

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

In the Matter of	)	
	)	
	)	
Federal-State Joint Board on	)	
Universal Service	)	
	)	WC Docket No. 09-197
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)	)	
	)	

**COMMENTS OF COX GEORGIA TELCOM, LLC**

Cox Georgia Telcom, LLC (“Cox”), by its attorneys, renews its request that the FCC concur with the conclusion of the Georgia Public Service Commission (“GPSC”) that redefinition of the service area of Windstream Georgia, L.L.C. (“Windstream”) is in the public interest. Although Cox’s proposal would not have led to creamskimming under the existing High Cost Fund, creamskimming concerns are eliminated by the recently-adopted framework of the Connect America Fund. Moreover, Commission concurrence with the GPSC proposal would allow Cox to better serve low income rural Georgia residents.

**BACKGROUND**

On July 6, 2011, Cox, pursuant to Section 54.207(c) of the Commission’s rules, requested the Commission’s concurrence with the proposal by the GPSC to redefine the service area of Windstream, a rural incumbent local exchange carrier (“ILEC”) in Georgia.<sup>1</sup> Cox provides wireline telephone service in rural areas of Georgia and was designated by the GPSC as an

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<sup>1</sup> Cox Georgia Telcom, LLC, Petition for Commission Agreement in Redefining Certain Service Areas of Incumbent Rural Telephone Companies in the State of Georgia Pursuant to 47 C.F.R., Section 54.207(c), WC Docket No. 09-197 (filed July 6, 2011) (the “Petition”).

eligible telecommunications carrier (“ETC”) pursuant to Section 214(e) of the Act. In 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 proposed to redefine Windstream’s Centerville wire center as a separate service area so that Cox’s designation as an ETC in that exchange can become effective.<sup>2</sup> Consistent with the GPSC’s order and with previous actions taken by the FCC and several other states, Cox requested the FCC’s concurrence with the proposed redefinition.

Cox supplemented the Petition in response to a request from Commission staff on September 29, providing per-loop cost data as well as population density information that the Commission has used in the past as a proxy for actual cost data.<sup>3</sup> On October 12, the staff initiated the instant proceeding to consider Cox’s redefinition request.<sup>4</sup>

## DISCUSSION

FCC concurrence with the GPSC’s redefinition proposal would serve the public interest. As Cox’s Petition and Supplement demonstrated, Cox’s proposal would not create a potential for creamskimming under existing high cost fund rules. Indeed, even Windstream did not object to the GPSC’s redefinition proposal. Moreover, the Commission’s recent revisions to the high cost portion of the universal service fund further reduce any potential for creamskimming. And Commission concurrence with the GPSC proposal would result in immediate benefits to low-

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<sup>2</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*”).

<sup>3</sup> Letter from J.G. Harrington, Esq., counsel to Cox, to Marlene H. Dortch, Esq., Secretary, FCC, WC Docket No. 09-197 (filed Sept. 29, 2011) (the “*Supplement*”).

<sup>4</sup> Public Notice, *Wireline Competition Bureau Initiates Proceeding To Consider Cox Georgia Telcom, LLC Petition For Agreement In Redefining The Service Area Of A Rural Telephone Company In Georgia*, DA 11-1700 (Wir. Comp. Bur. rel. Oct. 12, 2011).

income Centerville residents, who – for the first time – would have a real choice of telephone carriers.

### **I. The GPSC Proposal Will Not Enable Creamskimming**

The record in this proceeding demonstrates that the GPSC proposal would not enable creamskimming. In its Supplement, Cox submitted precise per-loop costs for each Windstream wire center. The Supplement showed that the ratio of Windstream’s cost to serve Centerville to its cost to serve the other wire centers in Centerville’s disaggregation zone is well within the range of population ratios the Commission has accepted in previous redefinition petitions. Therefore, concurrence with the GPSC’s redefinition proposal is appropriate.

The Commission undertakes its creamskimming analysis to ensure that a competitive ETC does not serve only the least expensive customers in an incumbent LEC’s service area and to ensure that the support a competitive ETC receives is reflective of the incumbent LEC’s costs to serve the relevant wire centers.<sup>5</sup> Data regarding the costs an incumbent LEC incurs to serve each of its wire centers often is not available, however. The Commission therefore typically compares the population density of the wire centers the applicant proposed to serve to those it did not. The Commission adopted population density as a proxy for the incumbent’s actual costs, based on the conclusion that “[b]ecause line density is a significant cost driver, it is reasonable to assume that the highest-density wire centers are the least costly to serve, on a per-subscriber basis.”<sup>6</sup> However, and as the Commission has explicitly acknowledged, population data is only a proxy and, moreover, is not the only consideration, especially when actual cost data is available. As the Commission recently explained, its “redefinition analysis has never been so rigid as to focus only on the density ratio.”<sup>7</sup> Instead, the creamskimming analysis must

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<sup>5</sup> Federal-State Joint Board on Universal Service, *Report and Order*, 20 FCC Rcd 6371, 6392-95 (2005) (“*ETC Report and Order*”).

