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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Equal Access and Interconnection	)	CC Docket No. 94-54
Obligations Pertaining to	)	RM 8012
Commercial Mobile Radio Services	)	

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COMMENTS OF COX ENTERPRISES, INC.

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SUMMARY

Cox Enterprises, Inc. ("Cox"), has been a consistent advocate for the introduction of competition in the telecommunications market. Not only has Cox espoused competition, but by its involvement in Personal Communications Services ("PCS") and competitive access, Cox is doing what it can to make local services competition a reality.

While the actions of private companies such as Cox are important to the development of competition, the Commission and its policies will play the pivotal role in determining whether interconnection to the local exchange carrier ("LEC") monopoly network will be a barrier to local services competition or a catalyst for the development of a "network of networks." The Notice inaccurately assumes that current cellular interconnection policies may achieve ubiquitous interconnection and local competition. In fact, despite the Notice's assumptions, the most fundamental LEC interconnection policy issues in the wireless world are not resolved. Cox submits that the resolution of those issues is just beginning.

If the Commission's policy goal is local services competition, Commercial Mobile Radio Services ("CMRS") interconnection policy cannot merely be an echo of cellular interconnection policy. While the Commission has stepped in the right direction by confirming its resolve to require LECs to pay CMRS providers compensation for call termination, the overall framework of interconnection still permits the LECs to control the development of their competitor's business by assessing high interconnection rates. Insufficient attention has been paid to the LEC

incentive and ability to use interconnection rates as a means to quash potential local services competitors. High interconnection rates prevent LEC competitors from developing services that can be cost competitive with local loop services.

Non-discrimination and good faith LEC negotiation obligations fail to address this problem. LECs can and will negotiate rates with their affiliates (or with themselves) and impose these "non-discriminatory" but excessive rates on competitors.

A mutual compensation requirement standing alone will not redress the imbalance of power between LECs and PCS interconnectors. While fair and reasonable LEC interconnection is essential to providing PCS, LECs have no natural incentive to provide cost-based interconnection to carriers that seek to become its competitors. Commission policy must recognize that this LEC incentive and concomitant lack of CMRS carrier bargaining power strongly suggest that there is no mutuality of interest between LECs and their CMRS competitors.

Even with the best of intentions, Commission competition policy will fail if LEC tariff or informational filing requirements are not imposed and the Commission does not become more involved in interconnection rate issues. The Commission simply cannot take a narrow view of its jurisdiction over LEC interconnection rates in light of its policy goals.

Finally, Cox supports the Notice's tentative conclusion that interexchange equal access requirements should not be imposed on non-BOC CMRS providers.

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COMMENTS OF COX ENTERPRISES, INC.

Cox Enterprises, Inc. ("Cox"), by its attorneys, hereby responds to the Notice of Proposed Rulemaking (the "Notice") issued by the Federal Communications Commission (the "Commission") in the above-referenced matter.[1/] The Commission should establish interconnection requirements for local exchange carriers ("LECs") that promote competition, rather than preserve the market power of the local exchange carriers. The Commission should not, however, impose equal access obligations on carriers without market power because such a requirement would impose costs in excess of any perceived benefit to consumers.

1/ Equal Access and Interconnection, Notice of Proposed Rulemaking and Notice of Inquiry, CC Docket No. 94-54, FCC 94-145 (adopted June 9, 1994, released July 1, 1994).

I. INTRODUCTION

Cox consistently has been a strong advocate of competition in all telecommunications markets. Through its Commline subsidiary, Cox was the first to utilize cable television plant for the origination, distribution and termination of interstate, interexchange telecommunications.[2/] That tradition continues today with Cox's interest in Teleport Communications Group, the leading competitive access provider ("CAP"), and with its pioneering efforts in the development of Personal Communications Services ("PCS").[3/] PCS initially will compete with cellular and other established wireless services. Under appropriate regulatory conditions, however, PCS could provide consumers an attractive alternative to monopoly local exchange service.

Although the potential for PCS is extraordinary, that potential will not be realized unless the Commission establishes ground rules that promote the development of competition. One of the most important issues affecting the development of competition is interconnection between PCS providers and landline LEC facilities. As Cox has stated in previous comments, "failure to examine landline interconnection issues comprehensively at the outset could marginalize PCS as a full service substitute to the local exchange carrier monopoly. . . ."[4/]

2/ See Cox Cable Communications, Inc., Memorandum Opinion, Declaratory Ruling, and Order, 102 F.C.C.2d 110 (1985) vacated as moot, 1 FCC Rcd 561 (1986).

