Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of Mid-Rivers Telephone Cooperative,	)	
Inc. for Order Declaring it to be an Incumbent	)	WC Docket No. 02-78
Local Exchange Carrier in Terry, Montana	)	
Pursuant to Section 251(h)(2)	)	

To: Wireline Competition Bureau

COMMENTS OF HANCOCK COMMUNICATIONS, INC.
IN SUPPORT OF MID-RIVERS TELEPHONE COOPERATIVE, INC.

Hancock Communications, Inc. ("Hancock"), by its attorneys, hereby files these comments in support of Mid-Rivers Telephone Cooperative, Inc.'s ("Mid-Rivers") petition that it be classified as an incumbent local exchange carrier ("ILEC") pursuant to Section 251(h)(2) of the Communications Act of 1934, as amended ("Act").[1] Hancock agrees with the Federal Communication Commission's ("FCC" or "Commission") tentative conclusion to classify Mid-Rivers as an ILEC. As discussed in detail below, classifying Mid-Rivers as an ILEC is consistent with long-standing universal service principles codified in the Act and serves the public interest, convenience, and necessity of consumers in Terry, Montana.

BACKGROUND

Hancock Communications, Inc., a competitive local exchange carrier ("CLEC"), is a wholly-owned subsidiary of Hancock Rural Telephone Corp. d/b/a Hancock Telecom, an ILEC and rural telephone cooperative in Indiana. Hancock serves rural regions east of Indianapolis, Indiana as a facilities-based CLEC. Sprint and Verizon are the current "legacy" ILECs in the areas that Hancock provides competitive service.[2] Hancock's basic business strategy is to overbuild the Sprint and Verizon exchanges, providing fiber and digital loops to homes and businesses.

To date, Hancock has captured more than 50 percent of the customers in the Sprint and Verizon legacy ILEC exchanges. Even with a conservative buildout schedule,

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[1] *Pleading Cycle Established for Comments Regarding Mid-Rivers Section 251(h)(2) Notice of Proposed Rulemaking*, WC Docket No. 02-78, Public Notice, DA 04-3789 (November 30, 2004) (*"NPRM"*).

[2] Hancock also operates as a CLEC in SBC territory, providing fiber-based, high-speed services to government and school facilities, as well as businesses.

Hancock has found that the legacy ILEC customers are anxious to sign up for Hancock's state-of-the-art telecommunications services. Hancock, unlike legacy ILECs in certain instances, is able to provide broadband services and features that most telecommunications consumers take for granted such as caller ID. Hancock believes that ILEC classification pursuant to Section 251(h)(2) makes sense in cases where small, rural CLECs in similar situations as Mid-Rivers are meeting the demand for up-to-date telecommunications services in rural areas that are being overlooked by large, nationwide ILECs.

DISCUSSION

The Mid-Rivers petition represents a classic example of what Congress had in mind for universal service when it codified the FCC's historical commitment[3] to ensuring that consumers in rural and high cost areas have access to similar service available to urban consumers. Section 254(b)(3) of the Act mandates that consumers "in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."[4] Based on the phenomenal 93 percent[5] of Qwest customers who have abandoned Qwest service for Mid-Rivers service in Terry, Montana, it is obvious that these former Qwest customers were not receiving adequate services available to the rest of the country. On its face, a CLEC capturing over 90 percent of the customers of the legacy incumbent suggests pent-up demand for telecommunications services that was unmet by the legacy ILEC. Mid-Rivers has essentially replaced Qwest as the incumbent carrier in Terry, Montana and deserves to be recognized as such, pursuant to Section 251(h)(2).

Mid-Rivers' capture of over 93 percent of the customers in the Terry, Montana exchange meets Section 251(h)(2)'s requirements that the carrier requesting classification as an ILEC must have "substantially replaced" the legacy ILEC, and occupy a market position comparable to an incumbent.[6] Mid-Rivers is now the dominant carrier in Terry, Montana. This dominance can be attributed to Mid-Rivers' rural telephone cooperative background and expertise and desire to provide rural telecommunications to rural customers. CLECs such as Mid-Rivers are skilled niche players in the nationwide telecommunications market, able to meet untapped demand for advanced telecommunications services in previously overlooked markets.

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[3] "Universal service has been a fundamental goal of federal telecommunications regulation since the passage of the Communications Act of 1934." *Alenco v. FCC*, 201 F.3d 608 (5th Cir. 2000).
[4] 47 U.S.C. § 254(b)(3).
[5] *NPRM* at ¶ 4.
[6] 47 U.S.C. § 251(h)(2)(A) and (B).

