John Staurulakis Incorporated 50th Anniversary
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March 1, 2012

Marlene H. Dortch, Secretary
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, WT Docket No. 10-208
Notice of *Ex Parte* Presentation

Dear Ms. Dortch:

On February 28, 2012, Rusty Dorman, Weldon Gray and Steve Alexander of Eastex Telephone Cooperative ("Eastex", or collectively, the "Eastex representatives"), and John Kuykendall and Steve Meltzer of John Staurulakis, Inc. ("JSI representatives") met with Lisa Gelb, Daniel Ball and Paul Hartman of the Wireline Competition Bureau. The subject of discussion was the Eastex Petition for Waiver of the Part 36 Frozen Category Rules[1] and request for expedited treatment.[2] Attached are the discussion talking points, written *ex parte* request for expedited treatment, and Petition which were provided to meeting participants.

The Eastex representatives described the voice and broadband services provided across an expansive rural territory and the significant investment that Eastex has made to provide broadband services to subscribers in six noncontiguous portions of a single study area. The extended Frozen Category Rules have prevented Eastex from properly allocating $29 million in special access and broadband facilities costs.[3] As a result Eastex is assigning an excessive amount of costs to the state jurisdiction while an insufficient amount of costs have been assigned to interstate special access and broadband.

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[1] *See* Petition of Eastex Telephone Cooperative, Inc. for Waiver of 47 C.F.R. Sections 36.3, 36.123-126, 36.141, 36.152-157, 36.191 and 36.372-382 to Unfreeze Part 36 Category Relationships, CC Docket No. 80-286 filed May 25, 2011 ("Petition").

[2] *See* Eastex Telephone Cooperative, Inc. Request for Expedited Treatment of Pending Waiver Request Necessitated by Universal Service and Intercarrier Compensation Reforms Written *Ex Parte* Communication, 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, filed Feb. 2, 2012.

[3] During the discussion it was clarified that $29 million represents central office equipment and software-related special access and broadband facilities expenditures through December 31, 2011. The $55 million investment stated in the Petition represents all capital expenditures through December 31, 2010 (see Petition at 5).

The Eastex and JSI representatives demonstrated that grant of the Petition would enable more of its costs to be allocated to the interstate jurisdiction which would allow Eastex to receive additional cost-based settlements without in any way burdening the high-cost fund and would address the "cost-revenue mismatch" caused by the application of the Frozen Category Rules. Further, the representatives stated it is imperative that grant of the petition occur prior to June 30, 2012, the date when the existing freeze is scheduled to expire and one day prior to the day when major near-term universal service reforms are scheduled to take effect.

Please contact the undersigned with any questions.

Respectfully submitted,

John Kuykendall
Vice President

cc: Lisa Gelb
Daniel Ball
Paul Hartman

Attachments

Eastex Telephone Cooperative, Inc.

3675 US Highway 79 South
PO Box 150
Henderson, TX 75653

FCC Ex Parte Meeting
February 28, 2012

➢ Introduction

- Eastex is a rural telephone cooperative that serves over 22,000 access lines and offers local, long distance, and broadband Internet service.
  - Second largest telephone cooperative in Texas in terms of access lines.
  - Its customers are predominantly families, farmers, ranchers, and small businesses that have chosen to make a livelihood in the rural area some 125 miles east of Dallas.
  - It is one of the largest employers in the area with 129 full-time employees.
  - Provides copper and fiber facilities to cell towers enabling wireless carriers to provide service in this rural portion of Texas.
- Service territory is quite vast - extending to 21 exchanges over 11 rural counties in East Texas; stretching 125 miles from its upper to its lower boundaries; and is comprised of six noncontiguous portions of one study area.
  - The noncontiguous portions are grouped into three geographic regions and served by separate business offices located at Henderson, Livingston and Waskom Texas.
  - Over 18,000 of the access lines are residential lines of which 18 percent are Lifeline and Tele-assistance recipients.
  - 9.86 subscribers per square mile and 3.5 subscribers per route mile of cable.
  - Among the anchor institutions that the Cooperative serves, approximately 91 are municipalities, fire departments, schools, county facilities, law enforcement and forestry services.

