

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of )

Federal-State Joint Board on )  
Universal Service )

Petition by Cox Georgia Telcom, LLC for )  
Commission Agreement in Redefining the )  
Service Areas of Rural Telephone Companies in )  
the State of Georgia Pursuant to )  
47 C.F.R. Section 54.207(c) )

WC Docket No. 09-197

**PETITION FOR APPROVAL OF REDEFINITION OF THE SERVICE AREA OF  
WINDSTREAM GEORGIA, L.L.C. IN THE STATE OF GEORGIA**

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## SUMMARY

Cox Georgia Telcom, LLC (“Cox”), pursuant to the process set forth in Section 54.207(c) of the Commission’s rules, requests the Commission’s concurrence with the proposal by the Georgia Public Service Commission (“GPSC”) to redefine the service areas of Windstream Georgia, L.L.C., rural incumbent local exchange carrier (“ILEC”) in Georgia.

Cox provides wireline telephone service in rural areas of Georgia and was designated by the GPSC as an eligible telecommunications carrier (“ETC”) pursuant to Section 214(e) of the Act. By granting ETC status to Cox, the GPSC found that the use of federal high-cost support to develop Cox’s competitive operations would serve the public interest. Because Cox’s service territory, based on local franchise agreements, does not correlate with rural ILEC service areas, the Act provides that affected rural ILEC service areas must be redefined before designation in certain areas can take effect. Accordingly, the GPSC has proposed to redefine Windstream Georgia, L.L.C.’s (“Windstream’s”) Centerville wire center as a separate service area so that Cox’s designation as an ETC in that exchange can become effective. Consistent with the GPSC’s order and with previous actions taken by the FCC and several other states, Cox requests the FCC’s concurrence with the proposed redefinition.

The proposed redefinition is warranted under the Commission’s competitively neutral universal service policies, and is precisely the same relief granted to similarly situated carriers by the Commission and several states. Unless Windstream’s service area is redefined, Cox will be unable to use high-cost support to improve and expand service in the Centerville area and consumers will be denied the corresponding benefits. As the Commission and several states have consistently held, competitive and technological neutrality demand removal of these artificial barriers to competitive entry. Moreover, the requested redefinition will not result in the payment of uneconomic support or cream-skimming opportunities, duly recognizes the special status of rural carriers under the Act, and does not impose undue administrative burdens on Windstream.

The GPSC’s proposed redefinition is well-supported by the record at the state level, and all affected parties were provided ample opportunity to ensure that the Joint Board’s recommendations

were taken into account. Accordingly, Cox requests that the Commission grant its concurrence expeditiously and allow the proposed redefinition to become effective without further action.

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Cox Georgia Telcom, LLC (“Cox”), by its attorneys, submits this Petition seeking the FCC’s agreement with the decision of the Georgia Public Service Commission (“GPSC”) to redefine the service area of Windstream Georgia, L.L.C. (“Windstream”), a rural incumbent local exchange carrier (“ILEC”) doing business in Georgia, so that Windstream’s Centerville wire center constitutes a separate service area. Cox provides service in Windstream’s service area over its wireline network and was granted eligible telecommunications carrier (“ETC”) status by the GPSC pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the “Act”). In a subsequent order, the GPSC proposed to redefine Windstream’s service area so that its Centerville wire center constitutes a separate service area. As a result, Cox’s ETC designation in the Centerville wire center will take effect upon concurrence by the FCC with this service area redefinition. As set forth below, classifying Windstream’s Centerville wire center as a separate service area will foster federal and state goals of encouraging competition in the telecommunications marketplace and extending universal service to rural Georgia’s consumers.

## BACKGROUND

Under Section 214(e) of the Communications Act of 1934, as amended (the “Act”), state commissions generally have authority to designate carriers that satisfy the requirements of the federal universal service rules as ETCs and to define their service areas.<sup>1</sup> In rural areas, service areas most commonly are defined by the ILEC’s study area. However, the Act explicitly creates a process to designate a different service area for universal service purposes than the entire area served by the ILEC. Specifically, Section 214(e) of the Act provides:

... “service area” means such company’s “study area” unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under Section 410(c), establish a different definition of service area for such company.<sup>2</sup>

The FCC and the Federal-State Joint Board on Universal Service (“Joint Board”) have recognized that a strict rule requiring a competitive ETC to serve an area exactly matching a rural LEC’s study area would preclude competitive carriers that fully satisfy ETC requirements from bringing the benefits of competition to consumers throughout their service territory.<sup>3</sup> Therefore, the FCC established a procedure for the FCC and states to redefine rural ILEC service areas.<sup>4</sup> This procedure has been applied by the FCC and state commissions to grant requests for redefinition based on wire center boundaries and to permit the designation of competitive ETCs in those areas.<sup>5</sup> This process, as well as the underlying necessity of redefinition, was reaffirmed

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<sup>1</sup> 47 U.S.C. § 214(e).

<sup>2</sup> *Id.*

<sup>3</sup> See Petition for Agreement with Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of Study Areas for the Purpose of Distributing Portable Federal Universal Service Support, *Memorandum Opinion and Order*, 15 FCC Rcd 9921, 9927 n. 40 (1999) (“*Washington Redefinition Order*”), citing Federal-State Joint Board on Universal Service, *Recommended Decision*, 12 FCC Rcd 87, 181 (1996) (“*Joint Board Recommended Decision*”).

<sup>4</sup> See 47 C.F.R. § 54.207(c). See also Federal-State Joint Board on Universal Service, *Report and Order*, 12 FCC Rcd 8776, 8881 (1997) (“*First Report and Order*”).

