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

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

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Federal Communications Commission
Office of Secretary

REPLY COMMENTS OF
COX COMMUNICATIONS, INC.

Carrington Phillip
Vice President, Regulatory Affairs
Cox Communications, Inc.
1400 Lake Hearn Drive
Atlanta, Georgia 30319

Of Counsel:

J.G. Harrington
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036

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I. INTRODUCTION AND SUMMARY

Cox Communications, Inc. ("Cox") hereby files these reply comments in response to the Notice of Proposed Rulemaking in the above-referenced proceeding.[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 carrier ("ETC") designation process and the Commission's rules regarding disbursement of high cost support.[2]

Cox's reply comments address the following issues: (1) the need for immediate disaggregation of ILEC study areas; (2) proposed additional ETC designation requirements; (3) scope of support for competitive ETCs; (4) the primary-line restriction for rural high cost support; (5) the transition to the primary-line restriction; and (6) per-line support cap upon competitive entry.

Cox believes the primary current focus of the Joint Board and the Commission should be to perform a comprehensive review of the rural High Cost Fund mechanism with an aim of

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[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 "Recommended Decision").

putting a new structure into place at the end of the current five year transition period, approximately two years from now. Meantime, the Commission should not take any actions that would thwart the development of competition in rural areas. Rather, the Commission should implement the recommendations contained herein as a means to encourage competition while preserving the universal service goals and benefits set forth in the 1996 Telecommunications Act.

First, the Commission should immediately order ILECs to disaggregate study areas into smaller units not associated with ILEC wire centers. Experience shows us that by doing so, proper economic signals are sent to incumbents and competitors alike. Support is more reflective of underlying incumbent costs and proper signals regarding entry are sent to competitors, thereby preventing cream-skimming behavior. Experience also demonstrates that rural consumers are the primary beneficiaries of such a policy because it is far more likely that competitors will enter rural, high-cost areas if support is available to them on a smaller geographic basis. For lower-cost geographic areas, high cost support should not be needed to provide competitors incentive to enter. When competitive entry is sustained, incumbents are forced to operate more efficiently, thereby reducing costs upon which support is based.

Second, the Commission's actions in this proceeding should not result in any limitations on support for current or future State-certified competitive ETCs. Cox strongly disagrees with commenters who recommend *mandatory* imposition of additional State ETC designation requirements. Even *optional* guidelines will have the effect of discouraging or eliminating both wireless *and* wireline ETCs in rural areas, thereby leaving rural consumers without the benefits of competition. Moreover, the Commission should not limit the amount of support available to competitive ETCs, and especially must not limit the number of ETCs allowed in rural areas.

As an interim measure for limiting fund size until a permanent mechanism is determined, the primary-line proposal will achieve the Joint Board's goals of preserving and advancing universal service, implementing and maintaining competitive neutrality, and preserving the long-term sustainability of the fund. Cox disagrees with arguments from both ILECs and wireless carriers that the restriction should not be imposed because it may harm them. Universal service funding is not intended to protect carriers at the price of competition and of an oversized fund for which consumers in all parts of the country ultimately pay. Cox also disagrees with arguments that restricting funding to primary lines will reduce rural area investment in advanced services, particularly because universal service funds are to be used only for investments associated with eligible basic services.

Cox reiterates its recommendation that the Commission should restructure rural high cost funding in a manner similar to that created by the California Public Utilities Commission, which allows consumers to select their primary line provider and does not allow the duplication of support to incumbents and competitors serving the same area that is responsible for the current size of the federal fund. The California experience also demonstrates that the purported administrative issues associated with this process are not insurmountable.

Cox believes a transition to the primary-line restriction may be unnecessary. However, many parties that question the transition plans in general do so as a means of preventing adoption of the primary-line restriction. The Commission should view the two issues separately. For the reasons described in Cox's initial comments, the restatement proposal should be implemented if a transition mechanism is necessary.

Finally, Cox agrees with commenters favoring a per-line support cap upon competitive entry and believes that a cap should be imposed regardless of whether the primary-line restriction

is implemented. Cox believes that such a cap will contribute to keeping the size of the fund down while still allowing competition to flourish.