➢ Investment in Broadband

- To fulfill its commitment to its cooperative members, Eastex ensures that its network is one that is dependable, sustainable and one of the most advanced broadband networks, capable of providing robust broadband services to meet the needs of customers.
  - Over 9,000 Digital Subscriber Line ("DSL") customers, offering 3 Mbps service to approximately 80 percent of the service territory and offering 768 kbps to 95 percent of the service area. Eastex is planning on additional future investment in broadband infrastructure to enhance its DSL service offering through increased service speeds and availability.
  - Approximately 5,810 route miles of copper cable and 537 miles of fiber optic cable. Service area includes 217 DSLAMs, 75 cell sites of which 25 are fiber fed and 50 are copper fed. 440 DS1 circuits are sold to 9 wireless carriers to transport wireless traffic from the copper fed cell sites.
  - All of Eastex's exchanges are equipped with digital switches and, as of December 31, 2010, the Cooperative has converted all its switches to new softswitches which should ultimately reduce switching costs while supporting IP network capabilities.
  - Eastex has also actively been installing fiber optic cable and broadband-capable circuit equipment throughout the service area to shorten loop lengths in order to be able to provide more bandwidth.
- The costs to provide these high quality telecommunications and robust broadband services to these rural areas are significant due in large part to the vastness and unique configuration of the Cooperative's service territory.

- Eastex Has Been Prevented From Properly Allocating Its Costs
    - When Eastex made its election to freeze its categories in 2001, it did not anticipate that the freeze would last for such an extended period of time.
        - In 2001, the FCC required all rate-of-return carriers to freeze their allocation factors and allowed these carriers the option of freezing their category relationships.
        - Initially, the freeze was set to expire on June 30, 2006 or until the Commission completed comprehensive separations reform whichever came first; however, the FCC has continued to extend the freeze with the most recent decision extending the freeze until June 30, 2012.
    - While the freeze has been in place, Eastex has invested approximately $29 million in special access and broadband facilities to meet the increased demand from Eastex customers for broadband services. However, due to the Frozen Category Rules Eastex has been unable to assign its costs to the proper state and interstate jurisdictions, FCC C.F.R. Part 69 interstate access elements and categorized plant balances reported to the Universal Service Fund.
    - As a result, 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.

- Grant of Eastex's Petition Would be in the Public Interest
    - Grant of Eastex's petition seeking waiver of the Frozen Category Rules would enable Eastex to allocate more of its costs to the interstate jurisdiction which would allow Eastex to receive additional cost-based settlements <u>without in any way burdening the high-cost fund</u>. Eastex will use the additional cost-based settlements to:
        - reduce the $6 million debt that has already been incurred which was used to deploy DSL throughout its rural service territory; and
        - continue expanding its network and enhancing broadband service to its subscribers by taking such actions as shortening loop lengths to provide more bandwidth and continuing to install more fiber to the more than 90 anchor institutions within its service territory.
    - Grant of the petition would also address the "cost-revenue mismatch" caused by the application of the Frozen Category Rules.
        - The freeze effectively results in the disassociation of actual cost from demand which results in inaccurate rate making.
    - It is imperative that grant of the petition occur prior to June 30, 2012, the date when the existing freeze is scheduled to expire and one day prior to the day when major near-term reforms are scheduled to take effect.

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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
<u>Request for Expedited Treatment of Pending Waiver Request Necessitated By Universal Service and Intercarrier Compensation Reforms</u>

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.

