



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

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In the Matters of)
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CLEC Access Charge Reform)
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Complete Detariffing for Competitive)
Access Providers and Competitive)
Local Exchange Carriers)

FEDERAL COMMUNICATIONS COMMISSION
CC Docket No. 96-262 OFFICE OF THE SECRETARY

CC Docket No. 97-146

REPLY COMMENTS OF
COX COMMUNICATIONS, INC.

Cox Communications, Inc. ("Cox") submits these Reply Comments in the above-referenced proceedings in accordance with two Public Notices released December 7 and December 20, 2000.¹ In these Public Notices, the Federal Communications Commission ("FCC") sought comments from interested parties regarding the manner in which competitive local exchange carriers ("CLECs") establish their charges for the interstate access service they furnish to interexchange carriers ("IXCs"). These Reply Comments generally support the Comments ("ALTS Comments") of the Association for Local Telecommunications Services ("ALTS") that were submitted on January 11, 2001, in these proceedings. Additionally, these Reply Comments generally oppose the comments of IXCs that would compel CLECs to charge no more than incumbent local exchange carriers ("ILECs") for similar access services.

¹ Public Notice, "Common Carrier Bureau Seeks Additional Comment on Issues Relating to CLEC Access Charge Reform; Pleading Cycle Established," CC Docket No. 96-262, DA 00-2751, released December 7, 2000, published at 65 FR 77545 (December 12, 2000). The Common Carrier Bureau subsequently granted a motion extending the time period for filing initial comments and reply comments. See Public Notice, CC Docket No. 96-262, DA 00-2866, released December 20, 2000.

I. BACKGROUND

Cox operates a number of facilities-based CLEC affiliates that conduct business and residential telephone operations in California, Arizona, Nebraska, Oklahoma, Louisiana, Georgia, Virginia, Rhode Island, and Connecticut. At the end of the third quarter in 2000, Cox's telecommunications operations provided local exchange service to over 200,000 residential customers and have over 65,000 switched business access lines. For these telephone customers, the benefits of competition have arrived. However, Cox did not enter into these markets without risk or significant capital expense. Consequently, Cox is concerned with proposals in these proceedings to limit its ability to recover these expenses and to earn a reasonable return on its investments.

As of the end of 2000, Cox's telephony facilities passed in excess of 2.4M residential homes. The actual capital expenditure associated with building such facilities has proven, in most circumstances, to be on the high side of Cox's forecasts. The cost of providing telephone service, either in the residential or commercial environment, is an expensive endeavor.

Cox has invested significant capital in constructing the facilities needed to provide telephone service, as compared to other CLECs. Cox thus cannot be compared to CLECs (including resellers) that do not own, control and install their network of facilities to their customers' premises. CLECs that do not operate over their own facilities do not face the costs of facility construction because they take advantage of the ILECs' existing facilities throughout their territories. These non-facilities-based CLECs use the incumbent's loops and avoid the enormous investment that Cox has made, and continues to make, in network and distribution facilities. Consequently, facilities-based CLECs

would be uniquely disadvantaged by a diminution in their capability of earning reasonable access charges, even though those same facilities-based CLECs can provide the customer with the significant advantages of product and service competition.

This unique disadvantage should be of grave concern to the FCC. As the FCC has recognized in several contexts, economically efficient facilities-based competition creates more consumer benefits than any other form of competition.² Facilities-based providers can compete more effectively with incumbents, provide more reliable service and, because they control the entire transmission path, can offer more innovative and advanced services than non-facilities-based providers. Thus, if facilities-based providers are denied an opportunity to earn a fair return on their investment, the most significant harm is to customers who are denied the benefits of the competition envisioned by the Telecommunications Act of 1996³ and the FCC's own decisions. The FCC should take all appropriate steps to prevent this from occurring.

II. The ALTS Proposal

Cox supports the recommendation of ALTS, entitled Guaranteed Reduced Exchange Access Tariffs ("GREAT"), that is explained in the ALTS Comments. Cox believes that the GREAT proposal will provide stability, assurance and reliable procedures for both IXCs and CLECs in the switched access market.

