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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

COMMENTS OF
COX COMMUNICATIONS, INC.

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SUMMARY

These comments focus on three of the key issues raised by the Recommended Decision (the "RD") of the Joint Board: (1) Designation of ETCs; (2) The scope of the support to be made available, both in terms of geography and lines served; and (3) Potential transition mechanisms for a reformed universal service program.

First, the Commission should not adopt new national guidelines for designation of ETCs. While mandatory standardized ETC criteria would make the designation process easier, guidelines – which cannot be binding – only add to the complexity of the current state designation processes, without any countervailing benefits. Indeed, the crux of the problem is not that there are too many new ETCs, or that the public interest is not being served by new ETCs, but that ILECs receive funding regardless of the number of customers they lose.

Second, the Commission should adopt three key changes in the way universal service support is made available. The first change is to permit ETC designation and to calculate funding on the basis of territories smaller than study areas. This will facilitate rational competition and reduce the potential for cream-skimming in areas that receive high cost support by aligning the support more closely with the costs of serving specific locations. The California state fund, which allocates support based on census block groups, demonstrates the merits of using smaller territories for this purpose.

Next, the Commission should limit support for an individual residential customer to the customer's primary line. This approach balances the need to support universal service with the costs that universal service imposes on all customers. Primary line designations should be based on customer nominations. Once again, the California experience demonstrates that limiting support to primary lines is feasible and that it does not harm rural carriers.

The Commission also should re-evaluate the way it calculates high cost support for both rural and non-rural areas. In particular, it should ensure that the amount of support available for a particular customer does not depend on the carrier that serves that customer. When a customer moves from one carrier to another, the support should move as well.

Finally, there should be no transition mechanism. However, if the Commission believes a transition mechanism is necessary, it should adopt the Restatement proposal from the RD. The Restatement proposal would best protect competitive neutrality and is flexible enough to address the possibility of a change to a new costing methodology. The other proposals should not be adopted. The Lump Sum Payment proposal would unduly favor ILECs over CLECs because only ILECs would be eligible for the lump payments. The Hold Harmless proposal not only would discriminate in favor of ILECs but also would discriminate among CLECs by basing their support on when they entered a particular market rather than on factors that are relevant to the costs of serving that market.

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Cox Communications, Inc. ("Cox") hereby files comments in response to the Notice of Proposed Rulemaking in the above-referenced proceeding issued by the Federal Communications Commission ("Commission") on June 8, 2004.[1] The Commission seeks comment on the Recommended Decision of the Federal-State Joint Board on Universal Service ("Joint Board") relating to the eligible telecommunications carriers ("ETCs") designation process and the Commission's rules regarding disbursement of high cost support.[2] Cox concurs with the Commission and others that this review of universal service support mechanisms that have been in place since 1997 is overdue.[3]

In evaluating whether the Commission's rules regarding high-cost support and ETC status best achieve the goals of the Telecommunications Act of 1996, the Commission seeks comment on a variety of issues related to the operations of the federal Universal Service Fund mechanism. These comments will focus on three important issues addressed in the RD: (1) the

[1] Federal-State Joint Board on Universal Service, *Notice of Proposed Rulemaking*, CC Docket No. 96-45, FCC 04-127, rel. June 8, 2004 (the "Notice").

[2] Federal-State Joint Board on Universal Service, *Recommended Decision*, 19 FCC Rcd 4257 (2004) (the "RD").

[3] See, *e.g.*, *Separate Statement of Commissioner Lila A. Jaber, Florida Public Service Commission* ("...this review is overdue in light of the evolving telecommunications market and the ongoing responsibility to maintain accessible, affordable telephone service for every American..."), RD at p. 53.

designation of ETCs; (2) the services that should be supported through the federal universal service fund; and (3) the potential revenue losses by incumbent local exchange carriers ("ILECs") serving rural areas.

