

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
 )  
Petition for Order Declaring ) WC Docket No. 02-78  
Mid-Rivers Telephone Cooperative, Inc. )  
An Incumbent Local Exchange )  
Carrier in Terry, MT )

**COMMENTS  
OF THE  
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (NTCA) hereby submits its comments in support of Mid-Rivers Telephone Cooperative, Inc.'s (Mid-Rivers) petition requesting that the Commission issue an order and rule declaring that Mid-Rivers shall be treated as the incumbent local exchange carriers (ILEC) in the Terry, Montana telephone exchange.

NTCA is a national association made up of more than 500 small and rural ILECs. All NTCA members are classified as "rural telephone companies" as that term is defined in the Communications Act of 1934, as amended. Mid-Rivers is an NTCA member.

Although Mid-Rivers was not a member of the National Exchange Carriers Association for the Terry, Montana exchange at the time the Telecommunications Act was enacted, it has provided a clear and convincing showing that it has passed the three-prong test for being treated as an incumbent under Section 251(h)(2). Section 251(h)(2) provides that the Commission may provide for the treatment of a LEC as an incumbent LEC if: (1) The carrier occupies a position that is comparable to the occupied by the

ILEC; (2) if the carrier has substantially replaced the ILEC; and (3) if it is consistent with the public interest, convenience and necessity.

As is explained in the petition, Mid-Rivers has a local presence in the community, serves at least 90% of the customers and has essentially replaced the ILEC. Given the fact that the ILEC's facilities are ill-maintained, the public interest will best be served if Mid-Rivers is treated as the incumbent. Mid-Rivers will take on the responsibilities of an ILEC for the Terry exchange. The public will benefit from a rule because Mid-Rivers has the resources to provide the community with state of the art telecommunications using its own facilities.

Section 251(h) was clearly intended to address the Mid-Rivers' situation. Congress recognized that although the 1996 Act froze the list of incumbents at its enactment, situations could, and likely would change. Just because a carrier was declared an ILEC at the date of enactment, it should not necessarily always be regulated as one. Similarly, competitive LECs that replace ILECs should have the option to choose the regulatory status appropriate to an ILEC.

In light of the foregoing, the Commission should grant Mid-Rivers' petition and adopt a rule and declaration that Mid-Rivers is the Incumbent Local Exchange Carrier in Terry, Montana.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS  
COOPERATIVE ASSOCIATION

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May 6, 2002

## CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in WC Docket No. 02-78, DA 02-914 was served on this 6th of May 2002 by first-class, U.S. Mail, postage prepaid, to the following persons.

/s/ Gail C. Malloy

Gail C. Malloy

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