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[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

JSI John Staurulakis
INCORPORATED

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FILED/ACCEPTED

MAY 25 2011

Federal Communications Commission
Office of the Secretary

FILE STAMP COPY

BY HAND DELIVERY

May 25, 2011

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Attention: Wireline Competition Bureau

Re: Eastex Telephone Cooperative, Inc.
Resubmission of Petition for Waiver of 47 C.F.R. Sections 36.3, 36.123-126, 36.141, 36.152-157, 36.191 and 36.372-382 to Unfreeze Part 36 Category Relationships

Dear Ms. Dortch:

On behalf of Eastex Telephone Cooperative, Inc. (the "Company"), John Staurulakis, Inc. respectfully resubmits the above-referenced Petition for Waiver ("Petition"). The initial submission of May 19, 2011[1] was withdrawn[2] and is hereby resubmitted with the requisite fee for a petition for waiver of Part 36 separations rules. The FCC Form 159 and filing fee are being submitted this date via overnight delivery to U.S. Bank, St. Louis, Missouri.

Please direct inquiries regarding the Company's Petition for Waiver to the undersigned consultant for the Company.

Sincerely,

John Kuykendall

John Kuykendall
Vice President

Enclosures

cc: Chief, Wireline Competition Bureau

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[1] *See* Eastex Telephone Cooperative, Inc. Petition for Waiver of 47 C.F.R. Sections 36.3, 36.123-126, 36.141, 36.152-157, 36.191 and 36.372-382 to Unfreeze Part 36 Category Relationships, filed May 19, 2011.

[2] *See* Withdrawal of Eastex Telephone Cooperative, Inc. Petition for Waiver of 47 C.F.R. Sections 36.3, 36.123-126, 36.141, 36.152-157, 36.191 and 36.372-382 to Unfreeze Part 36 Category Relationships, filed May 24, 2011.

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

In the Matter of	)	
	)	
Jurisdictional Separations and Referral To the Federal-State Joint Board	)	CC Docket No. 80-286
	)	
Petition by Eastex Telephone Cooperative, Inc. For Waiver of 47 C.F.R. Sections 36.3, 36.123-126, 36.141, 36.152-157, 36.191 and 36.372-382 to Unfreeze Part 36 Category Relationships	)	

To: Chief, Wireline Competition Bureau

PETITION OF EASTEX TELEPHONE COOPERATIVE, INC. FOR WAIVER OF 47 C.F.R. SECTIONS 36.3, 36.123-126, 36.141, 36.152-157, 36.191 AND 36.372-382 TO UNFREEZE PART 36 CATEGORY RELATIONSHIPS

Pursuant to Section 1.3 of the rules of the Federal Communications Commission ("FCC" or "Commission"),[1] Eastex Telephone Cooperative, Inc. ("Eastex" or the "Cooperative") hereby requests a permanent waiver of 47 C.F.R. Sections 36.3, 36.123-126, 36.141, 36.152-157, 36.191 and 36.372-382 (hereinafter referred to as "Frozen Category Rules") as these rules relate to frozen category relationships entirely removing the category freeze for Eastex. Alternatively, Eastex requests a temporary waiver of the Frozen Category Rules to allow Eastex to "unfreeze" its category relationships for one year after which it would "refreeze" its category relationships. Waiver of these rules would allow Eastex to properly allocate its costs enabling the Cooperative to receive additional cost-based settlements without in any way burdening the high-cost fund. As demonstrated herein, grant of this waiver is warranted due to the fact that the "good

[1] 47 C.F.R. § 1.3.

cause" waiver standard has been satisfied, and grant of this waiver would be in the public interest.

I. Background

Eastex is a rural telephone cooperative that serves over 24,000 access lines and is the second largest telephone cooperative in Texas in terms of access lines. As shown in the attached map, [2] the Cooperative's service territory is quite vast. It extends to 21 exchanges over 11 rural counties in East Texas, stretches 125 miles from its upper to its lower boundaries and is comprised of six noncontiguous portions of one study area. The noncontiguous portions are grouped into three geographic regions and served by separate business offices located at Henderson, Livingston and Waskom Texas.

As of December 31, 2010, Eastex had a total of 19,839 residential lines (19 percent are Lifeline and Tele-assistance recipients) and 4,344 business lines for a total of 24,183 subscribers (10.75 subscribers per square mile and 4.3 subscribers per route mile of cable). Specific to Internet service,[3] as of the same date, Eastex had a total of 8,110 Digital Subscriber Line ("DSL") customers, offering 3 Mbps service to approximately 80 percent of the service territory and offering 768 kbps to 95 percent of the service area.[4] Eastex has a strong community presence throughout its three geographical regions. At

[2] See Attachment 1.

