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February 2, 2012

Ms. Sharon Gillett
Chief, Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: CC Docket No. 80-286, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109
Written *Ex Parte* Communication
Request for Expedited Treatment of Pending Waiver Request Necessitated By Universal Service and Intercarrier Compensation Reforms

Dear Ms. Gillett:

On May 25, 2011, Eastex Telephone Cooperative, Inc. ("Eastex" or the "Cooperative") filed a petition with the Wireline Competition Bureau ("Bureau") seeking waiver of the Frozen Category Rules[1] as these rules relate to frozen category relationships ("Petition").[2] John Staurulakis, Inc. ("JSI") assisted the Cooperative in filing the petition and has made several status inquiries which are permissible under the *ex parte* rules of the Federal Communications Commission ("Commission" or "FCC"). To date, however, no indication has been provided as to when the Bureau plans to place the Petition on Public Notice for comment or when the Commission will ultimately act on the Petition.[3]

While action on the Petition was indeed critical when it was filed eight months ago, now that the Cooperative has been able to assess the potential impacts of the Commission's *USF-ICC Order*,[4] it has found that there is an even greater need for the pending Petition to

[1] The Frozen Category Rules are contained in 47 C.F.R. Sections 36.3, 36.123-126, 36.141, 36.152-157, 36.191 and 36.372-382.

[2] The Petition requests a permanent waiver of the Frozen Category Rules which would entirely remove the category freeze for Eastex. Alternatively, the Petition requests a temporary waiver which would allow the Company to "unfreeze" its category relationships for one year after which it would "refreeze" its category relationships.

[3] Eastex paid the requisite filing fee of $7,725, which is a significant amount for the Cooperative.

[4] *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier*

be granted expeditiously. Eastex believes it is imperative that the "cost-revenue mismatch" caused by the application of the Frozen Category Rules[5] be addressed before June 30, 2012, the date when the existing freeze is scheduled to expire[6] and one day prior to the day when major near-term reforms are scheduled to take effect.

As explained in the Petition, to meet increased demands from its subscribers for quality telecom and broadband services, Eastex has invested heavily in special access and broadband facilities, which is in the public interest. While making these investments since the implementation of the Frozen Category Rules, the Cooperative has been unable to assign its costs to the proper (1) state and interstate jurisdictions, (2) FCC C.F.R. Part 69 interstate access elements, and (3) categorized plant balances reported to the Universal Service Fund ("USF"). As a result of these rules, Eastex is assigning an excessive amount of costs to the state jurisdiction, Interstate Common Line Support ("ICLS") and High Cost Loop Support ("HCLS") support while an insufficient amount of costs have been assigned to interstate Special Access and Broadband. This is contrary to the matching principle, the matching of costs with revenues.

The freeze effectively results in the disassociation of actual cost from demand which results in inaccurate rate making. For example, Eastex's 2010 interstate special access revenue requirement is a mere $87,599. Conversely, demand for special access services has increased substantially over the past twelve years so that Eastex now reports to the NECA pool $1,477,477. This revenue requirement does not bear any relationship to the cost of these services. Due to the freezing of categories, costs incurred for providing special access services are largely assigned to categories other than special access. The problem would become even more pronounced if Eastex were to exit the NECA pool and file its own company-specific traffic-sensitive rates. If the Cooperative took such action, due to the freezing of categories, the tariff rates for special access would be priced well below cost effectively placing the burden of recovering these costs on other carriers that pay interstate access charges and on contributors to USF.

Compensation Regime, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) ("*USF-ICC Order*").

[5] As explained by the state members of the Federal-State Joint Board on Jurisdictional Separations, a "cost-revenue mismatch" exists for carriers that have frozen their category relationships due to the fact that these carriers "have not directly assigned their interstate special access investment during the freeze." Letter from Steve Kolbeck, State Chairman, Federal-State Joint Board on Jurisdictional Separations, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 80-286 (Mar. 5, 2010) at p 5.

[6] *See Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80286, Report and Order, FCC 11-71 (rel. May 4, 2011). If the Commission were to once again extend the freeze, it should allow for the modification of frozen category relationships for all affected rate-of-return carriers prior to the extension of the freeze as recommended prior to the extension of the freeze last year. *See Id. citing* Texas Cooperative Comments at 2.

Additionally, Eastex should be allowed to realign its costs prior to July 1, 2012 when the proposed regression analysis used to limit reimbursable capital expenditures and operating expenses is scheduled to take effect so that re-categorized costs are factored into the analysis. Taking this step would improve the accuracy of the regression modeling process while ensuring the USF algorithm at the company level includes proper costs.[7]

As a result of the implementation of the *USF-ICC Order*, it is estimated that as of January 1, 2012, the Cooperative's high-cost USF has been reduced by approximately $93,000 per month[8] and that when the regression analysis is implemented on July 1, 2012, the Cooperative will lose approximately an additional $163,000 per month.[9] These reductions are on top of the estimated $166,000 per month that the Cooperative is already forgoing due to the application of the Frozen Category Rules.[10] In sum, it is estimated that absent grant of the Petition, the total reduction in Eastex's high-cost support beginning July 1, 2012 would be approximately $422,000 per month which equates to a $5,064,000 reduction for a twelve-month period.

Accordingly, for the reasons enumerated herein, expeditious grant of the Petition would be in the public interest and provide at least some relief to the significant loss of support the Cooperative has already begun to encounter due to the Commission's universal service reforms.

[7] As recommended above, if the Commission were to allow for the modification of frozen category relationships for all affected rate-of-return carriers prior to the extension of the freeze, this would ensure that the re-categorized costs are factored into the regression analysis for all affected carriers which would further improve the accuracy of the regression modeling process.

[8] Eastex has estimated that the impact of the modification of the formula for limiting the eligibility of corporate operations expenses for HCLS, the extension of that limit to ICLS and the elimination of safety net additive support would be a total of $1,115,333 for 2012 which is approximately $93,000 per month.

[9] Eastex has estimated that the impact of the regression analysis on its HCLS as it has been proposed by the Wireline Competition Bureau in Appendix H in the *USF-ICC Order and FNPRM* to be $1,958,246 for 2012 which is approximately $163,000 per month. This impact would increase if the regression analysis is applied to ICLS.

[10] As noted above, in the Petition, the Cooperative has estimated the impact of the Frozen Categories Rules to be an estimated $1,993,402 per year. *See* Petition at p 9 and Attachment 2 (explaining that if the Petition were granted, the shift in cost allocation would result in the Cooperative receiving $584,005 less in high-cost loop support and $2,577,407 in additional cost-based settlements or an estimated net gain in settlements of $1,993,402).

Please contact the undersigned with any questions.

Respectfully submitted,

John Kuykendall
Vice President

cc: Albert Lewis, Chief, Pricing Policy Division
Daniel Ball, Attorney Advisor, Pricing Policy Division