

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
Federal-State Joint Board)	
On Universal Service)	CC Docket No. 96-45
)	
Cellular South Licenses, Inc.)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
Throughout its Licensed Service Area)	
In the State of Alabama)	

**REPLY OF THE
ALABAMA RURAL LOCAL EXCHANGE CARRIERS
("ARLECs") TO THE
OPPOSITION TO APPLICATION FOR REVIEW**

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Blountsville Telephone Company
Brindlee Mountain Telephone Company, Inc.
Butler Telephone Company, Inc.
CenturyTel of Alabama, Inc.
Frontier Communications of Alabama, Inc.
Frontier Communications of Lamar County, Inc.
Frontier Communications of the South, Inc.
Graceba Total Communications, Inc.
GTC, Inc.
Gulf Telephone Company
Hayneville Telephone Company, Inc.
Hopper Telecommunications Company, Inc.
Interstate Telephone Company
Millry Telephone Company, Inc.
Mon-Cre Telephone Cooperative, Inc.
Moundville Telephone Company, Inc.
New Hope Telephone Cooperative, Inc.
Oakman Telephone Company
OTELCO Telephone LLC
Peoples Telephone Company
Ragland Telephone Company
Roanoke Telephone Company, Inc.
Union Springs Telephone Company, Inc.
Valley Telephone Company

January 24, 2003

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**REPLY TO THE
OPPOSITION TO APPLICATION FOR REVIEW**

The Alabama Rural Local Exchange Carriers (“ARLECs”)¹ submit this Reply to the Opposition filed by Cellular South Licenses, Inc. (“CellSouth”) on January 14, 2003 (“Opposition of CellSouth”). Contrary to CellSouth’s assertions, the *Memorandum Opinion and Order*, DA 02-3317, issued by the Wireline Competition Bureau (“WCB”) on December 4, 2002 (“CellSouth Order”), is in error. The ARLECs have demonstrated that, for certain rural areas, the public interest is not served by granting multiple ETC designations when the costs of supporting multiple networks exceed the benefits gained from supporting multiple carriers. Critical issues associated with such public interest analysis, including, the increase in the size of the Universal Service Fund (“USF”) as a result of supporting multiple carriers, and the loss of network efficiency when multiple carriers serve sparsely populated rural areas like those in Alabama, were presented fully to the WCB. However, the WCB gave such weight to competitive entry that it failed to consider these issues, ones that, for carriers located in rural Alabama and similar areas, should not be ignored simply because they are being considered in the *Joint Board Referral*.² Quite to the

¹ Castleberry Telephone Co. supports this Reply. See ARLECs Application for Review (filed Dec. 30, 2002) at 1.

² *In the Matter of Federal-State Joint Board on Universal Service, Order*, FCC 02-307 (rel. Nov. 8, 2002) (“*Joint*

contrary, the importance of these issues begs that the ETC designation in these limited instances be deferred. To do so is not prohibited³ and insures consistent orders.

While Congress provided a clear mandate to promote competition in the 1996 Act⁴, the designation of ETCs in rural areas may only be granted when in the public interest.⁵ By focusing solely on the introduction of competition to specific areas of rural Alabama as supporting CellSouth's ETC designation, the WCB ignored the public interest analysis of Congress and the Act's twin goal of promoting Universal Service.⁶ The WCB's conclusion that the Commission's policy is to "promot[e] competition in *all* areas, including high-cost areas"⁷ is incomplete and thus inconsistent with Congressional directive.

The cases cited by the ARLECs indicate that the Congressional mandate is not for competition at all costs, but economically viable competition. The majority in *Verizon Communications Inc. v. FCC* acknowledges that the Act "assumes that, given modern technology, local telecommunications markets *may* now prove large enough for several firms to compete in the provision of some services--but not necessarily all services--without serious economic waste."⁸ The Court does not say that local competition can be supported in all markets for all services.

Board Referral").

³ See *Memorandum Opinion and Order*, RCC ETC Petition, DA-02-3181 (rel. Nov. 27, 2002) at footnote 27.

⁴ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act"). 47 U.S.C. §§ 151, *et seq.* ("Communications Act", "1996 Act" or "Act"). Any references to section 254 in this Response refer to the universal service provisions of the 1996 Act, codified at 47 U.S.C. § 254 of the Act.

⁵ 47 U.S.C. § 214(e)(2) and (6).

⁶ Sec. 254 of the Act. See also, *Joint Board Referral* at para. 1.

⁷ CellSouth Order at para. 28 (emphasis added).

The ARLECs have not mischaracterized *U.S. Telecommunications Association v. FCC*.⁹ At its core, the case supports the proposition that Congress did not intend for competition under the Act to be “synthetic”, or artificial. Competition may very well be less authentic if it is not facilities-based. Similarly, there is likelihood that competition in certain rural areas may be “synthetic” and otherwise not in the public interest if it is promoted through the use of high-cost dollars without a thorough examination of the impact on overall universal service funding and network efficiencies.