This rural marketplace shift, exemplified by the position of Mid-Rivers with respect to the legacy incumbent Qwest is indicative of a national trend. While most urban CLECs are struggling to capture customers, rural, facilities-based CLECs are succeeding. Hancock's experience in legacy ILEC territory is another example of this trend. So far, Hancock has captured over 50 percent of legacy ILEC customers in the Wilkinson, Knightstown, and Shirley exchanges that it serves, and expects this figure to grow as it builds out its advanced network. Hancock also serves the Fortville, Cumberland, and Greenfield exchanges and is working on capturing a majority of customers in those exchanges, too.

Large, nationwide ILECs have generally abandoned their remote exchanges, leaving many of these exchanges in poor condition. Niche rural providers such as Mid-Rivers and other small, rural-based CLECs have been able to overbuild these areas and offer advanced services to rural customers who otherwise would not have the option of purchasing these services. By granting Mid-Rivers' ILEC classification request, the Commission will be encouraging this positive universal service development. Further, by allowing such successful niche players as Mid-Rivers to convert to ILEC status, the Commission will be creating a way for legacy ILECs no longer interested in serving remote rural customers to gracefully exit these markets and to concentrate their resources on more profitable urban and suburban areas.[7]

Classifying Mid-Rivers as an ILEC meets the Section 251(h)(2) requirement that the classification serve the "public interest, convenience, and necessity."[8] Hancock knows from personal experience that rural-based CLECs such as Mid-Rivers provide telecommunications services that large carriers cannot or will not offer. These services range from the simple offering of call waiting to more advanced broadband services. Absent rural niche players such as Mid-Rivers, customers of large, legacy ILECs might *never* see advanced services in their exchanges. It is in the public interest for the Commission to offer CLECs the regulatory certainty and the administrative efficiencies inherent in converting to ILEC status, thus encouraging the provision of services in rural America comparable to those offered in urban areas.

The fact that, in some cases, high cost support to a newly-converted ILEC increases over that which flowed to the carrier previously as a CLEC should not be viewed in a negative light. When a carrier such as Mid-Rivers overbuilds a neglected legacy network in order to provide up-to-date services to rural consumers, it is consistent with universal service principles for it to receive needed high cost support for its efforts. The new networks that carriers such as Mid-Rivers are building to replace what in many

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[7] The phenomenal success with which small, rural CLECs capture large, legacy ILEC customers attests to these large carriers' disinterest in serving less profitable rural areas. The large, legacy ILECs have a fiduciary duty to their shareholders seeking a maximum rate of return on their investments. Rural niche players such as Mid-Rivers are motivated less by profit, and more by the public interest inherent in providing their neighbors with up-to-date telecommunications services.

[8] 47 U.S.C. § 251(h)(2)(C).

cases are analog legacy networks, are efficient and able to offer numerous services over the same platform. The Commission should not limit or cap universal service support when it grants ILEC status to a CLEC that has replaced the legacy ILEC. The number of small, rural CLECs that will be in the same position as Mid-Rivers in the future is unlikely to overwhelm the universal service fund. In any case, Commission universal service policy should encourage rural-based CLECs to build networks that are comparable to those in urban areas. Allowing CLECs, pursuant to Section 251(h)(2), to convert to ILEC status, and in some cases receive additional high cost support, will provide a limited, yet effective regulatory incentive for the revamping of rural networks throughout the country.

CONCLUSION

Mid-Rivers clearly meets the Section 251(h)(2) standard for ILEC classification. Carriers such as Mid-Rivers reflect a positive universal service trend where previously uncared for rural consumers are finally benefiting from the Act's promise of comparable services "in all regions of the Nation."[9] When developing criteria for ILEC classification pursuant to Section 251(h)(2), the Commission should enable carriers like Mid-Rivers and Hancock that have overbuilt the legacy ILEC's abandoned network and have captured customers with a pent-up demand for modern telecommunications services to expeditiously be granted ILEC classification. For the foregoing reasons, Hancock respectfully requests that the Commission grant Mid-Rivers' Section 251(h)(2) petition and develop Section 251(h)(2) standards that encourage similarly-situated carriers to seek ILEC status in order to provide new and advanced telecommunications services in previously neglected rural regions.

Respectfully submitted,

HANCOCK COMMUNICATIONS, INC.

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[9] 47 U.S.C. § 254(b)(3).