3/ Personal Communications Services, Third Report and Order, 9 FCC Rcd 1337 (1994).

4/ See Comments of Cox Enterprises, Inc. in Regulatory Treatment of Mobile Services, GN Docket No. 93-252, filed November 8, 1993 at 2.

The Commission must ensure that LECs are not permitted to deter the development of PCS and other potential LEC competitors by charging unreasonable interconnection rates. The Commission's experience with expanded interconnection for special and switched access demonstrates the tremendous incentive and ability of the LECs to manipulate interconnection rates to the detriment of their competitors. The Commission must take strong steps now to ensure that PCS providers and other Competitive Mobile Radio Service ("CMRS") providers achieve more equitable results than CAPs have under expanded interconnection.

Additionally, if the Commission's policy goal is competition, CMRS interconnection policy cannot be a mere continuation of cellular interconnection policy. In order for competition to develop, monopoly LECs can no longer control nearly every aspect of the rates, terms and conditions of interconnection. While the Commission has taken a step in the right direction in requiring mutuality of compensation requirements for interconnection, even under that framework LECs can continue to control the development of their competitors. Accordingly, a new policy framework is required.

Finally, the Commission should not impose unnecessary equal access obligations on PCS providers. Equal access was adopted as a safeguard against anticompetitive behavior by the LEC monopolists and serves no purpose when applied to nondominant carriers in a competitive market. The costs of an equal access requirement imposed on nondominant carriers far outweigh any perceived public benefit.

II. ABSENT APPROPRIATE OVERSIGHT BY THE COMMISSION, LEC INTERCONNECTION RATES WILL UNDERMINE THE COMPETITIVE VIABILITY OF PERSONAL COMMUNICATIONS SERVICES

In the Second Report and Order, the Commission recognized the importance of full and fair interconnection to the development of competition in CMRS and the local loop.[5/] The rules adopted in that order, however, are not sufficient to protect against anticompetitive pricing of interconnection by the LECs. While the Notice proposes some minor modifications to these rules, Cox believes the Commission must take a more active role in ensuring that LECs do not use their bottleneck control over local exchange facilities to hinder the development of local competition.

A. The Commission's Rules Do Not Sufficiently Restrain The Ability Or The Incentive Of LECs To Forestall Local Competition

In the Second Report and Order, the Commission required LECs to provide reasonable and fair interconnection to PCS providers in the same manner as LECs presently provide interconnection to cellular operators. Second Report and Order, 9 FCC Rcd at 1497-98. Under this regime, interconnection rates are established by negotiation, rather than under tariff. Both the LEC and the PCS provider are entitled to compensation for the reasonable costs of terminating traffic that originates on the facilities of the other party.

5/ "The Commission finds it is in the public interest to require LECs to provide the type of interconnection reasonably requested by all CMRS providers." Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd 1441, 1498 (1994).

In the Notice, the Commission acknowledged that the period following the early licensing of cellular service was marked by difficult negotiations and, in some cases, complete refusal of the LECs to provide interconnection. On several occasions the Commission was forced to strengthen its interconnection policies before it was able to eliminate the most glaring problems.[6/] Even now, under the same rules that will be applied to LEC-CMRS interconnection, it often is necessary for Commission staff to intervene before a reasonable interconnection agreement can be negotiated. Notice at ¶ 112.

The Commission recognized that similar intransigence may be expected from the LECs with the introduction of PCS.[7/] The potential for competition to LEC local exchange and wireless offerings substantially increases LEC incentives to use interconnection rates as an unfair competitive weapon. As Cox has stated previously, "continuing, aggressive federal leadership is an absolute minimum requirement for the realization of the Commission's competition policies."[8/]

6/ See Memorandum Opinion and Order, The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 59 RR 2d 1275 (1986); Id., Declaratory Ruling, 2 FCC Rcd 2910 (1987).

7/ "We note that some of the objections to the system of negotiated agreements stem from the fear that new entrants might lack the bargaining power to secure fair and reasonable interconnection agreements through the negotiation process. We recognize that new market entrants, such as PCS providers, might be concerned that despite the obligation that they negotiate in good faith, LECs would treat these new entrants in much the same way the LECs treated cellular providers in the early 1980s." Notice at ¶ 118.

8/ Cox Comments at 4.