In reviewing the Commission’s unbundling rules in the *USTA* case, the Court of Appeals drew from *AT&T Corp v. Iowa Utilities Board*, 119 S.Ct. 721 (1999), where the Supreme Court rejected the Commission’s overly broad application of the competitive “impairment” standard, noting that it was “hard to imagine when the incumbent’s failure to give access to the element would not constitute an ‘impairment.’”¹⁰ Making a similar mistake here, the WCB applied the pro-competitive elements of the Act so as to trump all other “public interest” criteria applicable to a rural ETC designation, rendering meaningless the balancing test envisioned by Congress. Applying the WCB’s analysis, it is “hard to imagine” when a rural ETC application would be denied.

Consumers in Alabama do not face “impediments to affordable telecommunications service”. Unlike Pine Ridge, CellSouth seeks ETC designation in an area for which the record indicates no lack of service capability.¹¹ CellSouth suggests that the WCB’s references to service

⁸ *Verizon Communications, Inc. v. FCC*, 122 S.Ct. 1646, 1689 (2002) (emphasis added).

⁹ *U.S. Telecommunications Association v. FCC*, 290 F. 3d 415 (2002) (“*USTA* case”).

¹⁰ *Id.* at 418, citing *AT&T Corp v. Iowa Utilities Board*, 119 S.Ct. 721, 735 (1999).

inaccessibility in the Pine Ridge Reservation should be ignored, contending the references were made after the WCB had already determined that the applicant had made the “threshold demonstration” necessary to secure an ETC grant.¹² However, a cursory reading of Pine Ridge reveals that the service inaccessibility finding was a critical part of the WCB’s “public interest” analysis in Pine Ridge.¹³ The ARLECs have not asked the Commission to issue a blanket freeze on the “processing of pending [ETC] applications” but to prevent the WCB from ignoring Commission action in this arena and to consider the long-range implications if the WCB does not. The ARLECs are not asking for a “suspension of existing rules”.¹⁴ The existing rules call for a public interest analysis. Yet, CellSouth wants the Commission to allow the WCB to continue to grant such designations without any consideration of the core issues necessary for such analysis. Such an approach is not in the public interest of rural telephone consumers, but is, to borrow a term from CellSouth “absurd”.¹⁵ It is counterintuitive to routinely grant ETC designations in geographic areas such as those served by the Alabama LECs, while ignoring the impact of these decisions on the funds available to support these very same areas.

Finally, the primary cause of fund growth has been to benefit Competitive ETCs (“CETCs”), not ILECs. The combined effect of the shifting of cost-based access charges to explicit and portable “support” mechanism through the CALLS and MAG plans (Interstate

¹¹ See “Exhibit A” (attached), Map 1, Mobile Telephone Operator Coverage estimated by County, *In the matter of Implementation of Sec. 6002(b) of the OBR Act of 1993, Annual Report and Analysis of Competitive Market Conditions with respect to CMS*, FCC 02-179, Seventh Report, Appendix E-2 (rel. July 3, 2002).

¹² CellSouth Opposition at 8.

¹³ 16 F.C.C.R. 18,133 (2001) at paras. 1 and 11.

¹⁴ CellSouth Opposition at 8-9.

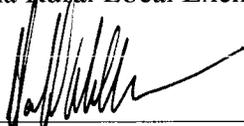
¹⁵ *Id.*

Access Support and Interstate Common Line Support) has been to add \$1.15B *per year* to the fund.¹⁶ This represents over one-third of the \$3.2B high-cost fund, and benefits only CETCs by making these funds potentially portable. The ILECs receive no more revenue than they did previously, and could potentially receive less. The \$1.26B increase cited by CellSouth is the projected impact *over 5 years*, thus the average annual impact of approximately \$250M per year is less than one quarter of the impact of CALLS and MAG.¹⁷

The CellSouth Order is premature because the Pine Ridge decision, as well as others referenced by CellSouth, was issued before the Commission issued its *Joint Board Referral - almost twenty days before the CellSouth Order*. Commission review is warranted because the WCB took the bold step of issuing an Order in the very arena the Joint Board is reconsidering – the ETC designation process.

Respectfully submitted,
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January 24, 2003

¹⁶ *In the matter of Access Charge Reform, Price Cap Performance Review for Local Carriers, Low-Volume Long Distance Users, Federal State Joint Board on Universal Service, Sixth Report and Order in CC Dockets 96-262 and 94-1, Report and Order in 99-249 and Eleventh Report and Order in 96-45, FCC 00-193 (rel. May 31, 2000) at para.186; The ICLS is currently \$372M per USAC HC01 1Q03 and projected to increase around \$500M when the phase-out of the Carrier Common Line Charge is completed July 1, 2003.*