II. ILEC STUDY AREAS SHOULD BE DISAGGREGATED TO BETTER TARGET HIGH COST SUPPORT AND MINIMIZE THE SIZE OF THE FUND.

Regardless of its decision regarding the primary-line restriction, Cox believes that the Commission should immediately require mandatory disaggregation of ILEC study areas. Cox agrees with the Rural Cellular Association ("RCA") that disaggregation of cost support ensures the efficient allocation of federal universal service funding, for it results in low, or lower-cost, portions of an ILEC study area either receiving no subsidy at all or receiving a minimal subsidy amount. Put another way, disaggregation ensures that competitive ETCs receive the proper economic signals for entry into the study area and prevents arbitrage and cream-skimming that would result from subsidies averaged for the whole study area.[3] As RCA explained, the Commission can learn from the example of a 2002 decision by the Washington Utilities and Commerce Commission (WUTC) to mandate "disaggregation of support for all rural ILECs so that support is directed toward high-cost wire centers. This decision ensured that competitors would receive little or no benefit from entering as an ETC into low-cost areas – it being presumed that competition is going to come to those areas without support."[4]

Further, Cox urges the Commission to adopt units of disaggregation more competitively neutral than wire centers, such as the census block groups (CBGs) that have been successfully used in California for eight years. Otherwise, ILECs will have lower administration costs than competitors, for competitors would have to work to match lines with ILEC wire centers. With CBGs, all carriers would be subject to a competitively neutral standard and would have to incur

[3] Unfortunately, as RCA Comments state, given the choice of disaggregating or not, ILECs choose not to disaggregate "as a shield against competitive entry." RCA Comments at 9. *See also* Cox Comments at 8.

[4] RCA Comments at 21.

similar expenses to submit claims to the federal universal service fund. As Cox noted in its comments, "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."[5]

III. MANDATORY ETC DESIGNATION GUIDELINES ARE UNNECESSARY, DISCRIMINATORY, AND ANTI-COMPETITIVE

The Commission should reject arguments that burdensome and mandatory federal requirements for State evaluation of ETC applications are necessary for the protection of universal service.[6] And Verizon's suggestions that the Commission establish a rebuttable presumption that the public interest is not served by more than one ETC in a study area, and that approved ETC petitions should be re-examined to 'de-designate' multiple ETCs, should be flatly dismissed.[7] As the Recommended Decision properly recognized, courts have upheld the State role in designating ETCs in both rural and non-rural areas.[8] States should continue to have the flexibility to determine whether ETC designation is appropriate in their respective markets. Moreover, a State should not be required to file any sort of justification in instances where it does not follow the federal permissive guidelines, as suggested by BellSouth.[9]

The Verizon and BellSouth approaches, as well as proposals for mandatory guidelines, will end up benefiting only ILECs while creating additional regulatory burdens for CLECs. Instead, the Commission should send a message that State ETC designation processes work well

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[5] Cox Comments at 7.

[6] *See, e.g.,* SBC Comments at 4.

[7] Verizon Comments at 9-10.

[8] Recommended Decision, 19 FCC Rcd at 4261.

[9] BellSouth Comments at 5.

and reform is unnecessary, that 'de-designating' previously approved ETCs is anticompetitive and that insulating ILECs from competition by arbitrarily approving only one ETC per study area is discriminatory and will not control universal service funding. Federal ETC standards that prevent or discourage CLECs from entering markets and competing with ILECs provide little incentive for ILECs to offer innovative services, further invest in their networks or encourage greater operational efficiencies.

Cox agrees with commenters like Sprint that argue that the Commission should move cautiously in making any changes to the standards for designating ETCs. The process already is rigorous and the Commission's time is better spent concentrating on reforming the current high cost funding mechanism rather than modifying already functioning and tested State ETC designation procedures.[10]

Cox also agrees with GCI that, "blanket limitations on ETC designations pick a 'winner' – the incumbent – and preclude the very effects of competition that would otherwise be available to *discipline* the costs in higher cost areas." As GCI explains, it is competition that will force ILECs to operate more efficiently and innovatively and ultimately drive down the costs that are the basis for their high cost support requests.[11] Allowing ILECs to be the sole ETCs and sole recipients of high cost funds only will result in the fund increasing, not decreasing. Therefore, the Commission and state commissions should take GCI's advice that great weight should be placed, "on the fact that consumer benefits will likely result from competitive entry when determining whether the designation of an additional ETC in a rural study area would be in the public interest."[12]

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[10] Sprint Comments at 20-23.

