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By Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

Re: Federal-State Joint Board on Universal Service, CC Doc. No. 96-45; Developing a Unified Intercarrier Compensation Regieme, CC Doc. No. 01-92; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tarriffs, CC Doc. No. 01-92; Petition of Mid-Rivers Telephone Cooperative, Inc. for an Order Declaring It to be an Incumbent Local Exchange Carrier in Terry, Montana Pursuant to Section 251(h)(2), WC Doc. No. 02-78

Dear Ms: Dortch:

On September 28, 2006 I met with John Hunter in the office of Commissioner McDowell to discuss the proceedings referenced above. The discussions followed the text of the attached papers and positions previously set forth in RICA's and Mid-Rivers' comments in these proceedings.

Please direct any questions regarding this matter to me.

Sincerely yours

David Cosson
General Counsel, Rural Independent Competitive Alliance
Counsel to Mid-Rivers Telephone Cooperative

Attachment
Cc: John Hunter

RURAL INDEPENDENT COMPETITIVE ALLIANCE

1 RICA and Its Members

RICA is a national organization representing the interests of facilities based competitive local exchange carriers providing service in rural, high cost areas of the country long neglected by the large incumbent telephone companies. RICA members are all affiliated with rural telephone companies and pursue an “edge out” strategy to provide superior service and advanced telecommunications capabilities that the incumbents have failed to provide.¹ They are facilities-based providers of service to the entire communities in comparatively high cost areas, with the typical rural ILEC’s high proportion of residential subscribers and no large businesses. Broadband and other advanced services are available to most RICA member subscribers.

2. Intercarrier Compensation

RICA members provide interstate switched access service at either the rate of the incumbent with which they compete, or at the NECA rate, pursuant to FCC Part 61 rules. Intrastate access is generally priced in the same manner. Subsequent to adoption of these tariffing rules, the FCC reduced the NECA rates in the MAG proceeding, and offset the reduction for NECA members with additional USF. Over RICA’s objection, no such offset was provided for rural CLECs.

The Missoula Plan for revision to the Intercarrier Compensation rules is now before the Commission as a result of the NARUC Task Force effort. RICA actively participated in the NARUC meetings. Because rural CLEC’s most closely resemble their affiliated rural ILECs in all characteristics relevant and material to determining rate regulation, RICA’s main concern with the plan is that it treats all CLECs as if they were Bell or other large urban carriers by assigning them to Track 1 and not including them in the definition of Covered Rural Telephone Companies.

It is critically important to rural CLECs’ ability to survive and grow that the exemption in the current rules for rural CLECs from the requirement to reduce their rates to BOC levels be maintained and that any mechanism to offset the revenue losses experienced as a result of a unified and uniform rate prescription fully incorporate rural CLECs. The Missoula Plan leaves the application of the Restructure Mechanism unresolved.

3. Universal Service

RICA has long advocated elimination of the “portability” rules in favor of determining the amount of support for each CETC based on its own costs. The present system is irrational because there is no connection between the need for support and the amount provided. Thus some CETCs receive little or no support where they operate in a high cost area of a large carrier that is not, on average, high cost. On the other hand, other

¹ See, Ken Belson, Rural Areas Left in Slow Lane of High-Speed Data Highway, New York Times, September 28, 2006, www.nytimes.com

CETCs receive a windfall where their costs may be substantially less than the average of the ILEC.

RICA supports broadening the base of contributions to ensure the health of the USF.

RICA members will be directly and indirectly affected by the Commission's decision in the *Qwest III* Remand proceeding, particularly if the portability rules are not repealed. RICA emphasized that adoption of new definitions of "sufficient" and "reasonably comparable" will affect all USF mechanisms.

The current proposal to determine USF support by competitive bidding raises several serious practical and legal questions, not the least of which is suggestion that incumbent local exchange carriers be the exclusive recipients of support for wireline service for the first ten years.