<sup>5</sup> See, e.g., Public Notice, *Smith Bagley, Inc. Petitions for Agreement to Redefine the Service Areas of Navajo Communications Company, Citizens Communications Company of the White Mountains, and CenturyTel of the Southwest, Inc. On Tribal Lands Within the State of Arizona*, 16 FCC Rcd 3558 (Com. Car. Bur. 2002); *Washington Redefinition Order*, 15 FCC Rcd at 9927-28.

in the FCC's *ETC Report and Order* released March 17, 2005.<sup>6</sup>

In 2008, Cox petitioned the GPSC for ETC status.<sup>7</sup> The GPSC granted Cox's ETC petition later that year, but the GPSC order did not redefine the service areas of rural ILEC areas that were only partially within Cox's ETC service area.<sup>8</sup> As a result, Cox could not receive universal service funding in those areas. In 2009, Cox requested redefinition of the service areas of Windstream and one of its operating affiliate companies so that it could receive universal service support for its service in three wire centers.<sup>9</sup> In March 2011, Cox amended its redefinition petition, requesting ETC designation and service area redefinition only throughout the Centerville wire center and committing to serve the entirety of that exchange.<sup>10</sup> In April 2011, Windstream contacted the GPSC, stating that it did not object to the amended petition.<sup>11</sup>

The GPSC granted Cox's amended redefinition petition effective June 2, 2011. The GPSC concluded that Cox should retain its ETC status in the Centerville exchange.<sup>12</sup> The GPSC

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<sup>6</sup> Federal-State Joint Board on Universal Service, *Report and Order*, 20 FCC Rcd 6371 (2005) ("*ETC Report and Order*").

<sup>7</sup> Petition of Cox Georgia Telcom, LLC for Designation as an Eligible Telecommunications Carrier for the Purposes of Programs that Support Service to Low Income Customers and Provide High Cost Support, GPSC Docket No. 9039 (filed April 25, 2008) (the "ETC Petition"). At the request of GPSC staff, Cox provided supplemental information supporting its Petition in a subsequent filing. See Notice of Filing of Additional Informational Materials in Support of Cox Georgia Telcom, LLC's Petition for Designation as an Eligible Telecommunications Carrier for the Purposes of Programs that Support Service to Low Income Customers and Provide High Cost Support, GPSC Docket No. 9039 (filed Nov. 7, 2008).

<sup>8</sup> Order Granting ETC Status, GPSC Docket No. 9039 (rel. Dec. 19, 2008).

<sup>9</sup> Cox Georgia Telcom, LLC, Petition for Redefinition of the Service Areas of Windstream Georgia, LLC and Windstream Georgia Communications, LLC, GPSC Docket No. 9039 (filed Dec. 28, 2009).

<sup>10</sup> Cox Georgia Telcom, LLC, Amendment of Cox Petition and Request for Adoption of Proposed Order, GPSC Docket No. 9039 (filed Mar. 31, 2011).

<sup>11</sup> Letter from Newton M. Galloway, Esq., counsel for Windstream Georgia L.L.C. and Windstream Georgia Telecommunications, L.L.C., to Mr. Reece McAlister, Executive Director, Georgia Public Service Commission, GPSC Docket No. 9039 (filed Apr. 25, 2011). A copy of Windstream's letter is attached hereto as Exhibit A for the Commission's reference.

<sup>12</sup> Order Partially Rescinding the Commission's Order Granting the Petition of Cox Georgia Telecom, LLC for designation as an Eligible Telecommunications Carrier (December 19, 2008) and Resolving Cox Georgia Telecom, LLC's Petition for Redefinition of the Service Areas of Windstream Georgia, L.L.C. and Windstream Georgia Communications, L.L.C., GPSC Docket No. 9039 (rel. June 2, 2011) ("GPSC Order"). A copy of the GPSC Order is attached hereto as Exhibit B for the Commission's reference.

also granted Cox's request for redefinition, concluding that "Windstream's existing disaggregation of USF support combined with the reasons set forth in Cox's response [to a GPSC Staff Inquiry] demonstrate that creamskimming is not a concern in this case."<sup>13</sup>

## **DISCUSSION**

The GPSC's proposal to redefine Windstream's service area is consistent with FCC rules, the recommendations of the Joint Board, and the competitively neutral universal service policies embedded in the Act. Specifically, redefining the Windstream service area so that the Centerville wire center is a separate service area will promote competition and the ability of rural consumers to have similar choices among telecommunications services and at rates that are comparable to those available in urban areas.<sup>14</sup> The proceedings at the state level provided all affected parties with an opportunity to comment on the proposed redefinition, and, indeed, Windstream noted that it did not object to the relief requested by and granted to Cox. The record at the state level, including Cox's Application and the GPSC Order, demonstrates that the requested redefinition fully comports with federal requirements and provides the FCC with ample justification to concur.

### **I. The Requested Redefinition Is Consistent with Federal Universal Service Policy.**

Congress, in passing the 1996 amendments to the Act, declared its intent to "promote competition and reduce regulation" and to "encourage the rapid deployment of new telecommunications technologies."<sup>15</sup> To further these pro-competitive goals, Congress enacted new universal service provisions that, for the first time, envisioned multiple ETCs in the same market.<sup>16</sup> Consistent with this mandate, the FCC has adopted the principle that universal service

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<sup>13</sup> GPSC Order at 5.

<sup>14</sup> See 47 U.S.C. § 254(b)(3).

<sup>15</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996) (preamble).