[11] GCI Comments at 10 (emphasis in original).

[12] *Id.* at 9.

Cox is very concerned that supporters of federal guidelines for ETC designation seem to see such guidelines as a way to stem the growth of the fund due to the increased number of wireless ETCs receiving high cost funds. For example, the Nebraska Rural Independent Companies argue that the significant increase in the number of wireless ETCs is "directly responsible for the significant growth seen in universal service funding requirements over the same time period."[13] And in the Recommended Decision, the Joint Board contends that "Competitive ETCs now receive a small fraction of the total high-cost support, but their support has increased dramatically over the past few years. Much of this growth represents supported wireless connections that supplement, rather than replace, wireline service."[14] While, as the Joint Board points out, support would be available under its recommended primary-line approach to the extent that customers choose to obtain connectivity through primary connections provided by wireless ETCs, Cox strongly cautions the Commission that imposition of additional ETC designation criteria not only would make it difficult for wireless carriers to obtain support, but also would make it difficult for *wireline* carriers to obtain such support.

Cox points this out to remind the Commission that, if implemented, the primary-line restriction likely will serve to regulate the amount of support that wireless carriers will receive, and that additionally imposing federal ETC designation guidelines will serve to severely curtail or eliminate both wireless *and* wireline competition to ILECs. Wireline competitors such as Cox are the best hope for not only providing rural consumers products and services *comparable* to the ILECs, but also newer and more innovative products and services at better prices. Such

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[13] Nebraska Rural Independent Companies Comments at 3.

[14] Recommended Decision at 29.

competition will force ILECs to operate more efficiently and reduce costs. When this happens, the burden on the fund will go down, not up.

The Commission also should reject any attempt to have prospective ETCs meet a State's carrier-of-last resort ("COLR") obligations before designation or to require competitive ETCs to serve the ILEC's entire study area. Requiring competitive ETCs to serve the ILEC study area or mandating that ETC applicants provide specific build-out plans for each service area for which designation is sought does nothing to limit the growth of the federal universal service fund or to ensure its long-term financial sustainability. Rather, Cox supports GCI's contention that requiring COLR obligations via the ETC designation process is not necessary because Section 214(e)(4) of the Act provides that, if an ETC relinquishes its designation, other ETCs in that service area have one year to purchase or construct facilities in order to provide service to all customers.[15] Commenting parties suggesting that competitive ETCs be committed to COLR-type requirements would merely create barriers to entry, especially if the Commission or a State mandates construction of facilities in order to obtain ETC status.

IV. THE SCOPE OF SUPPORT FOR COMPETITIVE ETCS SHOULD NOT BE LIMITED

In its comments, SBC urges the Commission to limit high-cost support to competitive ETCs to the lesser of the difference between the affordable rate for service and the CETC's actual cost of service or the per-line support available to the ILEC.[16] There is no reason to treat competitors in such a discriminatory fashion. All carriers that are deemed eligible to serve a rural area should have an equal chance of receiving support for doing so. Moreover, SBC provides no mechanism to determine the "affordable rate" for service in an area. Simply put,

[15] GCI comments at 3-4.

[16] SBC Joint Board Comments at 9 (attached to SBC Comments as Attachment A).

SBC's proposal, by guaranteeing that CETCs would receive less funding than ILECs for each customer, seeks to place undue burdens on competitive carriers that may be better positioned to serve rural customers

Cox also strongly disagrees with Verizon's and the Nebraska Companies' proposals that the Commission adopt a rebuttable presumption that it is not in the public interest to have more than one ETC in a rural high-cost area.[17] There is no reason to believe that designating multiple ETCs in high-cost areas will place a strain on the fund, or that each carrier should receive support based on its own embedded costs. Rather, as RCA notes, funding even one competitive ETC in a high-cost area on its embedded cost is likely to strain the fund more than funding five CETCs on a per-line basis.[18]

