

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

In the Matter of)
)
CELLULAR SOUTH LICENSE, INC.)
) CC Docket No. 96-45
Petition for Designation as an)
Eligible Telecommunications Carrier)
in the State of Alabama)

To: The Commission

MOTION TO DISMISS

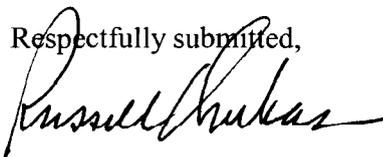
Cellular South License, Inc. (“Cellular South”), by its attorneys, hereby requests that the Commission summarily dismiss the Supplement to the Application for Review of the Alabama Rural Local Exchange Carriers (“Supplement”) filed with respect to the designation of Cellular South as an eligible telecommunication carrier (“ETC”) by the Wireline Competition Bureau (“Bureau”). *See Cellular South License, Inc.*, 17 FCC Rcd 24393 (Wireline Comp. Bur. 2002). In support thereof, the following is respectfully submitted:

Section 1.115(d) of the Commission’s rules (“Rules”) provides that an “application for review and any supplement[] thereto shall be filed within 30 days of public notice” of the action of which review is sought. 47 C.F.R. § 1.115(d). Obviously, the Supplement is untimely since it was filed nearly seventeen months after the 30-day period of § 1.115(d) expired. *See generally Citicasters Licenses, Inc.*, 17 FCC Rcd 1997, 1997 n.2 (2002); *BDPCS, Inc.*, 15 FCC Rcd 17590, 17596-97 (2000). Yet, the Alabama Rural Local Exchange Carriers (“ARLECs”) neither requested a waiver of § 1.115(d) of the Rules nor submitted a motion for leave to file their Supplement showing good grounds on which leave may be granted. Therefore, the Supplement should be summarily dismissed as untimely and unauthorized. *See Warren C. Havens*, 17 FCC Rcd 17588,

17593 & n.53 (2002); *Carol Sue Bowman*, 6 FCC Rcd 4723, 4723 n.1 (Mass Media Bur. 1991). *Cf. Charles T. Crawford*, 17 FCC Rcd 2014, 2018 n.44 (2002).

The dismissal of their Supplement will not prejudice the ARLECs. For the most part, the Supplement is a rehash of arguments the ARLECs made in their application for review. Moreover, on May 14, 2004, Cellular South supplemented its petition for designation as an ETC pursuant to the Bureau's "invitation" to update the record. *See* Public Notice, DA 04-999, 2004 WL 770012 (Wireline Comp. Bur. Apr. 12, 2004). The ARLECs will have until May 28, 2004 to comment on Cellular South's supplemented petition. *See Parties Are Invited to Update the Record Pertaining to Pending Petition for ETC Designations*, 69 Fed. Reg. 22029 (Apr. 23, 2004). Thus, the ARLECs will have ample opportunity to be heard once more with respect to Cellular South's designation as an ETC.

For all the foregoing reasons, Cellular South respectfully requests that the Commission summarily dismiss the untimely and unauthorized Supplement.

Respectfully submitted,


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May 19, 2004

CERTIFICATE OF SERVICE

I, Kimberly Verven, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this 19th day of May, 2004, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing *Motion to Dismiss* filed today to the following:

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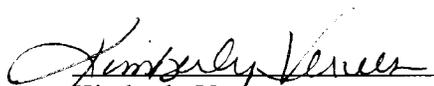
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