Initially, the FCC should note that Cox does not believe it has an obligation to reduce its current interstate switched access charges. The charges contained in Cox's

² See, e.g., Promotion of Competition in Local Telecommunications Markets, *First Report and Order and Further Notice of Proposed Rulemaking*, Cox WT Docket No. 99-217, rel. Oct. 25, 2000, ¶ 4 (stating that facilities-based competitors "have the greatest ability and incentive to offer innovative technologies and service options to consumers"); Implementation of the Local Telecommunications Provisions of the Telecommunications Act of 1996, *Third Report and Order*, 15 FCC Rcd 3696, 3701 (1999) (adopting rules that "seek to promote the development of facilities-based competition").

³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

interstate switched access tariffs currently on file with the FCC are fair and reasonable, and Cox rejects any suggestion that these charges may be too high. In fact, certain IXC affiliates who provide local exchange service have access charges that are far higher than those established by Cox. Accordingly, Cox is not motivated to support the GREAT proposal from any notion that its charges should be reduced. Cox's support is based instead on the idea that stability and predictability should be brought to access charges that will allow CLECs to make capital investments for the purpose of furthering local exchange competition.

In the foregoing spirit, Cox lends its support to the GREAT proposal recommended by ALTS. The circumstances outlined in the ALTS Comments with regard to "widespread self help"⁴ tactics being employed by certain IXCs are only too familiar to Cox. Cox has experience with an IXC who, after exchanging access traffic with Cox, has refused to pay Cox's tariffed charges for such exchange, and this non-payment may well negatively impact the economics of Cox's telephony business. Cox is aware of the dire consequences, perhaps fatal in some instances, that new entrants face when confronted with such tactics. The effect of these tactics is clearly to restrict rather than promote competition.

In its comments ("AT&T Comments"), AT&T argues in favor of a ceiling on the interstate access charges that CLECs may establish in their tariffs. AT&T urges the FCC to "mandatorily detariff" CLEC access charges that are higher than those established in the tariffs of ILECs in their service areas.⁵ Cox opposes such action on grounds that it is unnecessary and unwarranted.

⁴ALTS Comments, pp. 2 & 3.

⁵ AT&T Comments, p. 15.

By contrast, the reasoned and measured GREAT recommendation would commence with a cap of 2.5 cents per minute on CLEC access rates. As stated previously, Cox is under no legal or regulatory requirement to accept such a cap. However, Cox would voluntarily take such action if the matter of the IXCs' non-payment is put to rest by the FCC through acceptance of the GREAT proposal. The benefits to the IXCs would continue under this proposal as the rate is further reduced by two tenths of a cent annually over the next three years. The decreasing cap also would allow CLECs to recoup some of the capital costs associated with constructing their networks, while providing a gradual but certain reduction over the proposed period.

However, in the same spirit, the IXCs should be willing to end their "widespread self help" tactics of non-payment. Therefore, if the Commission chooses to implement a CLEC access charge cap, it should simultaneously place specific obligations on IXC behavior. IXCs should be required to exchange access traffic with any CLEC whose access charges are either at or below the cap. Further, the FCC should order such IXCs to promptly pay such CLEC's access charges. IXCs should be specifically prohibited from employing "widespread self help" tactics in order to hold hostage any CLEC whose switched access charges are above an ILEC's rates. These tactics do nothing but inhibit competition and enrich the IXCs at the expense of the CLECs and the customers they serve.

III. Comparing CLEC and ILEC Switched Access Rates

Although facilities-based CLECs have expended a substantial amount of capital in a relatively short amount of time to provide a state-of-the-art telephone network, they still possess extremely limited market share. ILECs, on the other hand, have spent even

greater amounts of capital, but over a much longer period of time. Additionally, the costs associated with an ILEC's network are spread over a much larger customer base and a far greater volume of switched access traffic, thereby reducing the per-minute costs experienced by the carrier.