In addition to the fact that the current regime does not provide a mechanism to ensure that overall interconnection rates are reasonable,[9] the lack of tariffing or any other filing requirement for interconnection makes enforcement of the nondiscrimination requirement of Section 202 virtually impossible. Even if a LEC and a CMRS provider can negotiate a satisfactory agreement, there is no way to determine whether the agreement is unreasonably discriminatory.

More fundamentally, an interconnection framework that requires the LEC to be non-discriminatory, but does not also require reasonable rates for interconnection, will doom any hope of local competition from CMRS providers. Under the current framework, LECs can negotiate an interconnection rate with their cellular affiliate (and in the future with themselves as a PCS operator) and then impose that same "non-discriminatory" rate on CMRS competitors. While there is no overt discrimination, the CMRS competitor is precluded by a high per minute interconnection rate from ever competing for local landline traffic. The Commission cannot allow the LECs to extend their market power in the landline network into the wireless network.

9/ While the Commission has on numerous occasions reiterated its expectation that LEC interconnection rates be reasonable, the Commission has not required LECs to tariff their rates. Furthermore, the Commission has been hesitant to preempt state commissions from regulating the intrastate portion of the rate for LEC interconnection, regardless of the fact that many, if not most, cellular interconnection agreements do not segregate interstate from intrastate interconnection rates.

Given the importance of interconnection rates to the development of competition, the Commission cannot rely on the "good faith" of the LECs to propose reasonable, cost-based and nondiscriminatory interconnection rates. As the number of carriers seeking to interconnect with LEC bottleneck facilities increases, some form of filing requirement will be necessary to ensure that interconnection rates are nondiscriminatory. Moreover, the Commission must establish a mechanism for prompt review of interconnection rates to ensure that they are reasonable and cost-based. The Commission should learn from its past experiences regulating LEC interconnection rates and ensure that PCS and other new services do not languish at the hands of incumbent monopolists.

Moreover, it is not enough for the Commission simply to look at the rates charged by LECs for interconnection. Although the importance of LEC interconnection rates cannot be overstated, the Commission must look beyond LEC provision of mere physical interconnection and confirm the need for fully unbundled LEC network functionalities. Under the current policy, PCS providers will be entirely dependent upon LEC willingness to develop and provide new services to potential competitors. LEC databases and other network capabilities must be included within the scope of LEC interconnection offerings and they must be offered on an unbundled basis. Anything less will impose costs on LEC competitors that the LECs themselves will not be required to bear and will delay the introduction of innovative new services to consumers.

The Commission's proposal to make minor adjustments to the current rules is marginally beneficial to the development of competition, but it will not be sufficient to prevent LECs from using interconnection as a weapon to hinder competition's development. The Commission must engage in a comprehensive review of LEC-CMRS interconnection, and it must establish mechanisms to ensure that interconnection rates are reasonable, cost-based and nondiscriminatory on a fully unbundled basis.

B. A Mutual Compensation Requirement Standing Alone Will Not Redress The Imbalance Between LECs And Interconnectors

The centerpiece of the current rules is the requirement that LECs and CMRS providers compensate each other for the reasonable costs incurred terminating traffic that originates on the network of the other party. While mutual compensation is a useful component of any interconnection regime, standing alone this requirement does not disturb LEC market power.

The Commission's experience with mutual compensation in the cellular market is illustrative of the potential problems that may arise. Cellular operators have been at a substantial disadvantage in negotiating such agreements. Because the cellular operator is completely dependent on the LEC for access to LEC customers, it has no power to demand and collect a fully compensatory rate, or to refuse payment to the LEC of an unreasonably high rate.

The mutual compensation model that will apply to LEC-CMRS interconnection is not unlike the international accounting rate model used by

international carriers that sets the price for the exchange of traffic.[10/] Under that system, the U.S. carrier and the foreign carrier negotiate a level of payment to be used regardless of which direction traffic flows. While this model works well when there is a balance of traffic coming in each direction, it has severe shortcomings where there is an imbalance in the traffic exchanged between the two carriers. Because the competitive carrier likely will originate more traffic than it terminates, the monopoly carrier has the incentive and the ability to hold out for a high mutual compensation rate.[11/]

Similarly, for the foreseeable future there will be a substantial imbalance of traffic between the LEC and the PCS provider because there will be fewer PCS customers. This imbalance creates an incentive for the LEC to make sure that the mutual compensation rate is set artificially high, because the LEC will more often than not be receiving this amount, rather than paying it. Moreover, the LEC has no incentive to be flexible in negotiating the mutual compensation rate because it has far less to lose than the PCS provider in the event no agreement is reached.

