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

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FEB 14 1997

In the Matter of)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	
Price Cap Performance Review for Local Exchange Carrier)	CC Docket No. 94-1
)	
Transport Rate Structure and Pricing)	CC Docket No. 91-213
)	
Usage of the Public Switched Network by Information Service and Internet Access Providers)	CC Docket No. 96-263
)	

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

REPLY COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc. ("Cox"), by its attorneys, hereby submits its reply comments in the above-referenced proceeding.^{1/} Cox files these reply comments for the limited purpose of responding to proposals to regulate charges for access services provided by competitive local exchange carriers ("CLECs").^{2/} As shown below, those proposals should be rejected because they are contrary to Congressional intent and unnecessary.

Cox is participating in this proceeding because of its strong interest in providing a competitive alternative to incumbent local exchange carriers. Cox is one of the largest cable

1/ Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, Usage of the Public Switched Telephone Network by Information Service and Internet Access Providers, *Notice of Proposed Rulemaking and Third Report and Order*, CC Docket Nos. 96-262, 94-1, 91-213, 96-263 (rel. Dec. 24, 1996) (the "Notice").

2/ These reply comments generally are responsive to paragraphs 271 to 281 of the *Notice*, and to the comments in response to those paragraphs. This information responds to the Commission's request that parties identify the portion of the *Notice* that their comments address. *Notice*, ¶ 341.

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operators in the country, with more than 3.3 million subscribers. Over the past two years, Cox has spent more than \$1.5 billion to upgrade its facilities to provide telecommunications and other advanced services. It will continue to upgrade its facilities throughout 1997 and 1998. Cox subsidiaries have been certificated as competitive local exchange carriers in several states, including California, Virginia and Arizona. Other certification applications are pending. Thus, it is critical to Cox that the Commission not adopt unduly burdensome CLEC rules at this crucial juncture in the development of local telephone competition.

Several parties have suggested imposing access charge regulation on CLECs. These proposals range from requiring CLECs to determine their access rates in the same manner as ILECs to requirements for pricing parity.^{3/} The Commission should reject each of these proposals as unnecessary and counterproductive. Regulating CLEC access charges would be contrary to Congressional intent. Moreover, there is no need for such regulation. Indeed, adopting regulations for CLEC access charges is likely to impede the Commission's efforts to drive incumbent local exchange carrier access rates to cost.

I. Adopting Access Rules for CLECs Is Contrary to the Intent of the 1996 Act.

Adopting access charge rules for CLECs would be contrary to Congressional direction in the Telecommunications Act of 1996.^{4/} Congress intended the 1996 Act to deregulate the

^{3/} See, e.g., Comments of Rural Telephone Coalition at 22-24 (same regulatory regime should apply to CLECs and ILECs); Comments of BellSouth at 9-10 (all LECs should use the same rate structure); Comments of AT&T at 63 (ceiling on terminating access)

^{4/} Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, enacted Feb. 8, 1996 (the "1996 Act").

telecommunications industry whenever possible. Although Congress adopted specific requirements for certain telecommunications carriers, there is no suggestion of any requirement that the Commission adopt access charge regulations for non-incumbent LECs.^{5/} To the contrary, Congress adopted specific provisions permitting the Commission to forbear from applying the requirements of the Communications Act.^{6/}

The light hand on CLECs reflected in the 1996 Act is consistent with the Commission's regulation of CLECs and competitive access providers prior to enactment of the 1996 Act. The Commission did not regulate the rates these competitive local carriers charged because there was no need to do so.^{7/} Similarly, when the Commission adopted rules implementing the local competition provisions of the 1996 Act, it determined that the rules governing incumbent LECs would not apply to CLECs.^{8/} The Commission reached this conclusion because it found that CLECs could be distinguished from ILECs, and because the 1996 Act expressly described when a CLEC should be treated as an ILEC and when such treatment was inappropriate because of their differing circumstances.^{9/} The Commission can and should adopt the same approach in addressing access charges reform.

^{5/} See 47 U.S.C. § 251(b) (requirements for LECs).

^{6/} See 47 U.S.C. § 10.

^{7/} The public interest was protected by the Section 208 complaint process.

^{8/} Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *Interconnection between Local Exchange Carriers and Commercial Mobile Service Providers, First Report and Order*, CC Docket Nos. 96-98, 95-185 (rel. Aug. 8, 1996) (the "*Local Competition Order*"), ¶¶ 1241-8.

^{9/} *Id.*, ¶¶ 1247-8.