<sup>16</sup> See 47 U.S.C. § 214(e)(2).

mechanisms be administered in a competitively neutral manner, so that no particular type of carrier or technology should be unfairly advantaged or disadvantaged.<sup>17</sup>

The FCC and many state commissions have affirmed that ETC service areas should be redefined to remove obstacles to competitive entry.<sup>18</sup> In 2002, for example, the FCC granted a petition of the Colorado Public Utilities Commission (“CPUC”) for a service area redefinition similar to the redefinition proposed in this Petition.<sup>19</sup> In support of redefining CenturyTel’s service area along wire-center boundaries, the CPUC emphasized that “in CenturyTel’s service area, no company could receive a designation as a competitive ETC unless it is able to provide service in 53 separate, noncontiguous wire centers located across the entirety of Colorado . . . . [T]his constitutes a significant barrier to entry.”<sup>20</sup> The FCC agreed and allowed the requested redefinition to take effect.<sup>21</sup> The FCC similarly approved a petition by the Washington Utilities and Transportation Commission (“WUTC”) and about 20 rural ILECs for the redefinition of the ILECs’ service areas along wire center boundaries, finding that:

[O]ur concurrence with rural LEC petitioners’ request for designation of their individual exchanges as service areas is warranted in order to promote competition. The Washington Commission is particularly concerned that rural areas . . . are not left behind in the move to greater competition. Petitioners also state that designating eligible telecommunications carriers at the exchange level, rather than at the study area level, will promote competitive entry by permitting new entrants to provide service in relatively small areas . . . . We conclude that this effort to facilitate

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<sup>17</sup> See *First Report and Order*, 12 FCC Rcd at 8801. Competitive neutrality is a “fundamental principle” of the FCC’s universal service policies. Federal-State Joint Board on Universal Service; Guam Cellular and Paging, Inc., Petition for Waiver of Section 54.314 of the Commission’s Rules and Regulations, *Order*, 18 FCC Rcd 7138, 7141 (Tel. Acc. Pol. Div. 2003). Moreover, competitive neutrality was not among the issues referred by the FCC to the Joint Board. See *Federal-State Joint Board on Universal Service*, 17 FCC Rcd 22642 (2002) (“*Referral Order*”).

<sup>18</sup> See, e.g., *First Report and Order*, 12 FCC Rcd at 8880-81; Petition by the Public Utilities Commission of the State of Colorado to Redefine the Service Area of CenturyTel of Eagle, Inc., Pursuant to 47 C.F.R. § 54.207(c) at 4 (filed Aug. 1, 2002) (“CPUC Petition”).

<sup>19</sup> See CPUC Petition at 5 (“Petitioner requests agreement to redefine CenturyTel’s service area to the wire center level”).

<sup>20</sup> CPUC Petition at 4.

<sup>21</sup> CenturyTel has petitioned the FCC to reconsider its decision. However, as of this date, CenturyTel’s service area redefinition is effective.

local competition justifies our concurrence with the proposed service area redefinition.<sup>22</sup>

In Washington, several competitive ETCs have been designated in various service areas without any apparent adverse consequences to date. No ILECs in Washington have introduced any evidence that they, or consumers, have been harmed by the WUTC's service area redefinition.<sup>23</sup>

As in those cases, the redefinition requested by this petition will enable Cox to make the network investments necessary to bring competitive service to people throughout its licensed service areas. Redefinition therefore will benefit Georgia's rural consumers, who will have access to pricing packages and service options on par with those available in urban and suburban areas.<sup>24</sup> They will see further infrastructure investment in an area formerly controlled solely by Windstream, which will increase consumer choice and the availability of innovative services.<sup>25</sup> Redefinition also will remove a major obstacle to competition, consistent with federal telecommunications policy.<sup>26</sup>

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<sup>22</sup> *Washington Redefinition Order*, 15 FCC Rcd at 9927-28 (footnotes omitted).

<sup>23</sup> *Sprint Corp. d/b/a Sprint PCS et al.*, Docket No. UT-043120 at p. 11 (Wash. Util. & Transp. Commn., Jan. 13, 2005) (stating that the WUTC's designation of multiple competitive ETCs, "if not benefiting customers (which it does), certainly is not failing customers. In the five years since we first designated an additional ETC in areas served by rural telephone companies, the Commission has received only two customer complaints in which the consumers alleged that a non-rural, wireline ETC was not providing service. No Rural ILEC has requested an increase in revenue requirements based on need occasioned by competition from wireless or other ETCs. This record supports our practice of not seeking commitments or adding requirements as part of the ETC designation process."). *See also* *WWC Holding Co., Inc. d/b/a CellularOne, Order Approving ETC Designation*, MPUC Docket No. P-5695/M-04-226 (Minn. PUC, Aug. 19, 2004) at 9 (concluding that proposed redefinition at the wire center level would neither harm the affected ILECs nor create significant cream-skimming opportunities). (FCC concurrence granted Dec. 28, 2004).

<sup>24</sup> *See* 47 U.S.C. § 254(b)(3).

<sup>25</sup> *See* GPSC Order at 6 (ordering "that all federal USF funding received as a result of the Orders in this docket will be used solely for the provision, maintenance and upgrading of the facilities and services necessary to offer and advertise the federally supported services in high cost and rural areas and to provide Lifeline credit for qualifying low-income consumers").

<sup>26</sup> *See* Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. at 113 (stating that the 1996 Act was designed to create "a pro-competitive, de-regulatory national policy framework" aimed at fostering rapid deployment of telecommunications services to all Americans "by opening *all telecommunications markets* to competition....") (emphasis added).