V. AS AN INTERIM MEASURE, THE COMMISSION SHOULD IMPLEMENT A PRIMARY-LINE RESTRICTION ON RURAL HIGH-COST FUND SUPPORT.

A. Limiting High Cost Funding to Primary Line Support Is Neither Anti-Competitive nor Extremely Difficult to Administer.

The Commission and the Joint Board should concentrate on developing a permanent high cost support mechanism for implementation at the end of the current five-year transition period, about two years from now. As an interim measure to contain the size of the fund, however, the Commission should adopt the Joint Board's recommended policy that federal universal service support be limited to the primary line serving a customer in a high-cost area. The primary-line restriction promotes the three overarching goals set forth in the Recommended Decision: (1) the preservation and advancement of universal service; (2) competitive neutrality; and (3) the long-term sustainability of the universal service fund.[19] Cox drew on its extensive experience with the

[17] Verizon Comments at 9-14; and Nebraska Companies Comments at 5.

[18] RCA Comments at 19.

[19] Recommended Decision, 19 FCC Rcd at 4258

California High Cost Fund-B to support its position. Many other parties, including the public service commissions of California,[20] New York,[21] and Missouri,[22] carriers such as SBC,[23] GCI,[24] and AT&T,[25] and consumer advocates such as NASUCA,[26] all support limiting universal service support to a single, primary connection.

Cox's response to parties opposing the primary line proposal is best reflected by NASUCA: "Interestingly, both incumbents and competitors oppose limiting support only to primary lines. The ILECs say that a primary line restriction would not be competitively neutral because they would be harmed; wireless ETCs say that the restriction would not be competitively neutral because they would both be harmed. *They cannot both be right.*"[27] And neither set of parties is.

BellSouth would have the Commission maintain the status quo because carriers may have "entered a market and constructed their networks based upon past assurances of sufficient universal service support..."[28] USTA argues that "[i]f carriers receive support only on a line-by-line basis, they will never know if they have sufficient support to build and maintain the networks..."[29] Cox suggests that these concerns come from incumbent phone carriers who want to use diminished universal service funding as a scare tactic. Customers should be the primary

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[20] California Public Utilities Commission Comments at 5.

[21] New York State Department of Public Service Comments at 2.

[22] Missouri Public Service Commission Comments at 2.

[23] SBC Comments at 11.

[24] GCI Comments at 25.

[25] AT&T Comments at 4.

[26] NASUCA Comments at 3.

[27] NASUCA Comments at 20 (emphasis supplied).

[28] Bell South Comments at 9.

[29] USTA Comments at 16.

beneficiaries of the universal service regime, not carriers. The Commission should adopt the single-connection proposal because it is the best way to promote universal service while keeping the size of the fund reasonable.

At the other end of the spectrum, many parties representing wireless carrier interests argue that the primary-line restriction will result in less competition. For example, Dobson Cellular Systems states that "...carriers already operating in rural markets are unlikely to invest further in their networks or expand the network, having no reasonable or acceptable expectation for a return on the investment made."[30] Western Wireless criticizes the Recommended Decision because, without "consideration of the benefits of promoting deployment of wireless technology in rural areas with the support of universal service funds, the Recommended Decision summarily concluded that 'deployment of rural wireless infrastructure is an important policy goal, but the reasonable comparability principle does not justify supporting multiple connections to achieve it.'"[31] However, just as universal service policy is not intended to protect incumbent carriers from competition, it also is not intended to provide an uneconomic incentive for competitors to enter a given market. The Commission should adopt the primary-line restriction and administer it in a competitively neutral manner, so that neither incumbent nor competitive providers are unduly advantaged or protected. Cox agrees with United States Cellular Corporation that "If there is to be a primary-line restriction, then the effect of such rules must be competitively neutral."[32]

Parties that oppose the adoption of the primary-line funding restriction also claim that the proposal raises difficult administrative issues. They argue that the proposal will lead to customer

[30] Dobson Cellular System Comments at 23.

[31] Western Wireless Comments at 3.

[32] United States Cellular Corporation Comments at 45.

confusion, increased administration and record-keeping costs, increased marketing activity, and/or slamming.[33] As shown below, none of these concerns could justify rejection of the primary-line proposal.