I. INTRODUCTION

Cox acknowledges the importance of maintaining a workable and sustainable federal universal service fund — an express goal of the RD. However, the Commission must resist any outcome that would create artificial barriers to competition motivated solely by a goal of reducing high-cost funding and standardizing the ETC process throughout States. Instead, the Commission must not hinder the development of competition, which results in all carriers providing telecommunications and information services "at just, reasonable, and affordable rates."[4]

Cox provides its customers choice and affordable rates for phone, video, and high speed Internet access services. Cox brings robust facilities-based competition to the marketplace. Cox is one of the largest facilities-based residential competitive local exchange carriers ("CLECs") in the United States. It has grown in the residential and business markets by investing in a full and efficient end-to-end network in both rural and non-rural areas, and by providing outstanding and award-winning services.

If Cox is to continue to advance universal service by bringing telephony and advanced services to customers in more rural areas, universal service mechanisms must be competitively neutral. This requires ensuring that there are no limitations on the number of ETCs in a given study area. Market forces, and not regulation, should dictate which carriers survive. Federal guidelines encouraging state commissions to adopt consistent criteria for designating ETCs

[4] 47 U.S.C. Sec. 254(b)(1).

theoretically could make the process easier for carriers seeking designation applications will be helpful. But the focus of universal service reform should be on correcting the problems with the existing universal service system that has created distorted market signals and an inappropriately large fund. The Commission should (1) disaggregate the study areas of incumbent local exchange carriers (ILECs) and permit competitors to be designated as ETCs in those smaller areas; (2) limit high cost support to a single, primary line to a home or business; and (3) if necessary, adopt a reasonable transition mechanism by putting a cap on per-line high cost support within a study area.

By guaranteeing that high cost support paid to carriers for the primary line is exactly the same for all ETCs, including the ILECs, the Commission will be safeguarding the financial stability of the fund while at the same time allowing competition to flourish. Competition cannot flourish when ILECs can receive more per-line high cost support than competitive ETCs. To illustrate the practicality of this approach, Cox notes the largest state high cost support mechanism in California, where under the California High Cost Fund-B the large and mid-sized ILECs' study areas have been disaggregated into Census Block Groups ("CBGs").[5] This mechanism required competitive providers that wish to obtain support to take on the obligation to serve any customer within a CBG as Carrier of Last Resort ("COLR"), and has provided high cost support to the COLR, ILEC or CLEC, that wins a customer's primary line service in any CBG. Cox urges the Commission to follow the California example. A key to the success of high cost reform lies in avoiding additional regulatory hurdles for competitors to achieve ETC status. As a straightforward principle, the Commission should reform the existing structure that unnecessarily favors ILECs at the expense of both competition and the end user.

[5] *See infra* Section II.B for a more thorough explanation of this fund.

In sum, the RD sets out three overarching objectives for its recommendations: (1) the preservation and advancement of universal service; (2) competitive neutrality; and (3) the long-term sustainability of the universal service fund.[6] Cox argues that these objectives can be realized on the basis of the California example.

II. SPECIFIC COMMENTS

A. The Commission Should Refrain from Adopting Additional Requirements for ETC Designation.

The Joint Board's hope, as expressed in the RD, is that "[a] single set of guidelines will encourage States to develop a single, consistent body of eligibility standards to be applied in all cases..."[7] The RD argues that, "collectively [the decisions of States to designate ETCs]...have national implications. They affect not only the dynamics of competition...but also the national strategies of new entrants."[8] Although this laudable goal would provide national competitive carriers like Cox some certainty in how the ETC designation process will work from State to State, in practice implementation of this objective would be counterproductive for reasons discussed below. The Commission should not adopt further guidelines on ETC designation that inevitably would make the already rigorous and often cumbersome State process of obtaining ETC designation even more difficult. The unintended effect of the Joint Board's proposed federal guidelines would be to add another layer of complications to ETC rules and effectively prevent competition from developing in high cost areas.

As the RD notes, the courts have upheld the States' role in designating ETCs in areas served by both rural and non-rural telephone companies.[9] Any federal guidelines adopted by

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[6] RD, 19 FCC Rcd at 4258

[7] *Id* at 4260

[8] *Id.* at 4263

[9] *Id.* at 4261.

the Commission cannot be binding on States, and therefore will be adopted on a piecemeal basis – indeed, states may pick out only the guidelines they find most appealing. This additional regulatory patchwork would create additional undue regulatory hoops without the desired rationalization of the process.