Further complicating matters is that these investments are comprised almost entirely of joint and common cost components. That is, these network costs cannot be properly characterized as either "local" or "access". Attempting to attribute these costs to either local or access service categories in isolation becomes an arbitrary exercise without meaningful results.

A CLEC must accordingly recover all of its joint and common costs, along with all service-specific costs, through the combined revenues of all its services. The contribution to joint and common costs provided by access services has always been a critical component of reasonable cost recovery by LECs. This was certainly true for the major ILECs historically. Usage-based access revenue generated more than 27%⁶ of total ILEC revenue in the early eighties. As recently as 1999, revenue from usage-based access charges still accounted for 16% of total ILEC revenue.⁷ For small, often rural, ILECs, the significance of access revenue is illustrated by the rates charged by the NECA companies. For many of these companies, switched access is the *primary* source of revenue, eclipsing even basic local service revenue.

It should not be surprising, then, that CLECs also rely on switched access revenue to significantly contribute to joint costs, particularly in the start-up phases of operation.

⁶ The percentages are from Tables 4.2 and 4.5 of the FCC's 2000 Statistics of Communications Common Carriers.

⁷ *Id.*

The access rate level proposed by ALTS recognizes the appropriate short-term role of access charges in contributing to joint cost recovery, and ultimately to CLEC survival. At the same time, it does not go beyond reasonable contribution and risk creating a CLEC local service subsidy. The development of robust competition in the local exchange market will depend, in part, on maintaining a reasonable regulatory framework. CLEC access tariffs which support compensatory access rates – such as those proposed by ALTS – continue to be a critical part of that framework.

IV. Mandatory Detariffing

Mandatory detariffing is not a viable solution to bring about CLEC access charge reductions. If the FCC were to implement AT&T's suggestion⁸ and order mandatory detariffing for all CLECs with access charges above those of ILECs, the adverse consequences to the fledgling CLEC industry would be felt immediately. The telecommunications industry has relied upon the tariff filing procedure as the most effective and efficient mechanism by which carriers, who may have no prior knowledge of each other's existence, can learn their rights and obligations prior to exchanging access traffic. This mechanism has added importance over the last several years as huge numbers of IXCs have entered the telecommunications market. Requiring every LEC to negotiate an independent access agreement with each IXC would constitute a waste of time and resources with no concomitant benefit for either the carriers or their customers. The current tariff filing procedure has served the market well for many years and should be retained.

⁸ AT&T Comments, p. 15.

Mandatory detariffing would mandate that CLECs individually negotiate with IXC's over terms, conditions and charges. CLECs have very limited market power, so negotiating with the large IXCs is more an exercise in unilateral decision-making. Negotiations are only effective when both parties negotiate from relatively equal bargaining positions. CLECs, placed in this circumstance, would be powerless to negotiate terms with large IXCs.

Cox urges the FCC to adopt the GREAT proposal recommended by ALTS as a means of alleviating the concerns of AT&T and other IXCs over CLEC access charges without reached the question of mandatory detariffing. Stability and certainty in the telecommunications market are assured by tariffs, and these benefits would be replaced by confusion and doubt if the FCC adopts mandatory detariffing.

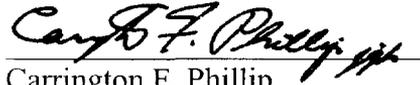
V. CONCLUSION

For the reasons explained above, Cox supports the FCC's adoption of the GREAT proposal recommended by ALTS. The FCC's implementation of the GREAT proposal would bring substantial stability to the interstate access market by protecting the rights

and obligations of CLECs and IXCs while leading to reasonable reductions in CLEC access charges.

Respectfully submitted,

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January 26, 2001

CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, do hereby certify that on this 26th day of January, 2001, I caused copies of the foregoing "Reply Comments of Cox Communications, Inc." to be served via hand delivery on the following:

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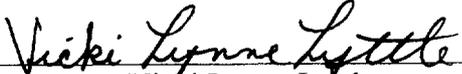
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