4. Status of Rural CLECs

Rural CLECs, by definition, operate in a much different environment than urban CLECs. Typically, they achieve the very high penetration rates necessary to support overbuilding because the incumbent has failed to maintain and update its facilities, and does not provide any local contact points. In essence, the rural CLECs become the *de facto* incumbent.

Because the Commission's rules treat CLECs less favorably than ILECs in many respects, rural CLECs are at a competitive disadvantage, even though they have provided the precise consumer benefits envisioned by the 1996 Act. CLECs cannot set access rates at their own costs, cannot recover Universal Service Support based on their own costs, and have no rights to require CMRS carriers to negotiate interconnection agreements.

The Commission has failed to act in a timely manner to the concerns RICA members have raised regarding these issues. In February 2002, Mid-Rivers Telephone Cooperative filed a petition under Section 251(h)(2) of the Act to be declared the ILEC in Terry, Montana where it serves at least 95% of the subscribers. Over four and one half years later, there is still no response to Mid-Rivers' petition. It has now been a year since the Commission granted a petition filed much later by Qwest for relief in Omaha where the CLEC had a much smaller market share.

Seeing the delay facing Mid-Rivers, several RICA members managed to negotiate contracts to buy out the ILEC where they had taken most of the subscribers. This spring the Commission finally approved the first of these transactions which was filed in November 2003. Two others were then granted by the Bureau. In the more than two years wait for FCC approval, not only were subscribers denied service improvements they would otherwise have received, but interest rates increased substantially adding to the subscribers' financial burden.

Many RICA members' requests to CMRS carriers to establish interconnection agreements have been refused on the basis that the Commission's *T-Mobile* decision only

requires them to negotiate with ILECs. The Commission should either explicitly extend the decision to CLECs, or permit them to file tariffs for traffic that they are terminating without compensation.

On February 5, 2002, Mid-Rivers Telephone Cooperative filed its Petition with the FCC requesting an order and rule designating Mid-Rivers as the Incumbent Local Exchange Carrier in Terry, Montana pursuant to Section 251(h)(2) of the Communications Act. That Section provides that the FCC may designate a local exchange carrier as an incumbent for the purposes of Section 251 if the carrier occupies a comparable position in the area to the existing ILEC, has substantially replaced the ILEC, and the public interest would be served. Mid-Rivers' Petition demonstrated that it served over 95% of the subscribers in the exchange and otherwise met all three tests. In April, 2002 the FCC established a round of public comments which was completed in May, 2002. The Montana Public Service Commission filed supporting comments in June of 2002. Qwest, the ILEC in Terry, filed its comments later in June.

The FCC took no further action for the next two years. In May, 2004, Mid-Rivers asked the U.S. Court of Appeals for the District of Columbia Circuit for a Writ of Mandamus compelling the Commission to act on the Petition. In August, 2004, the FCC filed an opposition, telling the Court that it was "poised to take action" on Mid-Rivers' Petition and that the Commissioners were voting on Notice of Proposed Rulemaking at that time. Mid-Rivers filed a reply with the Court, explaining, among other issues, that the previous comment cycle met all the requirements for rule making under the Administrative Procedure Act. The "voting" took three months, but on November 15, 2004, the FCC released its NPRM, stating "we intend to complete this proceeding as expeditiously as possible." The comment cycle was completed January 14, 2005. The Montana PSC, Prairie County and the Town of Terry supported Mid-Rivers' Petition.

The FCC has taken no action on Mid-Rivers' Petition since November of 2004. In March, 2005 the Court denied Mid-Rivers' request for a Writ of Mandamus. In the summer of 2005, Mid-Rivers was advised by FCC staff that its petition was being considered in conjunction with a petition filed by Qwest in June 2004 asking for forbearance from regulation in the Omaha, Nebraska area where a competitive carrier had obtained substantial market share. In September, 2005, Mid-Rivers, by letter, pointed out the significant differences in fact and law between its Petition and Qwest's. Later that month, however, the FCC approved the Qwest petition. Qwest's request was thus completed in fifteen months, but after four and a half years Mid-Rivers' Petition remains pending.