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August 20, 2004

Marlene Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation in WC Docket 02-78, Petition of Mid-Rivers Telephone Cooperative to be Declared an ILEC Pursuant to Section 251(h)(2) of the Communications Act

Dear Ms. Dortch:

Yesterday, John Jones of CenturyTel, Inc., Jeffrey Marks of this office and I made a presentation in successive meetings with Scott Bergmann, Legal Advisor to Commissioner Adelstein, Matthew Brill, Senior Legal Advisor to Commissioner Abernathy, and Jessica Rosenworcel, Legal Advisor to Commissioner Copps, discussing issues raised in the Petition filed in the above above-captioned proceeding. CenturyTel urged that the Commission to consider the numerous policy implications raised by the Petition and that the Commission should not act until it obtains a more complete record. The enclosed materials were distributed at these meetings. Please direct any questions concerning this matter to me.

Very truly yours,

Karen Brinkmann (JAM)

Karen Brinkmann

Enclosure

cc: Scott Bergmann, Legal Advisor, Office of Commissioner Adelstein
Matthew Brill, Senior Legal Advisor, Office of Commissioner Abernathy
Jessica Rosenworcel, Legal Advisor, Office of Commissioner Copps

**Petition of Mid-Rivers Telephone Cooperative for a Declaration that It Has "Substantially Replaced" the ILEC Pursuant to Section 251(h)(2) of the Communications Act (WC Docket 02-78)**

**I.** As stated in the FCC's brief to the D.C. Circuit, Mid-Rivers' reasons for seeking reclassification as an ILEC are not stated in the record – While it is difficult to evaluate the full impact of granting Mid-Rivers' petition, any grant could establish far-reaching precedents

**II.** A number of federal regulatory implications should be considered simultaneously with the petition, including:

a. The likelihood of increasing the amount of federal support Mid-Rivers is entitled to receive by a substantial margin (yet to be determined)

b. The likelihood of substantially increasing the level of interstate access rates Mid-Rivers may charge (also yet to be disclosed), without any clear public interest benefit

c. Whether Mid-Rivers will undertake §251(c) interconnection, unbundling and resale obligations (or invoke the §251(f) rural exemption)

d. Subjecting Mid-Rivers to a variety of additional federal regulatory obligations, such as dominant carrier rate regulation, equal access obligations, and accounting and reporting requirements (Mid-Rivers has not stated whether it would seek forbearance from these obligations)

e. Whether Qwest should cease to be viewed as the ILEC and declared non-dominant in the Terry exchange, if Mid-Rivers has "substantially replaced" it, as defined in §251(h)(2) of the Act

f. Whether Qwest now will be able to receive support based on the costs of Mid-Rivers, and whether this "role reversal" advances universal service

**III.** The Commission may also decide:

a. Whether Mid-Rivers be subject to regulation as an ILEC or Carrier-of-Last-Resort under state regulations

b. How much market share a CLEC must win to meet the test of "substantial replacement" of an ILEC

c. Whether Mid-Rivers' existing (coop) study area in Montana will be redefined to include these new, high-cost exchanges

**IV.** This petition has even broader implications for existing carriers serving high-cost areas, because:

a. Current Commission policies neither allow carriers to increase support by sub-dividing study areas, nor allow support to be increased through sale of exchanges to new owners

b. Existing rules affect investment in high-cost areas by artificially capping the amount of support available to ILECs serving high-cost areas, through such mechanisms as the capping of rural high-cost support, the operation of the non-rural high-cost proxy model, and the freezing of study area boundaries

c. Existing rules discourage acquisition of distressed properties by restricting the amount and timing of support available to buyers of such properties – the "safety valve" has provided limited relief from the onerous effects of Section 54.305 of the FCC's rules

d. The Commission has proposed "primary line" limitations which would further discourage investment in high-cost areas, even while CETCs are getting support in ever-increasing numbers

**V.** Rather than encouraging investment, granting the Mid-Rivers petition will raise new questions about long-term investment by ILECs in high-cost rural markets

**VI.** The breadth of these issues has not been explored in the meager record on this petition; many of these issues are under review in docket 96-45, and a number have been submitted to the Federal-State Joint Board on Universal Service for resolution, and have just been put out for public comment