<sup>6</sup> *Id.* at 6392-93.

<sup>7</sup> 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), *Order*, 26 FCC Rcd 3472, 3476 (Wir. Comp. Bur. 2011) (“*Cellular Properties*”).

take into account "variations in population distributions, geographic characteristics and other individual factors."<sup>8</sup>

In other words, when actual costs are available, there is no reason to look at information that is intended to approximate the actual data. In this case, the ratio of Windstream's cost to serve Centerville to its cost to serve the other wire centers in the relevant disaggregation zone is well within the range of population ratios the Commission has accepted. As the Supplement showed, Windstream calculated an annual per-loop cost in Centerville of \$306.05, while the aggregate per-loop cost of Zone 1 was \$358.87, a ratio of approximately 1:1.17.<sup>9</sup> The cost ratio between Centerville and the rest of Zone 1 (*i.e.*, Zone 1 excluding Centerville) is 1:1.25.<sup>10</sup> Not only are these ratios significantly smaller than population density ratios the Commission has approved in the past,<sup>11</sup> here the ratio is based on actual costs involved rather than population density, so it does not involve an approximation. Therefore, Commission concurrence with the GPSC proposal is appropriate in this case.

In addition, the Commission should give particular weight to the judgments of the GPSC and of Windstream in this case. The GPSC carefully weighed the evidence before it and determined that "creamskimming was not a concern in this case."<sup>12</sup> Indeed, the FCC recently reinforced the important role state regulators play in the universal service context by reaffirming their role in designating ETCs.<sup>13</sup> Likewise, Windstream stated during the GPSC proceeding that

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<sup>8</sup> *ETC Report and Order*, 20 FCC Rcd at 6394-5.

<sup>9</sup> See Supplement at Exhibit A.

<sup>10</sup> See *Id.*

<sup>11</sup> For example, earlier this year the FCC conditionally concurred with a redefinition that would result in a population density ratio of 1:1.45. *Cellular Properties*, 26 FCC Rcd at 3476. And in 2005, the FCC concurred with a redefinition proposal by the Kansas Corporation Commission that included ETC service areas with population density differentials of 1:1.43 (South Central Telephone) and 1:1.40 (United Telephone Association). See Public Notice, *Wireline Competition Bureau Seeks Comment On Petition To Redefine A Rural Telephone Company Service Area In The State Of Kansas*, 20 FCC Rcd 4002 (2005) (deemed granted May 23, 2005).

<sup>12</sup> See *GPSC Order* at 5.

<sup>13</sup> Executive Summary, *Connect America Fund & Intercarrier Compensation Reform Order and FNPRM*, at 4 (Wir. Tel. Bur. rel. Oct. 27, 2011) ("*CAF Executive Summary*").

it had no objection to the proposed redefinition.<sup>14</sup> Because the creamskimming analysis exists, in large part, to ensure that incumbent rural LECs are not harmed by unfair competition, Windstream's judgment that it has no objection to the redefinition of its service area – and Cox's ETC status taking effect in Centerville – should be given substantial weight.<sup>15</sup>

## **II. The High Cost Reform Order Eliminates Any Potential For Creamskimming**

Even if the GPSC's redefinition proposal would enable creamskimming, which it would not, the Commission's recent order creating the Connect America Fund effectively eliminates any possibility that creamskimming could occur. Under the new rules, in the near term existing high-cost support for competitive ETCs is first frozen and then will be phased down.<sup>16</sup> In the medium term, high cost support will be available to Cox only to the extent that Windstream declines to accept such support and its attendant obligations or is otherwise unable to meet the Commission's evolving broadband speed standards.<sup>17</sup> Finally, in the long term, support will be available only to the ETC that can provide broadband service to unserved areas most efficiently, as determined by a competitive bidding process.<sup>18</sup> In such a process, of course, the more ETCs that bid to provide service, the lower the level of support per subscriber.

## **III. FCC Concurrence With The GPSC Proposal Will Benefit Centerville Residents.**

The Commission should concur with the GPSC's redefinition proposal without delay, because Centerville residents will reap immediate benefits when Cox's ETC status is allowed to take effect. Today, only one wireline telephone service provider receives USF support under the Lifeline program: Windstream. When its ETC status takes effect, Cox will market its competing Lifeline service broadly to low-income Centerville residents, so that they may fully enjoy a real

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<sup>14</sup> *Id.*

<sup>15</sup> *ETC Report and Order*, 20 FCC Rcd at 6392.

<sup>16</sup> *CAF Executive Summary* at 4.

<sup>17</sup> *Id.* at 2-3.

<sup>18</sup> *Id.*