Additional unenforceable federal ETC standards, such as minimum eligibility requirements, public interest considerations, and additional steps in the annual certification process are just such complications to be avoided. The ETC system already hinders competitors from seeking designation, particularly when competitors are required to serve the ILEC's entire study area within a state. The addition of unenforceable federal standards would not be competitively neutral. Customers in rural areas need the benefits of competition (e.g., better services, cheaper prices, lower overall network costs). And consumers payments to the USF should not continue to subsidize less efficient companies that would immune from the pressure of competition.

Finally, imposing additional ETC requirements does nothing to limit the growth of the federal universal service fund or to ensure its long-term financial sustainability. As the Joint Board acknowledges in the RD, "[c]urrently, the support flowing to a high cost area increases automatically when a competitive ETC is designated, according to the number of connections it serves."[10] This is the crux of the problem and it is not fixed by imposing unenforceable federal regulatory hoops. The fact is that the fund increases automatically because the ILECs continue to get the same support amounts even as a competitive ETC market takes customers away from them. In other words, the problem is that the fund is designed to shield ILECs from the effects of competition, which results in a much bigger fund than is necessary.

[10] *Id.* at 4285.

B. Scope of Support

Cox contends that the principal focus of the Commission should be on revising the high cost rules to fairly and economically distribute support between incumbent and competitive ETCs based on which carrier is serving the customer. In this way, the rules will reward efficient providers and rightfully penalize inefficient providers. This result will maintain the goal of ensuring a basic level of telephone service to every consumer at a reasonable rate. Cox's recommended reforms would accomplish the three objectives of the RD because they would curb the growth of the fund while promoting universal service in a competitively neutral fashion.

1. The Commission Should Disaggregate Study Areas to Allow ETCs to Serve Areas Smaller than the ILEC Study Area to Provide Better Economic Signals to Incumbent *and* Competitors, and Discourage Cream-Skimming.

As the Joint Board notes in the RD, the Commission has previously recognized in the Rural Task Force Order that high cost "support should be disaggregated and targeted below the study area level to eliminate the uneconomic incentives for competitive entry caused by the averaging of support across all lines served by the carrier within its study area. Under disaggregation and targeting, per-line support is more closely associated with the costs of providing service."[11] in the same Order, the Commission also has noted that "the level of disaggregation should be considered to ensure competitive neutrality is maintained between incumbent and competitive ETCs."[12] Finally, the Joint Board agrees that "disaggregation and targeting of high cost support may help alleviate some concerns regarding cream skimming. Permitting rural carriers to disaggregate and target high-cost support allows them to direct

[11] *Id.* at 4278.

[12] *Id.* at 4278, n. 140.

high-cost support to those zones within the study area where support is most needed."[13] Cox agrees that this targeted support eliminates the economic distortions that come from averaging support across entire study areas. This promotes a better matching of per-line support to costs, and effectively addresses the incentive to cream-skim.

The experience in California with the California High Cost Fund-B ("CHCF-B") demonstrates the benefits of this policy. The CPUC disaggregated the large and mid-sized incumbent LECs' study areas into CBGs, and declared that a CLEC that wished to receive CHCF-B support must elect to take on the obligation to serve any customer within a CBG – i.e., the CLEC must agree to COLR obligations within the designated CBG.[14] The use of CBGs is ideal because it provides a reasonably sized area that is not related to any provider's network, making designation competitively neutral. Also, the federal Census Bureau designates CBGs, preventing any industry member or group from unduly influencing the area's size or location to its advantage.

As an active participant in the CHCF-B, Cox appreciates the benefits of the CPUC's decision to disaggregate the funding areas to small enough units (CBGs) to permit a truly facilities-based competitor to enter and flourish in the market while benefiting from the fund as its network grows. The Commission and other States should be principally interested in providing proper economic incentives for capital-intensive facilities-based competition to develop in rural and semi-rural areas. In California, the CHCF-B provides smaller subsidies in

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[13] *Id.* at 4278.