As Cox noted in its comments, many of the claimed administrative issues can be addressed by permitting the customer, the principal beneficiary of universal service support, to select his or her primary-line service provider, be it incumbent or competitive, wireline or wireless.[34] Problems regarding selections by a customer with multiple carriers could be addressed by the USAC through the implementation of a competitively neutral auditing mechanism[35] or the establishment of a master database with information from all carriers that would enable the Commission or USAC to cross check lines being claimed by ETCs.[36]

Though a balloting or similar selection process for existing customers may be necessary, Cox questions NASUCA's proposal to default them to ILECs,[37] and further believes that the cautious approach suggested by SBC is unnecessary.[38] To the extent any default mechanism is necessary, it should allocate primary line assignments based on some objective criterion, such as the proportion of lines served by each carrier. (Of course, balloting only would be necessary when a customer is served by two ETCs, which is not common today.) Instead, Cox wholeheartedly agrees with NASUCA's observation that "Although there may be practical

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[33] *See, e.g.*, USTA Comments at 20, RCA Comments at 24, Mid-Size Carrier Coalition at 22, and Dobson Cellular Systems Comments at 20.

[34] Cox Comments at11-12.

[35] *Id.* at 12.

[36] California Public Utilities Commission Comments at 6.

[37] NASUCA Comments at 25-26. Cox urged the Commission to further develop the record regarding balloting; see Cox Comments at 12.

[38] SBC states in its comments that "Before the Commission considers eliminating support for non-primary lines, it also must fully explore the logistical and administrative costs of limiting support only to primary lines because the costs and burdens of implementing any such limitation could well exceed the benefits." SBC Comments at 9.

difficulties in transitioning to a primary-line support system, these administrative issues can be overcome, as they have in the past...And no one seriously contends that the cost of identifying primary lines outweighs the cost of continuing to support second or additional lines."[39] Cox recommends that the Commission direct USAC to explore options and recommend solutions for implementing the proposal.

B. Limiting High Cost Funding to the Primary Line Will Not Hurt Rural Customers.

In its comments, Cox showed that there was no evidence from the California experience that the adoption of a single-connection funding policy would result in either complex state ratemaking proceedings, or in the erosion of advanced services investment in rural areas.[40] Nevertheless, Cox did not oppose the Joint Board's call for additional record development on these issues.[41]

Although the Recommended Decision was not conclusive, some commenters urged the Commission not to adopt the primary-line proposal because customers might somehow end up with diminished access to advanced services, or might be subject to rate increases on unsubsidized additional lines. For example, the Rural Telecommunications Associations assert that "without sufficient support to enable construction and operation of facilities necessary to provide the nine currently supported voice-grade services, carriers will lose much of their ability and incentive to make the costly and risky investments necessary to deliver high-speed and

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[39] NASUCA Comments at 23.

[40] Cox Comments at 10.

[41] *Id.*

advanced services"[42] while USTA argues that "...carriers may need to raise subscriber line charges (SLCs) for some customers..."[43]

Cox disagrees that these threats should dissuade the Commission from implementing the primary-line proposal. First, the purpose of the federal high cost fund is to give consumers access to basic telephone services, as evidenced by the list of services currently supported by the high cost fund.[44] The high cost fund's purpose is not to provide economic incentives for the deployment of advanced services. As both the Joint Board and commenters note, mobility, per se, is not supported by the fund, and neither are narrowband or broadband access to the Internet.[45] Second, the purpose of the federal high cost fund is not to guarantee carriers a certain revenue stream. Third, individual states retain the ability to independently fund additional lines or supported services by establishing intrastate funds.

C. If a Transition Mechanism Is Necessary, the Commission Should Adopt the Restatement Proposal.

While commenters supporting the primary-line restriction generally urge the Commission to adopt the "restatement" proposal as the only competitively neutral transition mechanism to single-connection support,[46] opponents question the workability of any of the transition plans[47] or advocate the adoption of the "lump-sum" or "hold-harmless" proposals.[48] Cox urges the Commission to consider the two issues separately: (1) the proper basis of funding universal

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[42] Rural Telecommunications Associations Comments at 22

[43] USTA Comments at 20.

[44] Recommended Decision at 8-9.

[45] Recommended Decision at 27. *See also* NASUCA Comments at 4-5, AT&T Comments at 8.