Moreover, permitting Cox to obtain universal service funding will help to create a level playing field in the Centerville area. Today, Windstream competes with Cox in voice, video, and data services, but only Windstream receives high cost funding. Redefinition would mean that both providers would have access to high cost support, rather than just Windstream, eliminating a potentially significant disadvantage for Cox.

## **II. The Requested Redefinition Satisfies the Three Joint Board Factors.**

A petition to redefine an ILEC's service area must contain "an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company."<sup>27</sup> In the *Recommended Decision* that laid the foundation for the FCC's *First Report and Order*, the Joint Board enumerated three factors to be considered when reviewing a request to redefine a LEC's service area.<sup>28</sup> These factors are (1) the potential for cream-skimming; (ii) the effect on the incumbent carrier's special status as a rural ILEC; and (iii) the administrative burden on the rural ILEC.<sup>29</sup>

### **A. The Requested Redefinition Will Not Result in Cream-Skimming.**

The first Joint Board factor is whether the competitive carrier is attempting to "cream skim" by only proposing to serve the lowest cost exchanges.<sup>30</sup> The FCC has clarified that cream-skimming opportunities arise when an ETC seeks designation in a "disproportionate share of the higher-density wire centers" in an ILEC's service area.<sup>31</sup> As the FCC has explained, "unless the

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<sup>27</sup> 47 C.F.R. § 54.207(c)(1).

<sup>28</sup> *Joint Board Recommended Decision*, 12 FCC Rcd at 179-80.

<sup>29</sup> *Id.*, 12 FCC Rcd at 179-180.

<sup>30</sup> *See id.*

<sup>31</sup> *ETC Report and Order*, 20 FCC Rcd at 6392 ("By serving a disproportionate share of the high-density portion of a service area, an ETC may receive more support than is reflective of the rural incumbent LEC's costs of serving that wire center because support for each line is based on the rural telephone company's average costs for serving the entire service area unless the incumbent LEC has disaggregated its support.") The FCC's analysis considers a variety of factors, such as the population density in the areas that the ETC applicant proposes to serve and proposes not to serve and the extent to which the incumbent carrier has disaggregated its support  
(continued . . .)

incumbent LEC has disaggregated its support,” “by serving a disproportionate share of the high-density portion of a service area, an ETC may receive more support than is reflective of the rural incumbent LEC’s costs of serving that wire center because support for each line is based on the rural telephone company’s average costs of serving the entire service area.”<sup>32</sup> However, opportunities for receiving uneconomic levels of support are diminished by the FCC’s decision to allow rural ILECs to disaggregate support below the study-area level.<sup>33</sup> Disaggregation addresses concerns about ETCs receiving a disproportionate level of support because it targets support to specific areas based on the costs of those areas, rather than spreading the support throughout the carrier’s service areas regardless of actual costs. For that reason, the FCC has concluded that the availability of disaggregation enables ILECs to protect themselves and substantially removes the ability of competitors to cream-skim:

We . . . also note that rural telephone companies now have the option of disaggregating and targeting high-cost support below the study area level so that support will be distributed in a manner that ensures that the per-line level of support is more closely associated with the cost of providing service. ***Therefore, any concern regarding “cream-skimming” of customers that may arise in designating a service area that does not encompass the entire study area of the rural telephone company has been substantially eliminated.***<sup>34</sup>

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(. . . continued)

at a smaller level than the service area. The FCC’s rules also permit the consideration of other relevant factors. Ultimately, because wireless providers receive over 97% of CETC high-cost support, cream-skimming concerns may stem primarily from the comparative absence of entry regulation or constraints on wireless providers when compared to cable operators or traditional wireline carriers.

<sup>32</sup> *ETC Guidelines Order*, 20 FCC Rcd at 6392.

<sup>33</sup> *See Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244, 11302-09 (2001) (“*Fourteenth Report and Order*”).

<sup>34</sup> *See ETC Report and Order*, 20 FCC Rcd at 6393-94. *See also Federal-State Joint Board on Universal Service, Western Wireless Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, Memorandum Opinion and Order, 16 FCC Rcd 18133, 18141 (2001) (emphasis added, footnote omitted).

In this case, Windstream has disaggregated its high cost support into three zones, based on the cost of serving each zone.<sup>35</sup> Cox has agreed to serve the entire Centerville wire center.<sup>36</sup> Any support Cox receives will be based on Windstream's actual costs in the Centerville disaggregation zone, and as a result will neither create unreasonable incentives for Cox nor harm Windstream. In other words, because Windstream has disaggregated its support, there effectively is no possibility of cream-skimming.

Moreover, the potential for cream-skimming is further decreased by Cox's practice of providing telephone service, to the maximum extent possible, wherever it is authorized to provide cable service under local franchises. Thus, the limits on Cox's telephone service are not set by Cox's analysis of where service will be most profitable, but by the franchising authority's decisions about where cable service should be provided.<sup>37</sup> As a practical matter, this requires Cox to reach beyond the densest town centers of the rural portions of its markets to less-dense areas that are more costly to serve. This distinguishes Cox from other carriers that choose the locations that they serve, and essentially eliminates the possibility of any meaningful cream-skimming.