[14] CPUC Decision (D.) 96-10-066, Appendix B, *mimeo* at p. 9. It should be noted that a carrier can be an ETC without immediately being subject to COLR obligations. This permits an ETC to, among other things, complete its buildout before having to serve every customer over its own facilities. *See* 47 U.S.C. § 214(e)(1)(A) (allowing ETCs to serve some customers via resale). Indeed, Section requires only that an ETC be prepared to assume COLR responsibilities in the event another ETC exits the market. 47 U.S.C. § 214(e)(4). Therefore, the Commission should not impose COLR obligations as a condition of obtaining ETC status.

more densely populated CBGs, while more rural CBGs offer higher subsidies. These economic signals show potential ETCs that they can enter and compete in more densely populated areas, but will receive greater public subsidy if they invest and compete in more rural areas. This is a superior outcome than mandating entry in the whole ILEC study area and averaging subsidies across a much wider territory.[15]

With all the benefits of disaggregation, Cox questions why the RD insists that the Commission maintain the presumption adopted in 1997 that a rural carrier's study area should serve as the service area for a new ETC, placing the burden of proof on a new ETC that the study area should be disaggregated.[16] It is not surprising, given the anti-competitive nature of requiring a competitive ETC to serve the whole ILEC study area, that most ILECs chose *not* to disaggregate voluntarily, as permitted under the 1997 policy.[17] Cox urges the Commission to reject this policy now, adopt CBGs or another competitively neutral, reasonably sized area as the proper unit of disaggregation for the federal high-cost subsidy, and distribute funds based on the smaller area.

2. The Commission Should Limit Federal High Cost Support to the Primary Line for Residential and Business Customers.

Commissioner Lila Jaber of Florida, in her separate statement attached to the RD, expresses best what should be the principal concern of policymakers when deciding what services are appropriately subsidized by all telephone consumers: "[U]niversal service funds should be used for the purpose intended – to provide universal access to a customer by providing the appropriate funding for a single connection.... Implementation of the primary-

[15] As an added benefit, this process could address the difficulty with maps, as mentioned in the RD. RD, 19 FCC Rcd at 4301-2.

[16] *Id.* at 4279.

[17] *Id.* at 4279, n. 141.

connection proposal may well be essential in order to preserve the long-term sustainability of the federal universal service fund."[18]

To illustrate how this funding ought to work, Cox points again to the California experience with the CHCF-B, which Cox believes fully supports the RD's recommendation that "the Commission limit the scope of high-cost support to a single connection that provides access to the telephone network."[19] In California, a customer selects a COLR and self-nominates one of the lines served by the COLR as his or her primary line. The COLR maintains a record of this designation, and may claim CHCF-B subsidies based on this designation. The CPUC audits all COLRs' records to ensure that these providers are not claiming more than one line from any one customer.

Granted, with self-nomination, there is a de minimis risk that a customer could have service from multiple carriers and designate more than one line as the primary line.[20] This risk may increase slightly with wireless carriers being eligible for ETC designation. In any event, the risk can be mitigated with random audits as more fully explained below. Cox agrees with the arguments expressed by the Joint Board in favor of the single-connection policy: (1) the federal universal-service fund is not set up to protect carriers;[21] (2) the policy would curb the growth of the fund;[22] (3) and the policy sends more appropriate economic signals for entry.[23]

[18] See *Separate Statement of Commissioner Lila A. Jaber, Florida Public Service Commission*, RD, 19 FCC Rcd at 4310.

[19] *Id.* at 4279. *See also id.* at 4282-3.

[20] Although it is possible that the CPUC may have concerns about customers nominating more than one carrier as their COLR, Cox is not aware of extensive abuses that have driven the size of the CHCF-B fund out of control. Cox does caution the Commission that any audit of a policy to permit customers to self-nominate their providers of primary-line service should not place burdens on competitive ETCs that are not equally shared by incumbent ETCs.

[21] *Id.* at 4284.

[22] *Id.* at 4285-6.

[23] *Id.* at 4286.

