

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Petition of Mid-Rivers Telephone
Cooperative, Inc. for Order Declaring it to
be an Incumbent Local Exchange Carrier in
Terry, Montana Pursuant to Section
251(h)(2)

WC Docket No. 02-78

REPLY COMMENTS OF VERIZON¹

Verizon agrees with the commenters who noted that no carrier meets the definition of “incumbent local exchange carrier” in the Terry, Montana exchange.²

In the *Notice*, the Commission found that “incumbent LECs typically occupy a dominant position in the market for telephone exchange service in their respective operating areas, and possess economies of density, connectivity, and scale that make efficient competitive entry quite difficult, if not impossible, absent compliance with the obligations of section 251(c).”³ As SBC points out, neither Qwest, the original incumbent, nor Mid-Rivers has a dominant position in the market or has the ability to prevent competition by denying use of its facilities. Accordingly, neither carrier could exercise market power by restricting output and raising prices, as such

¹ The Verizon telephone companies (“Verizon”) are the affiliated local telephone companies of Verizon Communications Inc. These companies are listed in Attachment A.

² *See, e.g.*, SBC at 3-6; Qwest at 10-11; ACS at 2-5.

³ *Petition of Mid-Rivers Telephone Cooperative, Inc. for Order Declaring it to be an Incumbent Local Exchange Carrier in Terry, Montana Pursuant to Section 251(h)(2)*, Notice of Proposed Rulemaking, 19 FCC Rcd 23070, ¶ 6 (2004) (“*Notice*”).

conduct would only drive customers to the other carrier, which offers service throughout the exchange over its own facilities.⁴ And because each carrier has its own network throughout the exchange, neither carrier is impaired by the lack of access to the other carrier's facilities under section 251(c). Accordingly, the Commission should find that neither carrier is an incumbent for purposes of section 251 because neither meets the section 251(h)(2)(A) standard of occupying "a position in the market for telephone exchange service . . . that is comparable to the position" of the incumbent local exchange carrier on the date that the Telecommunications Act of 1996 was passed.⁵

In addition, as ACS noted, a carrier is not required to demonstrate that the requirements of section 251(h)(2) have been satisfied before being relieved of dominant carrier regulation or of unbundling obligations.⁶ Section 251(h)(2) is a narrowly-focused provision aimed at defining when a carrier should be treated as an incumbent local exchange carrier under section 251(c). Non-dominance, and a lack of impairment under section 251(d)(2), would normally occur far in advance of the point where a competitive local exchange carrier would be found to have "substantially replaced" the incumbent. Non-dominance occurs when competitive alternatives eliminate a carrier's ability to control output or prices.⁷ The impairment standard under section 251(d)(2) is based on the ability of other providers to compete without access to unbundled facilities. *See USTA v. FCC*, 359 F.3d 554, 572 (D.C. Cir. 2004) (impairment standard is related

⁴ *See* SBC at 4-6.

⁵ The Act does not compel the Commission to designate a new incumbent local exchange carrier. Section 251(h)(2) uses the discretionary term "may" rather than the mandatory "shall."

⁶ *See, e.g.*, ACS at 3; *see also* Qwest at 10-11.

⁷ *See, e.g., Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd 3271, ¶ 7 (1995).

to “structural impediments to competitive supply”). Impairment turns not on the level of competitive losses or even competitive entry, but rather on whether “competition is possible.” *See id.* at 575. Thus, in neither case does the standard require a particular level of market share loss, much less substantial replacement of the incumbent.

Although several carriers argue that the Commission should prescribe the level of universal service support that Mid-Rivers should receive if it were classified as the incumbent local exchange carrier,⁸ universal service issues are not part of the section 251(h)(2) test and they should not be addressed here.⁹ The Commission should address this issue in the context of the broader universal service issues it is considering in Docket 96-45, such as the Joint Board proceeding to consider the appropriate mechanism for rural carriers.¹⁰

⁸ *See, e.g.*, GCI at 5-9; Sprint at 3-5.

⁹ *See, e.g.*, NTCA at 3; RICA at 4.

¹⁰ *See, e.g.*, *Federal-State Joint Board on Universal Service*, 19 FCC Rcd 11538, ¶ 13 (2004).

Conclusion

For the foregoing reasons, the Commission should not classify either Qwest or Mid-Rivers as the “incumbent local exchange carrier” for purposes of section 251(c) in the Terry, Montana exchange.

Respectfully submitted,

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THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

**Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.**