Finally, the Commission should consider that Cox, together with its cable affiliate, is competing against bundled video, telephone, and data service offerings of Windstream. Because Windstream has access to high cost funding to support its telephone service while Cox does not, it wields a competitive advantage in offering these bundled services to its customers – driven not

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<sup>35</sup> Cox has been unable to determine the precise composition of Windstream's disaggregation zones. The disaggregation map provided by USAC indicates that Windstream's Centerville wire center is the only wire center in its disaggregation zone. *See* Disaggregation Map For Study Area 220357, available at <http://www.usac.org/hc/tools/disaggregation-maps/default.aspx>. If this is the case, there cannot be any cream-skimming concerns, because the support available in the Centerville wire center would be precisely aligned to Windstream's actual costs there. However, because other information available from USAC suggests that the map may not be accurate, Windstream may in fact have included additional wire centers with similar cost characteristics in the Centerville disaggregation zone.

<sup>36</sup> *See* GPSC Order at 3.

<sup>37</sup> *See, e.g.*, Cox Centerville Franchise Agreement at § 1 (authorizing Cox to serve throughout "the present or future geographical limits of the City of Centerville").

by network advantages or better customer service but by regulatory fiat. Granting Cox's Petition will level the playing field and permit consumers to reap the benefits of vibrant competition between similarly situated competitors.

In sum, Cox is not proposing to serve "only the low-cost, high revenue customers in a rural telephone company's study area."<sup>38</sup> Rather, it will be serving the entire Centerville wire center, an area which already has been disaggregated from wire centers with different cost characteristics. Thus, no cream-skimming will result from a grant of this Petition.

**B. The Requested Redefinition Will Not Affect Windstream's Status as a Rural ILEC.**

Second, the Joint Board recommended that the FCC and the States consider the rural carrier's special status under the 1996 Act.<sup>39</sup> In reviewing Cox's request, the GPSC weighed many factors before determining that Cox's ETC designation was in the public interest. Congress mandated this public-interest analysis to protect the special status of rural carriers, in the same way it established special considerations for rural carriers with regard to interconnection, unbundling, and resale requirements.<sup>40</sup> No action in this proceeding will affect or prejudice any future action the GPSC or the FCC may take with respect to Windstream's status as a rural telephone company, and nothing about service area redefinition will diminish Windstream's status as such.<sup>41</sup>

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<sup>38</sup> See, e.g., Federal State Joint Board on Universal Service; Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area In the State of Alabama, Memorandum Opinion and Order, 17 FCC Rcd 24393, 24404 (Wir. Comp. Bur 2002.) ("In this case, however, Cellular South commits to provide universal service throughout its licensed service area. It therefore does not appear that Cellular South is deliberately seeking to enter only certain areas in order to creamskim.")

<sup>39</sup> See *Joint Board Recommended Decision*, 12 FCC Rcd at 180.

<sup>40</sup> See *id.*

<sup>41</sup> See GPSC Order at 5.

### **C. The Requested Redefinition Will Not Affect the Rural ILEC's Administrative Burden.**

Third, the Joint Board recommended that the FCC and the States consider the administrative burden a rural ILEC would face.<sup>42</sup> In the instant case, Cox's request to redefine Windstream's service area along the boundaries of its Centerville wire center is made solely for ETC designation purposes. Because the Centerville wire center (along with the rest of Windstream's wire centers) already has been disaggregated, defining the service area in this manner will in no way affect how Windstream calculates its costs, but will enable Cox to begin receiving high-cost support in Centerville in the same manner as Windstream. Windstream may continue to calculate costs and submit data for purposes of collecting high-cost support in the same manner as it does now.

Because Windstream already has chosen to disaggregate support in its Centerville wire center and elsewhere, this disaggregation is unrelated to Cox's ETC status and grant of Cox's Petition will not represent any administrative burden to Windstream. Even if the disaggregation were tied to Cox's ETC status, which it is not, the FCC placed the burden of disaggregation on rural ILECs in its *Fourteenth Report and Order* independent of service area redefinition and made no mention of the disaggregation process as a factor in service area redefinition requests. Moreover, the benefit of preventing cream-skimming and the importance of promoting competitive neutrality outweighs any administrative burden involved.

In sum, the proposed redefinition fully satisfies the Joint Board's recommendations and will not impose any unfair burdens on Windstream. Indeed, as noted above, Windstream itself told the GPSC that it did not object to the proposed redefinition.<sup>43</sup>

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<sup>42</sup> See *Joint Board Recommended Decision*, 12 FCC Rcd at 180.

<sup>43</sup> See Exhibit A, Windstream Letter to GPSC.

**III. The Proposed Redefinition Along Wire-Center Boundaries Is Consistent with the FCC’s “Minimum Geographic Area” Policy.**

In its April 2004 *Highland Cellular* decision, the FCC declared that an entire rural ILEC wire center “is an appropriate minimum geographic area for ETC designation.”<sup>44</sup> The FCC reiterated this finding in its *ETC Report and Order*.<sup>45</sup> As set forth in the attached GPSC Order, Cox’s designated ETC service area does not include any partial rural ILEC wire centers. Accordingly, the instant request for concurrence with redefinition to the wire-center level, and not below the wire center, is consistent with FCC policy.

**CONCLUSION**

For all these reasons, Cox respectfully requests that the Commission grant this petition and that, in accordance with Section 54.209(c)(3)(ii), it permit the proposed redefinition to go into effect without opening a formal proceeding.

Respectfully submitted,

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<sup>44</sup> *Highland Cellular*, 19 FCC Rcd at 6438

<sup>45</sup> *See ETC Report and Order*, 20 FCC Rcd at 6405.

