

**CONCURRING STATEMENT OF
COMMISSIONER KEVIN J. MARTIN**

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

Today's decision initiates a Notice of Proposed Rulemaking that seeks comment on how section 251(h)(2) of the Communications Act should be applied to the request by Mid-Rivers Telephone Cooperative, Inc ("Mid-Rivers"), a competitive local exchange carrier in the Terry, Montana exchange, to be classified as an incumbent local exchange carrier ("ILEC") in that exchange.

Mid-Rivers filed its request in February 2002 and the Commission sought comment on that request in April 2002.¹ In its petition, Mid-Rivers declared that it serves approximately 97% of the residential and business access lines in the Terry exchange primarily over its own facilities. Given its 97% share of the local exchange market in Terry, Montana, Mid-Rivers asserts that it meets the requirements of the three part statutory test to be classified as an ILEC. Mid-Rivers asserts that its overwhelming market-share demonstrates that it: "...occupies a position in the market for telephone exchange service that is comparable to the position occupied by [the ILEC];"² "has substantially replaced the ILEC..."³; and that the "...public interest, convenience, and necessity..."⁴ is served by recognition of its *de facto* status of serving virtually all the customers in the Terry exchange over its modern network facilities. The Mid-Rivers' petition was supported by the Montana Public Service Commission and the incumbent LEC in Terry, Montana did not file in opposition.

While I agree that this petition--which has been pending for nearly three years-- raises questions regarding some of the Commission's fundamental policies, such as universal service and local competition, I believe that the Commission could have moved forward to grant the petition while simultaneously seeking further comment on these policy issues.

Accordingly, I concur in the result of the Order.

¹ See Mid-Rivers Telephone Cooperative, Inc., *Petition for Order Declaring Mid-Rivers Telephone Cooperative, Inc. an Incumbent Local Exchange Carrier in Terry, MT*, WC Docket 02-78 (filed Feb. 5, 2002).

² See 47 USC 251(h)(2)(A)

³ See 47 USC 251(h)(2)(B)

⁴ See 47 USC 251(h)(2)(C)