[3] Eastex provides Internet service in conjunction with its wholly-owned affiliate, Eastex Telecom. Accordingly, when Eastex's Internet service is referenced in this petition, this reference includes the services provided by both Eastex and its affiliate.

[4] Eastex provides four levels of DSL service: (1) Play (256 kbps downstream and 128 kbps upstream) for $19.95 per month; Power (768 kbps downstream and 256 kbps upstream) for $49.95 per month; Prime (1.5Mbps downstream and 512 kbps upstream) for $69.95 per month; and Platinum (3Mbps downstream and 512 kbps upstream) for $89.95 per month. As of December 31, 2010, Eastex had 1,439 Play subscribers, 5,446 Power subscribers, 1,061 Prime subscribers and 164 Platinum subscribers for a total of 8,110 DSL subscribers. Additionally, there were 83 DSL employee subscribers.

129 full-time employees, Eastex is one of the largest employers in the area. Among the anchor institutions that the Cooperative serves, approximately 91 are municipalities, fire departments, schools, county facilities, law enforcement and forestry services.

Formed in 1950, Eastex has made significant investments through the years to engineer, build, and maintain its expansive network which today offers local, long distance, and broadband Internet service to its customers who are predominantly families, farmers, ranchers, and small businesses that have chosen to make a livelihood in the rural area some 125 miles east of Dallas. To fulfill its commitment to its cooperative members, Eastex ensures that its network is one that is dependable, sustainable and one of the most advanced broadband networks, capable of providing robust broadband services to meet the needs of customers through its approximately 5,241 route miles of copper cable and 377 miles of fiber optic cable. Specifically this has meant that the Cooperative has equipped all of its exchanges with digital switches and, as of December 31, 2010, had converted all its switches to new softswitches.[5] Eastex has also actively been installing fiber optic cable throughout the service area to shorten loop lengths in order to be able to provide more bandwidth. The costs to provide these high quality telecommunications and robust broadband services to these rural areas are significant due in large part to the vastness and unique configuration of the Cooperative's service territory.

As demonstrated herein, the Frozen Category Rules have prevented Eastex from properly allocating its costs thus preventing the Cooperative from receiving additional cost-based settlements. Grant of this instant petition would allow the Cooperative to

[5] The Cooperative purchased these softswitches out of general funds.

begin to receive additional interstate pool settlements and would not in any way burden the high-cost loop fund.

II. Waiver Standard

In general, the FCC's rules may be waived for good cause shown.[6] Waiver is appropriate where the "particular facts would make strict compliance inconsistent with the public interest."[7] The FCC may grant a waiver of its rules where the requested relief would not undermine the policy objective of the rule in question, special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.[8]

III. Waiver is Justified

A. Eastex Invested with the Expectation that the Freeze Would End in the Five-Year Time Period Specified by the FCC

In 2001, the FCC required all rate-of-return carriers to freeze their allocation factors and allowed these carriers the option of freezing their category relationships.[9]

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[6] 47 C.F.R. § 1.3.

[7] *See AT&T Wireless Services, Inc. et al. v. Federal Communications Commission*, No. 00-1304 (D.C. Cir. 2001), *citing Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*").

[8] *See generally, WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *see also Northeast Cellular* (D.C. Cir. 1990).

[9] *See Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 16 FCC Rcd 11382 (2001) ("*2001 Separations Freeze Order*"). Category relationships are "the percentages of a carrier's costs for equipment and investment, recorded in Part 32 accounts, that are assigned to various Part 36 categories based on how the equipment or investment in that category is being used." *In the Matter of Petition by Gila River Telecommunications, Inc. Pursuant to 47 C.F.R. Sections 36.3, 36.123-126, 36.152-157, and 36.372-382 for Commission Approval to Unfreeze Part 36 Category Relationships*, CC Docket No. 80-286, Order, FCC 10-199 (rel. Dec. 2, 2010) at n.7.