# Exhibit A

Windstream Letter

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STE. 127  
Atlanta, GA, 30334-5701

**RE:** In the Matter of: Petition of Cox Georgia Telcom, LLC for Designation as an Eligible Telecommunications Carrier for the Purpose of Programs that Support Service to Low Income Customers and Provide High Cost Support - Cox Georgia Telcom, LLC's Petition For Redefinition Of The Service Areas Of Windstream Georgia, L.L.C. And Windstream Georgia Communications, L.L.C. Before the Georgia Public Service Commission  
Docket No. 9039-U

Dear Mr. McAlister:

I am in receipt of Cox Georgia Telecom's Amendment of Petition and Request for Adoption of Proposed Order filed March 31, 2011. Please accept this as notification that Windstream Georgia, L.L.C. and Windstream Georgia Telecommunications, L.L.C. do not object to the provisions of this proposed order submitted by Cox. Windstream reserves its right to notification and hearing should the Commission deem it necessary to revise the terms of the proposed order.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

GALLOWAY & LYNDALL, LLP

Newton M. Galloway

NMG/alf

cc: Mr. Randy New  
Mr. Leon Bowles  
Mr. Patrick Reinhardt  
Mr. Dan Walsh

# Exhibit B

GPSC Order

COMMISSIONERS:

STAN WISE, CHAIRMAN  
CHUCK EATON  
TIM G. ECHOLS  
H. DOUG EVERETT  
LAUREN "BUBBA" McDONALD, JR.



**FILED**

JUN 02 2011

EXECUTIVE SECRETARY  
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<p><b>DOCKET #</b> <u>Docket No. 9039</u></p> <p><b>DOCUMENT #</b> <u>136383</u></p>
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In Re: **Petition by Cox Georgia Telcom, LLC for Designation as an Eligible Telecommunications Carrier for the Purposes of Programs that Support Service to Low Income Customers and Provide High Cost Support**

**ORDER PARTIALLY RESCINDING THE COMMISSION'S ORDER GRANTING THE PETITION OF COX GEORGIA TELCOM, LLC FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER (DECEMBER 19, 2008)**  
**AND**  
**RESOLVING COX GEORGIA TELCOM, LLC'S PETITION FOR REDEFINITION OF THE SERVICE AREAS OF WINDSTREAM GEORGIA, L.L.C. AND WINDSTREAM GEORGIA COMMUNICATIONS, L.L.C.**

**I. Introduction and Jurisdiction**

This matter comes before the Georgia Public Service Commission ("Commission") on the Petition of Cox Georgia Telcom, LLC ("Cox") for Redefinition of the Service Areas of Windstream, Georgia, LLC and Windstream Georgia Communications, LLC (collectively, "Windstream"), filed December 28, 2009. ("Redefinition Petition") Cox's Redefinition Petition was preceded by its filing on April 25, 2008 (as supplemented November 7, 2008), styled: Petition of Cox Georgia Telcom, LLC for Designation as an Eligible Telecommunications Carrier for the Purposes of Programs that Support Service to Low Income Customers and Provide High Cost Support ("First ETC Petition").

Pursuant to Section 254(e) of the Federal Telecommunications Act of 1996 (the "Act"), "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support." 47 U.S.C. § 254(e). Section 214(e)(2) of the Act gives state commissions the primary responsibility for ETC designations. 47 U.S.C. § 214(e)(2). Further, O.C.G.A. § 46-5-222 expressly provides that "[t]his Code section shall not be construed to affect any authority of the Public Service Commission to act in accordance with federal laws or regulations of the Federal Communications Commission, including, without limitation, jurisdiction granted to set rates, terms, and conditions for access to unbundled

network elements and to arbitrate and enforce interconnection agreements.” O.C.G.A. § 46-5-222(b)(3).

## II. Statement of Proceedings

On April 25, 2008, Cox Georgia Telcom, LLC filed its Petition for Designation as an Eligible Telecommunications Carrier for the Purposes of Programs that Support Service to Low Income Customers and Provide High Cost Support (“Petition”). On November 7 and 13, 2008, Cox filed additional support for its application. The Commission issued its Order Granting ETC Status on December 19, 2008.

On August 24, 2009, Cox filed a Motion for Clarification and Reconsideration Out of Time (“Motion”). In its Motion, Cox requested that “the Commission clarify and expand its previous Order to grant ETC status to Cox throughout the AT&T Telecommunications, Inc. d/b/a AT&T Georgia (“AT&T”) territory described in Cox’s Petition and authorize it to provide such services throughout the territory.” (Motion, 1). Cox requested that the Commission order the effective date of its ETC status in AT&T’s service territory to be December 19, 2008. *Id.* at, 3-4. The Commission reconsidered its Order Granting ETC Status to include the four AT&T wire centers in the Macon and Warner Robins exchanges identified by Cox in its November 7, 2008 Trade Secret Filing. The Commission further affirmed that Cox is granted ETC status for those four wire centers in AT&T’s service territory as of the December 19, 2008 effective date of the Commission’s Order granting Cox ETC status.