10/ International Accounting Rates, Second Report and Order and Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 8040 (1992).

11/ A 1984 FCC Office of Plans and Policy Working Paper entitled "Promoting Competition Piecemeal in International Telecommunications," recognized that exchange of international traffic between a monopoly foreign carrier (a PTT) and competitive U.S. carriers held the potential of benefiting the foreign carrier without benefiting consumers in the domestic market. Specifically, author Evan Kwerel observed: "When the net traffic flow is out of the U.S., as with international MTS, . . . U.S. carriers are making net payments to the PTT. The PTT can extract the same total revenue from U.S. carriers regardless of the terms for dividing the accounting rate by demanding a sufficiently high accounting rate." OPP Working Paper No. 13 at 26.

Accordingly, although mutual compensation is important, standing alone it is insufficient to ensure that interconnection rates are reasonable, nondiscriminatory and cost-based. As discussed below, the Commission must actively monitor the actual rate charged by LECs for interconnection or LECs will be able to impose unnecessary costs that hobble their competitors.

C. Competition In The Local Loop Will Not Develop Unless The FCC Takes Strong Measures To Ensure Cost-Based Interconnection Rates

As shown above, the Commission's current rules regarding interconnection between CMRS providers and LECs are not sufficient to prevent anticompetitive conduct by the LECs. In fashioning a new regulatory regime, the Commission should be guided by its experience with interconnection issues in other contexts. For example, the Commission recognized that reasonable and fair interconnection rates would be the key to the development of competition in the interstate access market.[12/] However, despite the Commission's best intentions, its experience with LEC expanded interconnection tariffs serves primarily to illustrate the intransigence of the LECs when their turf is threatened.

The Commission first imposed expanded interconnection requirements over two years ago, yet it still has not made a conclusive finding that tariffed rates for

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12/ "We find, however, that either requiring removal of expanded interconnection service because of the LEC's failure to justify their rates or, alternatively, allowing apparently unreasonably high rates to take effect, would frustrate the competitive goals of our expanded interconnection proceeding." Local Exchange Carrier Rates, Terms and Conditions for Expanded Interconnection for Special Access, First Report and Order, 8 FCC Rcd 8344, 8346.

expanded interconnection are reasonable.[13/] Although the Commission has prescribed rates on an interim basis, the lack of cooperation and compliance by the LECs has been effective in delaying the timing and minimizing the significance of expanded interconnection. Given the reluctance of LECs to establish reasonable rates when only a minuscule portion of their markets is threatened with competition, their proposed interconnection rates are likely to be even more unreasonable when PCS providers threaten the local exchange monopoly. The Commission must take an active role now to ensure that LECs provide full and fair interconnection at cost-based rates in the future.

For other regulated services, the Commission relies on competition, tariffs or filed contracts to ensure that rates are reasonable and nondiscriminatory.[14/] Because LECs are not subject to competition in the local exchange market, it is clear that some form of filing requirement is necessary for LEC-CMRS interconnection. Otherwise, a new market entrant has no way to determine if the interconnection rate offered by a LEC is unreasonably discriminatory. Although a tariff requirement

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13/ "[B]ased on the current record, we find that the LECs have not demonstrated that their originally filed rates for expanded interconnection are just and reasonable in compliance with the Communications Act . . . ." Id.

14/ For example, the Commission relies on competition and streamlined tariff requirements to regulate the rates of nondominant carriers. See Tariff Filing Requirements for Nondominant Carriers, Memorandum Opinion and Order, 8 FCC Rcd 6752 (1993).

would facilitate detection of unreasonable rates and unreasonable discrimination, the Commission's experience with expanded interconnection demonstrates the danger in relying solely on tariff review when the carrier filing the tariff has no incentive to cooperate. The Commission proposed in the Notice two safeguards designed to solve this problem: a requirement that interconnection contracts be filed with the Commission and a requirement that all such contracts contain a "most favored nation" clause.[15/] Both these requirements represent a useful step toward ensuring that LECs do not unreasonably discriminate among CMRS providers. However, neither of the proposed safeguards is sufficient to ensure that the rate offered to CMRS providers is reasonable and cost-based.[16/] Therefore, in conjunction with the safeguards proposed by the Commission in the Notice, the Commission must establish a mechanism for prompt review of LEC interconnection rates upon request of a CMRS provider.