II. There Is No Policy Basis for Imposing Access Charge Rules on CLECs.

The Congressional intent not to impose additional regulation on CLECs is further justified because there is no need to apply access charge rules to CLECs. As a general matter, CLECs lack market power and have every incentive to compete vigorously in every aspect of the telecommunications marketplace. As new entrants into a field dominated by a monopoly carrier, CLECs generally will not be in any position to overcharge any customer. For that reason, although competitive services already are available in some parts of the country, none of the commenters that support imposing access charge rules on CLECs provide any examples of abuse. In the absence of evidence of abuse by even a single carrier, there is no reason to adopt rules that apply to all CLECs.^{10/}

Moreover, CLEC prices for both originating and terminating access likely will be disciplined by interexchange carriers. If a CLEC overcharges for access, interexchange carriers can penalize the CLEC for that decision. For instance, if a CLEC imposes excessive originating access charges, IXCs can adopt differential pricing for that CLEC's customers and inform the CLEC's customers why their prices are higher.^{11/} For that matter, if a CLEC's access prices — either originating or terminating — are excessive, it may become economically attractive for IXCs to offer services to that CLEC's customers via

^{10/} Even if there were evidence of isolated abuses, the Commission and interexchange carriers have other tools available to address such abuses, including Section 208 complaints. Absent evidence of widespread abuse, case-by-case adjudication is preferable to imposing unnecessary and potentially costly regulation on an entire emerging industry segment.

^{11/} While the Communications Act prohibits unjust and unreasonable discrimination, nothing in the Act prohibits differential pricing when costs are different, so long as charges are not geographically deaveraged. *See* 47 U.S.C. §§ 202, 254(g).

unbundled elements or resale. Any of these strategies not only will permit an IXC to avoid the burden of excessive access charges, but also will put the CLEC at risk for losing its local telephone service customers.

At the same time, the Commission should recognize that IXCs often are a CLEC's largest customers. In addition to traditional switched access services provided to connect an IXC to the CLEC's retail customers, a CLEC also is likely to sell dedicated access services to IXCs. Dedicated, high-capacity services still are the greatest source of revenue for many CLECs, including the largest CLECs, and will continue to be important to CLECs' financial well-being in the foreseeable future. These dedicated services also are highly competitive, with multiple vendors in many areas. As a consequence, CLECs cannot afford to take steps, such as overcharging for terminating access, that are likely to alienate their largest customers when those customers can take their business elsewhere or decide to provision local services themselves.

III. The Commission Should Distinguish Between ILEC and CLEC Access Services.

As shown above, there is no basis for regulating CLEC access services. There also are specific reasons to distinguish CLEC access services from those provided by ILECs. Incumbent LECs that urge the Commission to adopt the same regulatory regimes for CLECs that apply to incumbents argue that there is no distinction between ILECs and CLECs. That is not the case.^{12/} Incumbent LECs have a history of abuses that began even before long distance competition. Incumbent LECs have every incentive to game the regulatory system

^{12/} See Comments of Pacific Telesis at 74; Comments of Rural Telephone Coalition at 22-24.

to maintain existing, above-cost rates. CLECs, on the other hand, have no history of abuse and little ability or incentive to maintain excessive rates. Thus, while continued scrutiny of ILEC access rates and rate structures is necessary, there is no need for CLEC access charge rules.

In addition, the Commission should recognize that adopting rules for CLEC access charges could retard the Commission's primary goal of moving in the direction of cost-based access charges. Regulations that limit CLEC freedom to price access appropriately or that prevent CLECs from structuring their access charges in the most efficient manner effectively will put lower bounds on ILEC access charges or limit ILECs' incentives to innovate in response to CLEC initiatives. Whether the Commission adopts a prescriptive or market-based approach to access charge reform, competition from CLECs will be an important check on ILEC access pricing and will help reduce access charges to cost. Unnecessary regulation of CLEC access charges only impedes that goal.

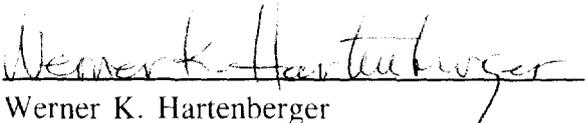
IV. Conclusion

The Commission should not impose any access charge rules on CLECs. Such rules are inconsistent with the intent of Congress in adopting the 1996 Act and there are neither actual nor potential abuses that would justify adding to the regulatory burdens faced by

CLECs. For all these reasons, Cox urges the Commission to adopt rules that are consistent with these reply comments.

Respectfully submitted,

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February 14, 1997

CERTIFICATE OF SERVICE

I, Tammi A. Foxwell, a secretary at the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 14th day of February, 1997, the foregoing "Reply Comments" were sent via hand delivery to the following:

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