Cox was required to file its Redefinition Petition as to Windstream’s territory in order to secure ETC funding from the Federal USF. In the Redefinition Petition, Cox sought to redefine Windstream’s service areas “so that Cox’s ETC designation may take effect throughout its wireline cable footprint.” (Redefinition Petition, p. 1) Cox noted that an attachment to its First ETC Petition “mapped the relevant portions of Cox’s service area that are served by Windstream.” *Id.* Cox asserted that “(f)or those Windstream service areas that were only partially within the proposed ETC service area, Cox now asks the GPSC to approve the redefinition of the service areas such that the portions of the service areas that Cox serves each constitute a separate service area.” *Id.* Further in its Redefinition Petition, Cox notes that it is “requesting redefinition of the Windstream service areas in three locations to correspond to Cox’s franchise boundaries in those locations, boundaries that were set by the franchising authorities in those locations.” (Redefinition Petition, p. 7) Cox states in the Redefinition Petition that its petition is limited to three rate centers: Centerville, Byron and Perry. It states:

Cox is already deployed in the Byron, Centerville, and Perry exchanges, which are located near Cox’s central plant in Macon. In fact, these exchanges contain the fastest-growing portions of Cox’s footprint, as Cox expects seventeen percent growth in its phone service in these areas within the next three years. (Redefinition Petition, p. 4)

In this proceeding Cox sought to clarify its service area and redefine Windstream’s service area below the wire center level to coincide with the boundaries of Cox’s cable franchise. Because

Cox does not serve the entire Windstream study area, it was required to initiate the Redefinition Petition and request redefinition of the Windstream service area in order to actually obtain USF funds as to Windstream's territory. Although the December 19, 2008 Order Granting ETC Status in this docket included the Byron, Centerville, and Perry wire centers in Cox's approved ETC service territory, this inclusion should not have been made prior to a finding that redefinition of Windstream's service area was in the public interest.

Cox addressed the three factors that the Joint Board identified in its *Recommended Decision* to be considered when reviewing a request for redefinition of a local exchange carrier's service area. These factors are (i) the potential for cream-skimming; (ii) the effect on the incumbent carrier's special status as a rural ILEC; and (iii) the administrative burden on the rural ILEC.<sup>1</sup> Cox argued that Windstream's disaggregation of its high cost support into three zones eliminated concerns about cream-skimming. (Petition, p. 10). Cox also noted that the FCC rules permitted disaggregation below the wire center level. *Id.*

Windstream intervened in the proceeding, and filed its Response to Cox's Petition on March 31, 2010. Windstream opposed the Redefinition Petition, particularly the redefinition of its wire/rate centers. Windstream objected to the Petition on the grounds that the redefinition would create the potential for creamskimming. Windstream stated that it had not disaggregated its service areas below the wire center level for purposes of universal support, and that it does not have the obligation to do so. (Windstream Response, pp. 1-2). Windstream also argued that Cox provided no evidence to support its contentions that any support Cox receives in Windstream's areas will be based on actual costs, will not create unreasonable incentives for Cox and will not hurt Windstream. *Id.* at 3. Windstream did not dispute that the second factor set forth in the *Recommended Decision* was adequately addressed in Cox's Petition. *Id.* at 4. However, with regard to the third factor, Windstream claimed that the redefinition of its service area would impose an administrative burden on it. *Id.*

The Commission issued a Procedural and Scheduling Order on September 10, 2010, in which evidentiary hearings were scheduled on the petition. The parties subsequently communicated to Commission Staff that they no longer desired to have hearings.

On March 31, 2011, Cox filed an Amendment of its Petition for Redefinition, in which it withdrew its request to be granted ETC status in Windstream's Perry and Byron wire centers and committed to serve the entirety of the Centerville wire center using its own facilities, consistent with 47 U.S.C. § 214(e)(1)(A). In an April 6, 2011 letter, Staff cited to an FCC order holding that disaggregation did not always alleviate creamskimming concerns,<sup>2</sup> and requested further support for Cox's position that there was not a potential for creamskimming in this instance. Cox filed its response on April 15, 2011.

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<sup>1</sup> Federal-State Joint Board on Universal Service, Recommended Decision, 12 FCC Rcd 87 (1996) ("*Recommended Decision*") at ¶¶ 172-74.

<sup>2</sup> Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45 (rel. March 17, 2005)

### III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission granted Cox's First ETC Petition on December 19, 2008. In its ETC Order, the Commission expressly provided that it is:

**ORDERED FURTHER**, this Order [the ETC Order] shall remain in full force and effect until further Order of the Commission. (ETC Order, Ordering Paragraph 5)

The December 19, 2008 Order Granting ETC Status in this docket erroneously included the Byron, Centerville, and Perry wire centers in Cox's approved ETC service territory prior to a finding by the Commission that redefinition of Windstream's service area was appropriate. Consequently, the Commission finds that the service area of Windstream should be redefined, and rescinds the Order Granting ETC Status only with respect to the Byron and Perry exchanges.

In the case of applications requesting designating below the study area of a rural telephone company, the FCC guidelines encourage the states to conduct a cream-skimming analysis which includes consideration of whether the incumbent LEC has disaggregated its support. FCC ETC Order, ¶49. The Commission finds that Windstream has already disaggregated support to the wire center level as to the three wire centers referenced in Cox's request. Moreover, in considering the requests of Cox in this proceeding, the Commission has also taken into account the recommendations of the Federal-State Joint Board for establishing ETC status as to any carrier seeking to enter the service area of a rural telephone company. Finally, the Commission has also taken into account other findings and orders of the Federal Communications Commission in cases where disaggregation was noted to be a factor in the cream-skimming concern. *In the Matter of Telecommunications Carriers Eligible for Universal Service Support; Federal-State Joint Board on Universal Service; Cellular Properties Petition for Commission Agreement in Redefining the Service Area of Wabash Telephone Cooperative, Inc. in the State of Illinois Pursuant to 47 C.F.R. Section 54.207(c)*, WC Docket No. 09-197, Federal Communications Commission, adopted March 7, 2011, at 15 ("If Wabash Telephone were to disaggregate its support, we believe that this would guard against any potential cream-skimming concerns and insulate the Wabash Telephone from any impact that Cellular Properties' entry might have on its ability to continue to serve its rural populace.") *In the Matter of Federal State Joint Board on Universal Service; RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area In the State of Alabama*, 17 FCC Rcd 23532, adopted November 26, 2003 at 38 ("of the seven rural telephone companies whose study areas RCC Holdings will not serve completely, five of these companies have filed disaggregation and targeting plans to create low-cost and high-cost zones, thereby substantially minimizing opportunities for rural cream-skimming. . . The fact that disaggregation and targeting is in effect for these five rural telephone companies supports our finding that cream-skimming is not a concern.") *In the Matter of Federal State Joint Board on Universal Service; Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area In the State of Alabama*, 17 FCC Rcd 2449, Adopted December 3, 2002 ("We note that the Commission has stated that the level of disaggregation should be considered when determining whether to certify an ETC for a