This proposal preserves the flexibility inherent in a contract-based system, while ensuring that LECs do not stifle the development of competition through unreasonable pricing of interconnection services. The Commission should establish guidelines for such review now and make clear that failure to comply will

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15/ A "most favored nation" clause requires the carrier to guarantee that the most favorable rates, terms and conditions provided to one CMRS provider will be made available to all. Notice at ¶ 119.

16/ As previously noted, for example, the LEC could "negotiate" an artificially high rate with its affiliate and then offer that rate on a "nondiscriminatory" basis to all other CMRS providers.

result in a rate prescription.[17] These guidelines should include unbundling requirements and delineation of permissible overhead loadings. Overhead loadings are of particular concern given the tendency of LECs to include excessive loadings in interconnection rates, while including a minimal amount of overhead in rates for competitive services, such as video dialtone.

To ensure that the Commission has the information necessary for prompt review of interconnection rates, the Commission should require the filing of interconnection agreements and all related contracts, such as billing and collection agreements. Interconnection tariffs filed at the state level also should be made available to the Commission. Only by looking at the entire scope of the LEC-CMRS interconnection relationship can the Commission determine whether LEC interconnection rates are reasonable.

III. THE PUBLIC INTEREST IS NOT SERVED BY UNIFORM TREATMENT OF LEC AFFILIATES AND ALL OTHER COMPETITIVE SERVICE PROVIDERS

In the Notice, the Commission seeks comment on the public interest benefits, if any, associated with imposing an equal access obligation on CMRS providers. Cox agrees with the Commission's conclusion that it is not possible to

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17/ Moreover, compliance with this requirement should be a pre-condition to any future LEC deregulation. It is essential that the Commission have adequate enforcement tools to address a course of non-compliance with basic interconnection requirements, including loss of LEC CMRS licenses and tying LEC anti-competitive behavior in the interconnection market segment to LEC deregulatory initiatives.

determine that the public interest benefits outweigh the costs of such a requirement at this time. Notice at ¶ 46. Indeed, an equal access obligation will impose costs on CMRS providers that will further delay the development of local competition.

Equal access requirements were imposed on the BOCs as a result of their bottleneck control over local exchange facilities.[18/] As the Commission has recognized, however, non-BOC CMRS providers have no market power.[19/] Unlike a carrier with market power, a CMRS provider that does not provide access to a particular IXC does so at the risk that it will lose customers. Moreover, because there will be many wireless networks in a market, no IXC would be disadvantaged if it were not provided equal access to a particular CMRS network.[20/]

While the benefits of an equal access obligation for CMRS providers are minimal, the costs are significant. The Commission has recognized that there are costs associated with building equal access functionality into a network. Notice at ¶ 46. Moreover, application of an equal access requirement will be complicated by the fact that not all CMRS providers will have similar or even reasonably uniform local

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18/ United States v. Western Electric Co., 552 F.Supp. 131 (D.D.C. 1982), aff'd sub nom., Maryland v. United States, 460 U.S. 1001 (1983); MTS and WATS Market Structure, 94 F.C.C.2d 292, 296-97 (1983).

19/ Second Report and Order, 9 FCC Rcd at 1467; see also United States v. Western Electric Co., C.A. No. 82-0192, slip op. at 17 (D.D.C. Aug. 25, 1994).

20/ Indeed, because a substantial portion of cellular systems will be subject to equal access requirements under the MFJ or the AT&T/McCaw consent decree, there is little likelihood that a wireless customer will not be able to receive service from the interexchange carrier of its choice.

calling areas. While the benefits may outweigh the costs of applying equal access to a carrier that controls bottleneck facilities, an equal access policy does not serve the public interest when applied to a nondominant carrier in a competitive market.

IV. CONCLUSION

The Commission's actions in this proceeding will have dramatic consequences on the development of PCS as a viable alternative in the local market. The Commission must actively monitor LEC interconnection rates until competitors are firmly established in the local market. Only if PCS providers are provided full and fair interconnection at cost-based, unbundled rates will true local competition emerge.

Furthermore, imposition of equal access obligation on PCS providers will impose costs on these providers without any corresponding public benefit. Accordingly, the Commission should affirm its tentative conclusion not to impose equal access requirements on PCS and other CMRS providers.

Respectfully submitted,

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