Supporting a single connection represents a good balance between the interests of consumers nationwide who pay into the federal universal-service and who should not be asked to subsidize anything but the basic connection to the network and the interests of private, rural telephone companies that seek government support to provide a basic connection to their rural customers. In an era of increasing competition, there is little or no justification for asking telecommunications consumers to prop up a carrier's provision of *non-basic* telecommunications services.

Concerning support for business service, the Commission must first decide whether such support makes good public policy. Although "[c]ommenters have noted that rural economies are highly dependent on the presence of businesses, particularly small businesses,"[24] the Commission should not ask customers in more urban areas, many of whom may be low- or-middle income, to unduly subsidize the telecommunications needs of commercial enterprises in more rural communities. It is a stretch to support even the primary line for these commercial customers; it is untenable to subsidize more than that.[25]

Finally, Cox does not disagree with the call in the RD for the Commission to further develop the record on whether adoption of the primary connection proposal would launch States into complex ratemaking proceedings,[26] or would undermine investment in rural areas by ILECs or CLECs.[27] However, there is no evidence that either outcome has come to pass for any of the California ILECs participating in the CHCF-B, or their respective study areas, even

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[24] *Id.* at 4293.

[25] Of course, nothing would prevent an individual State from supporting more than the single, self-nominated primary connection to the network for residential or business customers in that State. That State could institute an intrastate fund to support such a policy.

[26] *Id.* at 4292-3.

[27] *Id.* at 4294.

though this fund has operated for eight years with a primary-line funding limit applicable to residential customers only.

3. The Commission Should Permit a Customer to Self-Nominate the Provider of the Primary Line Service to be Subsidized.

The RD calls for the Commission to "further develop the record on proposals to allow consumers with more than one connection to designate an ETC's service as 'primary.'"[28] Cox urges the Commission to adopt this self-certified one-connection policy without further proceedings, and to permit customers to verbally communicate to the ETC that it is the provider of the primary-line service. Based on the California experience, it is unlikely that the potential administrative problems with this policy cited in the RD will occur. The CHCF-B allows customers to nominate their primary-line provider. None of the concerns of opponents of the self-certification proposal (e.g., ETCs will invest in marketing rather than infrastructure) have come to pass in California.[29]

In addition, this policy places the principal beneficiary of universal service policy, the customer, in control of designating the primary line provider. This will directly advance the goal of universal service, while a more burdensome process, such as requiring a written statement from the customer, will be costly to the carrier and time-consuming to the customer without any significant incremental progress toward preserving the long-term sustainability of the fund. In any event, the vast majority of customers receiving wired telephone service obtain all their wired network connections from a single provider. Thus, in areas where there is no wireless ETC, the issue of "double-counting" through customer selection of more than one

[28] *Id.* at 4292.

[29] *Id.* at 4291-2.

ETC as primary and the fund paying double for the same customer is likely to be minor if not irrelevant.

In areas where there is a wireless ETC, Cox continues to believe that the Commission should permit a customer to nominate the provider of the primary connection that is eligible to receive universal service funding. Although the possibility that such a customer might nominate both a wired and a wireless service provider as the ETC is higher, this problem can be addressed through a competitively neutral auditing mechanism. The Commission should develop a record on how to best identify and address such occurrences.

One serious question related to customer self-nomination is how current customers should be handled.[30] In California, carriers were ordered to send letters to existing customers to obtain the primary line designation. This worked well, particularly because carriers were properly motivated by the CPUC disallowing claims from customers who did not return their written certifications. On the other hand, applying this method to the federal universal service fund could place a financial burden on some ETCs, particularly small, rural ILECs. Cox urges the Commission to assess the impact of implementing a written certification process.

4. The Commission Should Move as Swiftly as Possible to Determine a Reasonable Basis of High Cost Support for Rural and Non-Rural Areas.

Cox concurs with the RD's statement that "Considering the basis of support under the rural and non-rural mechanisms simultaneously would allow the Joint Board to craft a more comprehensive approach" to universal service, particularly when many companies serve both types of areas.[31] As the RD notes later, with the adoption of other measures in the RD (along with the ones Cox has proposed here), growth of the fund will be minimized until the basis for

[30] *Id.* at 4292, n. 225.