service area other than a rural carrier's entire study area." citing, *Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244, 11322, para. 200 (2001)) (as corrected by Errata, CC Docket Nos. 96-45, 00-256 (Acc. Pol. Div. rel. Jun. 1, 2001).

The FCC has recognized that disaggregation alone may not be sufficient in every instance. In *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45 (rel. March 17, 2005), the FCC held as follows:

Nevertheless, although disaggregation may alleviate some concerns regarding creamskimming by ETCs, because an incumbent's service area may include wire centers with widely disparate population densities, and therefore highly disparate cost characteristics, disaggregation may be a less viable alternative for reducing creamskimming opportunities. This problem may be compounded where the cost characteristics of the rural incumbent LEC and competitive ETC applicant differ substantially. Thus, creamskimming may remain a concern where a competitive ETC seeks designation in a service area where the incumbent rural LEC has disaggregated high-cost support to the higher-cost portions of its service area.

(¶ 51) (footnotes omitted). In order to establish that disaggregation is sufficient to resolve the creamskimming concerns in this case, the record must reflect either that the circumstances detailed in the above-quoted excerpt are not present in the Windstream wire centers at issue or explain why creamskimming concerns have been resolved, despite the fact that such circumstances do exist. Staff requested that Cox provide such support.

Cox stated that there was no evidence that would support the existence of creamskimming concerns with disaggregation at Windstream's wire center level, that Windstream disaggregated support by wire centers in a granular way, and that Cox does not have a cost advantage over Windstream in competing in the Centerville wire center. Cox also cited to the rebuttal testimony of Windstream witness William F. Kreutz which indicated that, if Cox agreed to serve the entirety of the Centerville wire center, the outcome "would facilitate the public interest in increasing competition and choice in rural areas." (Cox Response, pp. 3-7). Pursuant to the Staff recommendation, the Commission admits the rebuttal testimony of Mr. Kreutz into evidence in this proceeding. Also, Cox has agreed to serve the entire Centerville wire center including some four square miles that are outside of its historically franchised area. The Commission finds that Windstream's existing disaggregation of USF support combined with the reasons set forth in Cox's response demonstrate that creamskimming is not a concern in this case. Finally, in accordance with Staff's recommendation, the Commission determined that rescinding the Order Granting ETC Status only with respect to the Byron and Perry exchanges and redefining Windstream's service area in order for Cox to receive funding in the Centerville wire center will not affect Windstream's rural status under the Telecommunications Act of 1996 or create an administrative burden for Windstream.<sup>3</sup>

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<sup>3</sup> See *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87, 181 (1996) ("Joint Board Recommended Decision")

For the reasons discussed herein, the Commission concludes that the service area of Windstream should be redefined to the wire center level.

\* \* \* \* \*

**WHEREFORE, it is**

**ORDERED**, that the Commission has jurisdiction to designate Cox as an ETC pursuant to 47 U.S.C. § 214(e)(2) and O.C.G.A. §46-5-222(b)(3).

**ORDERED FURTHER**, that the Commission's Order of December 19, 2008 is hereby rescinded as to Windstream's Byron and Perry wire/rate centers. The other wire centers for which Cox has been designated in prior Commission orders are not affected by this Order.

**ORDERED FURTHER**, the Cox "Petition for Redefinition of the Service Areas of Windstream Georgia, L.L.C. and Windstream Georgia Communications, L.L.C." shall be and is hereby granted in accordance with the terms and conditions set forth herein.

**ORDERED FURTHER**, that Cox shall abide by the FCC's ETC designation criteria and rules set forth in 47 C.F.R. §§ 54.202, 54.209, and adhere to the additional to the provisions and commitments set forth in the Commission's Order Granting ETC Status.

**ORDERED FURTHER**, that all federal USF funding received as a result of the Orders in this docket will be used solely for the provision, maintenance and upgrading of the facilities and services necessary to offer and advertise the federally supported services in high cost and rural areas and to provide Lifeline credit for qualifying low-income consumers.

**ORDERED FURTHER**, that this Order shall remain in full force and effect until further Order of the Commission.

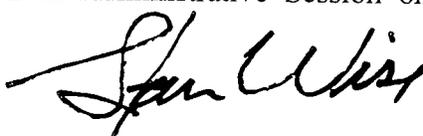
**ORDERED FURTHER**, that Cox shall file a copy of this Order with the Universal Service Administrative Company and the FCC to commence its receipt of federal universal service support.

**ORDERED FURTHER**, that a motion for reconsideration, rehearing, oral argument, or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

**ORDERED FURTHER**, that jurisdiction over this matter is expressly retained for the purpose of entering such further Order(s) as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 19<sup>th</sup> day of April, 2011

  
\_\_\_\_\_  
Reece McAlister  
Executive Secretary

  
\_\_\_\_\_  
Stan Wise  
Chairman

6-1-11  
DATE

6-2-11  
DATE