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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Chairman Michael K. Powell
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20037

Re: Petition for Order Declaring Mid-Rivers Telephone Cooperative, Inc. an Incumbent Local Exchange Carrier in Terry, MT, WC Doc. No. 02-78; Federal-State Joint Board on Universal Service, CC Doc. No. 96-45
Ex Parte Communication

Dear Chairman Powell:

In February of 2002 Mid-Rivers Telephone Cooperative requested, pursuant to Section 251(h)(2) of the Communications Act, that the Commission designate it as the Incumbent Local Exchange Carrier ("ILEC") in Terry, MT. Mid-Rivers provides service in Terry as a Competitive Local Exchange Carrier ("CLEC") to approximately **97%** of the access lines. Mid-Rivers' request demonstrated that (1) it has a comparable position in the area to the present ILEC (Qwest); (2) that it has substantially replaced the ILEC; and **(3)** designation of Mid-Rivers as the ILEC would be consistent with the public interest, convenience and necessity and the purpose of Section 251.

Comments and reply comments were completed by May 15,2002, in which the only opposition was from Western Wireless. Subsequently, the Montana Public Service Commission filed a letter supporting Mid-Rivers and Qwest filed its comments as an ***exparte*** letter, seeking a delay and a Notice of Inquiry. In December of 2002, Mid-Rivers met with the Wireline Competition Bureau staff to urge prompt action on its request. **A** copy of the paper distributed at the meeting summarizing the filing and issues is attached. An attempt to discuss the issues directly with Qwest was unsuccessful.

Mid-Rivers is very much aware that the Commission has been focused on several substantial common carrier issues over the last year, several of which have statutory deadlines. Mid-Rivers also recognizes that its request is one of first impression and so requires careful consideration. The Act, however, also obligates the Commission to address in a reasonable time frame matters which may seem to be of more local concern, but which are entrusted solely to the Commission.

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Carriers must make major business decisions in an environment where economics and technology are rapidly changing. Communications are a critical factor in the extreme low density and harsh climate of eastern Montana. The ability of Mid-Rivers and other carriers to meet these challenges is very much dependent on timely action by regulators. Mid-Rivers therefore respectfully requests that the Commission promptly undertake action to decide its request.

I will be pleased to respond to any questions in this matter.

Sincerely yours

David Cosson

Counsel to Mid-Rivers Telephone Cooperative, Inc.

Attachment

cc: Commissioner Abernathy
Commissioner Copps
Commissioner Martin
Commissioner Adelstein
Christopher Libertelli
Matthew Brill
Jessica Rosenworcel
Daniel Gonzalez
Lisa Zaina
William Maher
Jeffrey Carlisle
Ann Stevens
Paul Garnett
Ian Dillner
Nesse Guendelsberger
Secretary

Attachment

December 10,2002

MID-RIVERS TELEPHONE COOPERATIVE
SECTION 251(h) PETITION, TERRY, MT
WC DOC. NO. 02-78

Filed: February 15,2002
Public Notice: April 19,2002
Comments/Replies Complete: May 15,2002

Summary:

Mid-Rivers provides ILEC and CLEC service in eastern Montana. Mid-Rivers initiated CLEC service in Terry in 1997 by constructing new outside plant, and offers a combination of modem, reliable services including DSL, Internet, ITV to the school and CLASS, together with a local presence. Ninety percent of the subscribers converted to Mid-Rivers in the first year. Approximately 97% of the 317 residence lines and 118 business lines in Terry are Mid-Rivers subscribers. Mid-Rivers has been designated an ETC in Terry. Mid-Rivers was able to obtain almost the entire subscriber base because of the superiority of its service compared to Qwest, which has long relegated Terry and other rural areas to telecommunications backwaters.

Mid-Rivers should be designated the ILEC for Terry because it meets the requirements of Section 251(h)(2):

(a) It has a comparable position in the area to the ILEC.
(b) It has substantially replaced the ILEC
(c) Treatment of Mid-Rivers as the ILEC is consistent with the public interest: convenience and necessity and the purposes of Section 251.

Record:

Comments in support of Mid-Rivers' Petition were filed by Rural Independent Competitive Alliance ("RICA"), the National Telecommunications Cooperative Association ("NTCA") and John Staurulakis, Inc. **("JSI").** An opposition was filed by Western Wireless Corporation. After close of the comment period, Qwest filed its comments as an ***exparte*** letter seeking to delay Commission action by proposing that the Commission first conduct a Notice of Inquiry before acting on Mid-Rivers' Petition.

Issues:

(a) ***Study Area Waiver.*** Westem Wireless and Qwest oppose the petition and claim to be concerned that if, after grant of the petition, the Commission also allows Mid-Rivers to include Terry in its study area, then any subsequent competitive carrier seeking ETC designation in Terry would be required to serve the entire Mid-Rivers study area and would be required to make a public interest showing. In addition, the opponents claim there could then be changes in the form of rate regulation and

USF support. Qwest asserts Mid-Rivers should continue to receive the same support as Qwest.

Issues regarding the implications of a study area waiver are premature at best. There are no pending ETC requests for Terry by Western Wireless or any other carrier. Although Mid-Rivers intends to apply for a study area waiver upon grant of this petition, the petition is not contingent upon grant of such a waiver and all interested parties will have the opportunity to raise any relevant comments in the waiver proceeding. Any other ETC applicant will have the right to request that a different service area be designated.

Mid-Rivers believes, however, that the current rules specifying that all ETCs receive the same per line USF support are seriously flawed from a public policy perspective and are not competitively neutral. Because all ETCs are not similarly situated, the current rules result in support that is not sufficient for some ETCs, and a windfall for others. Both results are in conflict with the Act. The current reexamination of the "portability" rules should not delay action on Mid-River's petition because Mid-Rivers' request for ILEC designation is not conditioned upon any subsequent Commission action.

(b) ***Section 251(f) Exempfion.*** Western Wireless and Qwest also object that grant of ILEC status to Mid-Rivers in Terry would allow Mid-Rivers to assert its Section 251(f) exemption from the requirements of Section 251(c).

The rural exemption issue can and should be addressed in accordance with the relevant provisions of Section 251(f)(1)(B) if, and when, a competitor seeks such an interconnection. There are currently no such requests. Congress contemplated that some CLECs would supplant the incumbent and become ILECs, without any indication that such new ILECs should not be permitted if they would meet the definition of a rural telephone company.

(c) ***Area of Designation.*** Qwest asserts that before acting on Mid-Rivers' petition, the Commission must decide whether the statute allows Mid-Rivers to be designated as the ILEC in Terry alone, or throughout the area in which it is designated a competitive ETC.

This issue borders on the frivolous. There is no basis in the statute for this assertion, nor any basis in fact. Consideration of this question would unnecessarily delay action on Mid-Rivers' petition. The prerequisites for ILEC status include substantial replacement; ETC status requires only holding out to provide the supported services.

(d) ***Status of Qwest after designation of Mid-Rivers.*** Qwest claims that before it acts **on** Mid-Rivers' petition, the Commission must resolve the question of whether Qwest would remain an ILEC if the petition is granted.

There is no reason to conduct a separate proceeding and delay action on Mid-Rivers' petition. If the Commission determines that Qwest's status in Terry changes as a result of grant of the petition, it can so state in its decision. The Act provides Qwest an opportunity to withdraw its ETC status from Terry, to which Mid-Rivers would not object, and would consider purchase of Qwest's facilities

Conclusion

Mid-Rivers requests that the Commission act promptly on its petition consistent with the intent of Congress for situations in which the incumbent carrier is supplanted by a new entrant.