[46] *See, e.g.*, Verizon Comments at XX,

[47] *See, e.g.*, CTIA Comments at 15-18 and CenturyTel Comments at 20.

[48] *See, e.g.*, Nebraska Companies Comments at XX.

service, and (2) whether a transition mechanism is necessary; and if so, which mechanism is appropriate.

In its comments, Cox suggested that a transition mechanism might not be necessary at all because "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."[49] However, if the Commission decides to adopt one of the proposals in the Recommended Decision, it should support the restatement proposal because "[t]his method is aligned with the benefits of funding for primary lines (e.g., competitive neutrality and does not unduly protect the 'losing' carrier."[50] Regarding the other two proposals, Cox concurs with AT&T that "...neither of the other two proposals for implementing primary line support is competitively neutral" and neither one aligns support with costs.[51]

VI. A PER-LINE SUPPORT CAP UPON COMPETITIVE ENTRY SHOULD BE IMPLEMENTED

Cox agrees with commenters that believe a per-line high cost support cap should be put into place upon a competitor's entry into an ILEC study area. As the Joint Board observed in the Recommended Decision:

> [A]bsent a per-primary line cap, a rural carrier would continue to receive support for new lines served - regardless of whether such lines provide primary connectivity - because any costs associated with the new connections would increase the rural carrier's total embedded costs and, therefore, the per-line support associated with the primary lines it serves. Likewise, a rural carrier would not lose support if it loses primary connections to a competitive ETC.

[49] Cox Comments at 15.

[50] *Id.* at 16.

[51] AT&T Comments at 15.

> Thus, the absence of a per-line cap would obviate the effect of a single-connection limitation.[52]

Cox agrees with the Regulatory Commission of Alaska that the cap should be an interim measure to prevent undue fund growth while the Joint Board and FCC seek a permanent solution through their review of the rural funding mechanism.[53] Cox also agrees with Western Wireless that the Commission should adopt the cap regardless of whether it adopts a primary line proposal.[54] However, Cox disagrees with AT&T's assertion that the Commission should adopt a national benchmark of per-line support, above which there should be a presumption that multiple ETCs are not in the public interest.[55] As stated earlier, Cox believes that competition serves to drive costs and prices down, and would have a minimizing effect on the level of the fund. Rather than limiting competition by drawing a line beyond which competition is not allowed, the Joint Board and the Commission should concentrate on reforming the rural funding mechanism to make it more, not less, competitively neutral.

VII. CONCLUSION

Cox urges the Commission to use this proceeding to enact short-term policy to encourage the development of competition while limiting the growth of the High Cost Fund. To achieve these goals, the Commission should immediately require disaggregation of ILEC study areas to Census Block Groups or similar units. Further, the Commission should resist any urges to limit the ability of viable service providers to compete with ILECs in rural areas, either through the imposition of federal guidelines that could make it more difficult for competitors to obtain ETC designation, or through the imposition of restrictions on the number of ETCs that can serve a

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[52] Recommended Decision, 19 FCC Rcd at 4290.

[53] Regulatory Commission of Alaska Comments at 1-2.

[54] Western Wireless Comments at 18.

[55] AT&T Comments at 26.

rural area. To limit the growth of the fund in the short term, the Commission should implement the primary-line restriction and the per-line support cap upon competitive entry. Finally, the Joint Board and the Commission should concentrate on determining how the current rural high cost support mechanism should be restructured to ensure a workable permanent solution that is competitively neutral and based on sound economic principles.

Respectfully submitted,

COX COMMUNICATIONS, INC.

Carrington Phillip
Vice President, Regulatory Affairs
Cox Communications, Inc.
1400 Lake Hearn Drive
Atlanta, Georgia 30319

Of Counsel:

J.G. Harrington
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036

(202) 776-2000

September 21, 2004

CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, a legal secretary at Dow, Lohnes & Albertson, PLLC do hereby certify that on this 21st day of September, 2004, copies of the foregoing Reply Comments of Cox Communications, Inc. were served by via hand delivery to the following:

Sheryl Todd
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5-B540
Washington, DC 20554

Best Copy and Printing, Inc.
Portals II
445 12th Street, S.W., Room CY-B402
Washington, DC 20054

Vicki Lynne Lyttle

Vicki Lynne Lyttle