[31] *Id.* at 4297.

cost support is established in 2006.[32] This also makes sense in the context of the FCC's ongoing review of the "contribution" portion of the USF, a review that remains to be completed.

However, Cox cautions the Commission that any basis of support for the primary line should be the same regardless of the costs of the carrier that provides eligible services to any particular customer. While the RD admits that "funding a competitive ETC based on the incumbent LEC's embedded costs may not be the most economically rational method for calculating support,"[33] the Commission also should not permit ILECs to receive larger subsidies than CLECs merely because the ILECs are less efficient. The Commission should once again look at the California High Cost Fund for a reasonable method to approach this issue. That fund subsidizes primary lines based on forward-looking costs in many rural areas of the State without disadvantaging or harming consumers in those areas.

The CPUC first estimated the recurring cost to serve each individual customer in all CBGs (including rural and semi-rural areas) throughout the State, regardless of the serving ILEC, using a forward-looking costing methodology.[34] The CPUC then determined the subsidy level for serving an individual customer by subtracting from the cost to serve that customer the monthly recurring revenue for the primary connection that the ILEC charged that customer.[35] The subsidy so calculated has been made available since the institution of the CHCF-B to any COLR serving a primary line within a CBG, whether it was the ILEC or any CLEC that opted

[32] *Id.* at 4298.

[33] *Id.* at 4297.

[34] D.96-10-066, *mimeo* at p. 107.

[35] *Id.*, Appendix B, *mimeo* at 9. The CHCF-B does not subsidize business service. *See id., mimeo* at 96.

to become a COLR.[36] The CPUC has made no attempt to review the cost of competitive COLRs, a task that would be wasteful and unnecessary.

The California subsidy mechanism is still dependent on the serving ILEC's rates. Cox recommends that the Commission address this issue by capping the level of the support flowing to the study area of an ILEC when a competitive ETC has been designated in any subdivision of that area. The Joint Board recommended this approach in the RD.[37] Alternatively, the support could be capped only in the subdivision of the study area entered by a competitor, *e.g.*, in a particular CBG, but this alternative could be administratively difficult. Moreover, it could send conflicting signals to competitive ETCs when two adjacent portions of the same study area could have wildly different subsidies depending on whether there is a competitive ETC in one of them. Under either approach, inflation would operate to reduce the actual per-customer costs of the federal universal-service fund. Of course this would depend on whether and how the capped subsidy would be modified through a still-to-be-determined index.[38] Meanwhile, by virtue of competitive pressure, the ILEC is not likely to increase its rates and reap unwarranted profits from high cost support.

C. Transition Mechanisms

1. Any Transition Should Be Limited.

The RD suggests that the Commission seek additional comment on three more cautious transition mechanism proposals.[39] However, Cox does not believe that there is a clearly developed argument that there is a need to "avoid or mitigate reductions in the amount of high-

[36] *Id.*, Appendix B, *mimeo* at 10.

[37] *Id.* RD, 19 FCC Rcd at 4290.

[38] *Id.* at 4291. Since the record will be further developed on the question of an appropriate index, Cox will not comment on that here.

[39] *Id.* at 4289-90.

cost support flowing to rural areas as a result of implementing a primary-line restriction."[40] As noted previously, the universal service fund's primary objective should be to ensure that customers in more rural areas are able to obtain primary service from their provider of choice. Certainly USF should not be used to protect ILECs from competitive inroads or ILEC revenues from being reduced as a result of competition. Indeed, as the Joint Board points out in the RD, the Fifth Circuit explained that "[t]he Act does *not* guarantee all local telephone service providers a sufficient return on investment; quite to the contrary, it is intended to introduce competition into the market. The Act only promises universal service, and that is a goal that requires sufficient funding of *customers*, not *providers*."[41] [emphasis in original] Because of this clear statement by the courts, Cox suggests that a transition mechanism is unnecessary.