¹⁷ *Federal-State Joint Board on Universal Service; MAG Plan for Regulation of Interstate Services of Non-Price Cap ILECs and Interexchange Carriers, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, CC Docket 96-45 and Report and Order, CC Docket 00-256, 16 F.C.C.R. 11,244 (2001) (“Fourteenth Report and Order”), at para. 28.*

CERTIFICATE OF SERVICE

I, Leah S. Stephens, hereby certify that on this 24th day of January, 2003, a true and correct copy of the above and foregoing REPLY TO OPPOSITION TO APPLICATION FOR REVIEW, unless otherwise designated, has been forwarded by U.S. Mail, first class, postage prepaid and properly addressed to:

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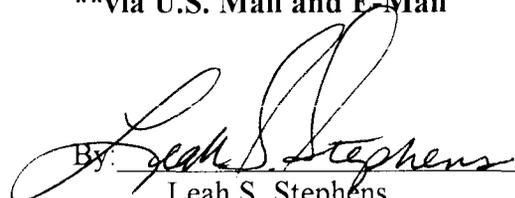
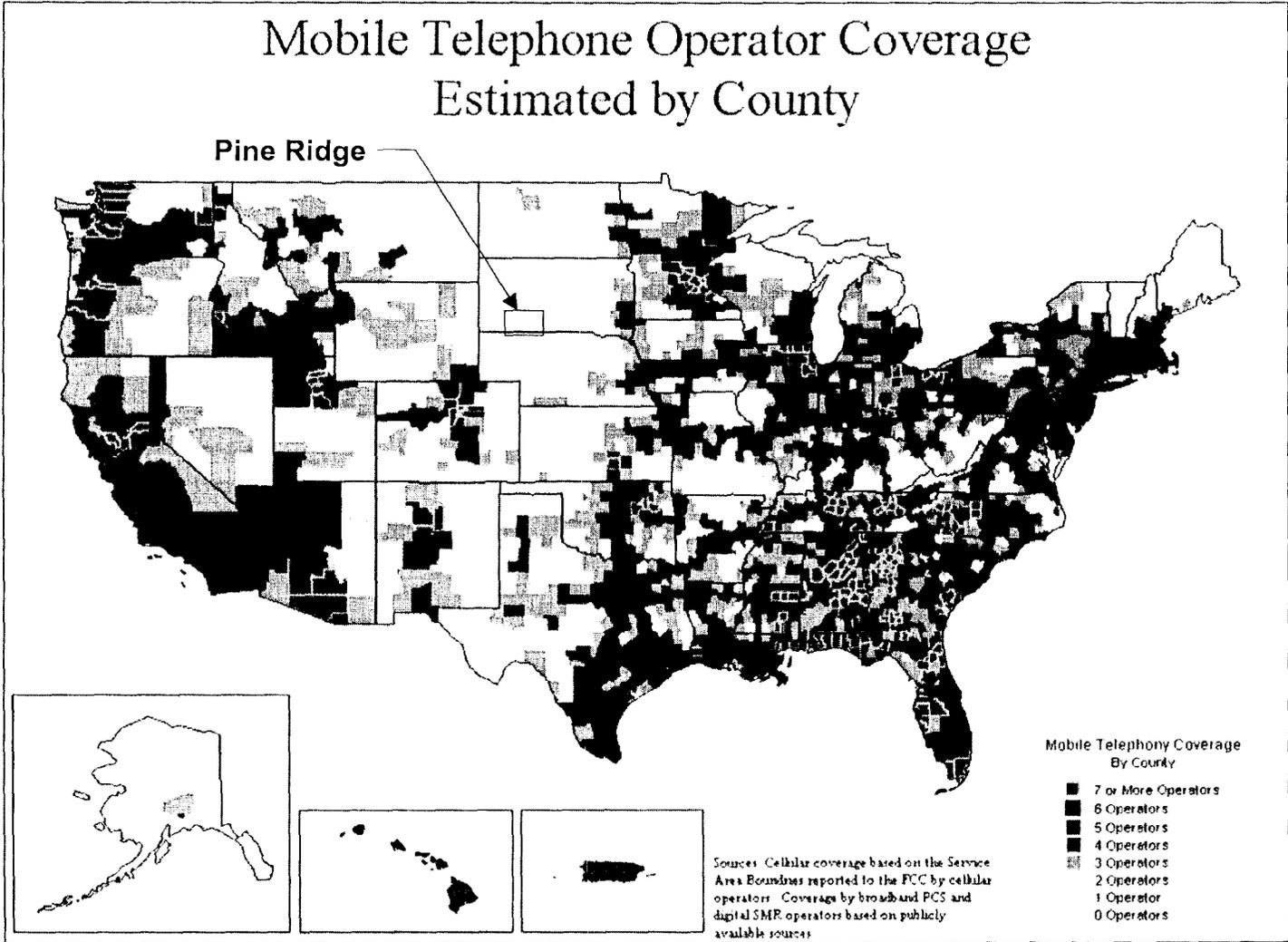
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EXHIBIT A



Source: 7th Annual Report on CMRS Competition