evidence to support any of the allegations that the Alabama Rural LECs have made with respect to the possible effect of designating CS/RCC as ETCs in Alabama.

Apparently, we are now asked to understand that the M&B article was not intended to help prove much of anything — that its only purpose was to outline a “framework to examine the issue of portability.”³ Far from it. By providing FCC staff with M&B article, together with population density maps, the Alabama Rural LECs used the BPCM 3.0 proxy cost model to purportedly demonstrate that costs will rise exponentially in sparsely populated areas. Mr. Wood explained why that cost model produces results that are unfairly skewed toward ILECs, and pointed out that the graphs presented by McLean & Brown did not even have a scale, rendering them grossly deceptive.

Although the Alabama Rural LECs based their arguments against CS/RCC’s petitions on an article containing flawed analysis and conclusions, they now contend that CS/RCC have failed to address those arguments.⁴ Clearly, speculative arguments without foundation cannot form the basis of sound public policy. Accordingly, CS/RCC respectfully request the Commission to give proper weight to the Alabama Rural LECs’ statements about the public benefits and costs of designating CS/RCC — that is, no weight at all.

The only substantive attempt by the Alabama Rural LECs to counter the Wood Declaration appears in footnote 9 of its Oct. 2 *ex parte* filing. CS/RCC respond as follows:

1. The Alabama Rural LECs do not dispute that the BCPM 3.0 model is an

³ Oct. 2 *ex parte* filing at p. 2 (emphasis in original).

⁴ *See id.* at p. 4.

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unreliable tool in predicting costs, or that costs do not rise nearly as high as the M&B article would suggest. The fact that BCPM 3.0 represents “the only publicly available data” does not cure it of the defects that cause it to overstate costs in low-density areas. At the very least, the Alabama Rural LECs should have included a disclaimer to this effect.

2. With regard to M&B’s Chart 3, which uses a severely distorted scale that causes the curve to slope upward in a misleading fashion, the Alabama Rural LECs now claim that the scale “is logarithmic in nature, and is a common method for displaying data over a wide range of values.” In fact, the M&B article never says anything about a logarithmic scale and does not present the data as anything other than factual in nature. Without revealing the “logarithmic nature” of the chart, the inevitable, if not intended, effect is to deceive the reader.
3. Regarding the claim that the Wood Declaration provides “no source or other factual foundation . . . for the ‘Embedded Cost’ curve,” we note that the embedded cost curve used by the Wood Declaration is a very conservative 1.5x economic cost ratio. There is ample empirical evidence from the Commission’s examination of Tier 1 LEC costs in CC Docket No. 96-45 that embedded costs tend to be at least 1.5x economic cost. In fact, there is reason to believe the disparity is greater for smaller LECs; this is part of the justification for the five-year transition period.
4. The Alabama Rural LECs go claim that “the data point illustrated on the chart appears to be in the range of between 1,000 and 2,000 households per square mile [which] would not be indicative of the rural areas for which CS/RCC seek ETC designation.” The “Efficiency Gain” and “Efficiency Loss” lines are provided merely to explain the significance of comparing embedded cost to economic cost at any point along the horizontal axis. By focusing their attention exclusively on where those points happen to fall, the Alabama Rural LECs ignore the fact that a shift in the curve would result in a lower cost *at any density*.

The FCC has rejected the notion that designation of CETCs in rural areas would necessarily result in harm to ILECs, such as erosion of their customer base, or to their customers, in the form of rate increases. Rather, ILECs must affirmatively demonstrate some specific harm that will befall them as a result of a competitive ETC being designated.⁵ The Alabama Rural LECs have failed to set forth any specific harm that will be visited on them if the CS/RCC

⁵ See *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming, Memorandum Opinion and Order*, 16 FCC 48, 57 (2000); *Order on Reconsideration*, FCC 01-311 at ¶ 19 (rel. Oct. 19, 2001).

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petitions are granted. Instead, now dissociating themselves from the M&B article's flawed analysis, they have reverted back to more generalized concerns such as the so-called "customer list" problem and the potential for excessive growth in the Universal Service Fund.

As the Alabama Rural LECs suggest, these issues extend far beyond the confines of the CS/RCC petitions and are more appropriately addressed in future efforts by the Joint Board and the Commission to refine the high-cost rules. They are wrong, however, to suggest that the petitions be held up pending the resolution of NTCA's recent petition for rulemaking.⁶ Delaying the build-out of infrastructure and introduction of innovative and high-quality service in rural areas would not serve the public interest.

Finally, the fact that CS/RCC are currently providing service in portions of the areas and winning customers without support is not at issue. The issue is whether either CS or RCC have made inroads into the local exchange marketplace thus far. The answer is no. Competition in rural areas, such as those served by the Alabama Rural LECs, is in its nascent stages and must not be quashed at the urging of LECs seeking to steer public policy to ensure market outcomes. The Alabama Rural LECs continue to control close to 100% of the local exchange marketplace in their service areas. Without facilities-based competition, which Chairman Powell extolled at last week's Goldman Sachs Conference in New York City, ILECs are never going to become more efficient and customers are never going to see the benefits of competition.⁷

In their attempt to derail CS/RCC's applications, the Alabama Rural LECs have put before this Commission speculative assertions — supported by demonstrably flawed economic analysis — that form no basis for granting the relief they seek. In sum, they have failed to raise any concerns that can lead to the conclusion that designation of CS/RCC would not serve the public interest.

CS and RCC are prepared to provide the Commission with whatever additional information it may require to complete its work. CS and RCC respectfully request the Commission to promptly grant the captioned applications.

⁶ See *In the Matter of Petition for Rulemaking to Define "Captured" and "New" Subscriber Lines For Purposes of Receiving Universal Service Support, Pursuant to 47 C.F.R. § 54.307 et seq.*, RM No. 10522, Comments of the Alliance of Rural CMRS Carriers (filed Sept. 23, 2002).

⁷ See Remarks of Michael K. Powell, Chairman, Federal Communications Commission, at the Goldman Sachs Communicopia XI Conference, New York, NY (Oct. 2, 2002) ("Only through facilities-based competition can an entity bypass the incumbent completely and force the incumbent to innovate to offset lost wholesale revenues.")

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Respectfully submitted,

RCC Holdings, Inc.
Cellular South Licenses, Inc.

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