In fact, the RD itself recognizes that there are significant economic benefits to the primary-line funding proposal.[42] Further, the incremental costs of second and additional lines are much less than the costs of the primary line, providing the rural ETCs with an opportunity to recover their joint and common costs (whether embedded or forward-looking) from the sale of these lines, as well as highly profitable optional features and toll. In the end, Cox agrees with the statement that, if the Commission does choose to adopt a transition mechanism, "no mitigation effort can be expected to live in perpetuity, nor should one be used to forestall competition in any area. Congress was quite clear; it intended to open all telecommunications markets to competition, not just markets in low cost or urban areas."[43]

[40] *Id.* at 4287.

[41] *Id. at 4284.*

[42] *See, e.g., id.* at 4286.

[43] *Separate Statement of Commissioner Thomas J. Dunleavy, New York State Public Service Commission, id.* at 4312.

2. If a Transition Mechanism Is Necessary, the Commission Should Adopt the Restatement Proposal as the Only One that Most Closely Meets the Three Objectives of the RD.

If the Commission – notwithstanding compelling arguments against doing so – adopts a transition mechanism, then the only reasonable proposal is the Restatement Proposal. This proposal would "restate the total current support…in terms of first lines."[44] Presumably this restated support would then be available to any competitive ETCs that win that line. This method is aligned with the benefits of funding for primary lines (e.g., competitive neutrality) and does not unduly protect the "losing" carrier. Moreover, it is flexible enough to transition to a different costing methodology if one is adopted by 2006.[45]

In contrast, the Lump-Sum-Payment proposal is not competitively neutral because, while the primary line support would be available to both incumbent and competitive ETCs, the lump-sum payments would be available only to the former, placing competitive ETCs at an instant, unreasonable disadvantage in the marketplace.[46] And the Lump Sum Payment proposal would do nothing to curb the growth of the fund, for the ILECs would receive these payments even when they are no longer providing primary-line service, creating no incentive for these companies to provide efficient or good service.

The "Hold-Harmless" proposal, which ensures that ILECs will continue to receive the same revenues from the fund going forward, while a competitive ETC's support would be limited to the primary line and would be frozen at entry, is an especially bad idea.[47] On its face this proposal is not competitively neutral. It also discriminates among competitive ETCs by

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[44] *Id.* at 4288.

[45] *See, e.g., id.* at 4258.

[46] This fact is recognized in the RD. *Id.*

[47] *Id.* at 4289.

potentially granting ETCs designated later preferential treatment vis-à-vis those that entered the market first. This is because the primary-line subsidy, which will vary and likely go up over time for an ILEC as it loses lines to a competitor, would be different for different competitive ETCs depending on when they enter a particular market.[48] Of course, the fund's size under this proposal could balloon out of control. ILECs would have significant incentives not to operate efficiently, for their draw from the federal fund would certainly remain the same and probably increase even if customers decide to take a competitor's primary line.

Although the RD states that this proposal is intended to address CLECs seeking ETC designation for arbitrage purposes,[49] Cox is convinced that the actual outcome will be to completely discourage competitive entry into rural areas. This outcome, as Commissioner Dunleavy noted, is certainly not what Congress intended in the Telecommunications Act of 1996.[50] The Commission should reject the "Hold Harmless" proposal out of hand.

III. CONCLUSION

Cox commends the work that the Joint Board undertook to provide the Commission with a set of proposals to reform the federal high cost support mechanism. Reform is necessary to ensure the fund promotes universal service in an efficient and competitively neutral manner, and is sustainable over the long term by reasonably curbing its growth.

Limiting high cost funding to the primary connection to the network, disaggregating the fund's subsidies to reasonably small divisions of ILECs' study areas, making primary line support available to all carriers on a competitively neutral basis, and moving as quickly as possible to a forward-looking cost rather than embedded cost basis for the calculation of high

[48] *Id.*

[49] *Id.*

[50] *Id.* at 4312.

cost support in rural areas are initiatives that will help the Commission achieve the goals set forth in the Joint Board's Recommended Decision. They are also aligned with Congressional intent as set forth in the 1996 Act.

For all these reasons, Cox Communications, Inc., respectfully requests that the Commission adopt rules consistent with these comments.

Respectfully submitted,

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