When the Cooperative made its election to freeze its categories, it did not anticipate that the freeze would last for such an extended period of time. Initially, the freeze was set to expire on June 30, 2006 or until the Commission completed comprehensive separations reform whichever came first.[10] Based upon this understanding, on August 31, 2001 Eastex notified the National Exchange Carrier Association ("NECA") of its election to freeze its category relationships "during the period of July 1, 2001 through June 30, 2006."[11] In 2006, however, the FCC extended the freeze for three years or until the Commission completed comprehensive separations reform whichever came first[12] and then continued to extend the freeze for one year intervals with the most recent decision extending the freeze until June 30, 2012.[13]

During this period of time, the demand from Eastex customers for quality telecom and broadband services continued to increase. To meet these demands, Eastex continued to invest in expanding its network. In the four years from January 2007 through December 2010, Eastex invested $55 million in plant additions, to provide both telephone and broadband services to customers. With few exceptions, without Eastex services, many customers would have no service of any kind at their residence. A portion of the investments made in the Cooperative's network to provide DSL services came from

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[10] *See 2001 Separations Freeze Order* at para 9 .

[11] Letter from Allen Dorman, General Manager of Eastex to Mr. Dean E. Schneberger, Director, Southwestern Region, NECA dated August 31, 2001.

[12] *See Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Order and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5516, 5523, para. 16 (2006).

[13] *See Jurisdictional Separations Reform and Referral to the Federal-State Joint Board,* CC Docket No. 80-286, Report and Order, FCC 09-44 (rel. May 15, 2009) ("*2009 Separations Freeze Extension Order*"); *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board,* CC Docket No. 80-286, Report and Order, FCC 10-89 (rel. May 25, 2010);. *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board,* CC Docket No. 80-286, Report and Order, FCC 11-71 (rel. May 4, 2011).

funds obtained from a loan from Citizen's National Bank – Henderson ("CNB"). As of December 31, 2010, Eastex had long term debt of $8.7 million, all of which was from advances from the CNB loan which were used to deploy DSL.[14]

B. Allowing Eastex to Unfreeze Categories Under These Circumstances Constitutes "Good Cause" and is in the Public Interest

While making these investments, Eastex has been unable to properly assign its costs related to broadband deployment due to the Frozen Category Rules. In its *2009 Separations Freeze Extension Order*, the FCC recognized that companies such as Eastex may have made their decision for "administrative convenience, expecting that when they were ready to undertake new investment after the end of the five-year freeze, they would be allowed to allocate the investment to the appropriate categories."[15] Believing this to be a matter that should be addressed, the FCC asked the Federal-State Joint Board on Jurisdictional Separations ("Joint Board on Separations" or "Board") to consider "whether allowing carriers a one-time opportunity to freeze or unfreeze category relationships is warranted under the circumstances."[16] Based on this directive, on March 5, 2010, the state members of the Joint Board on Separations submitted a proposal to the Board recommending an interim adjustment of separations allocation factors and category relationships pending comprehensive reform.[17] Part I of the Proposal addressed the "cost-revenue mismatch" for carriers that have frozen their category relationships due

[14] Eastex does not provide fiber-to-the-home except where the customer requires higher bandwidths such as schools and cell towers.

[15] *2009 Separations Freeze Extension Order* at para. 19.

[16] *Id.*

[17] *See* 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) ("Proposal").

to the fact that these carriers "have not directly assigned their interstate special access investment during the freeze."[18] According to the Proposal, the cost studies on which the category relationships were based "is governed by separations studies that are nine years old" which "are unlikely to reflect current conditions" and thus "no longer have any basis in fact."[19] The Proposal then declares, "[w]hile some inaccuracy of the separations process is permissible, currently the actual use to which the property is put is almost completely ignored [which] is contrary to the Supreme Court's instructions in *Smith v. Illinois*."[20] As further explained in the Proposal,

> Companies' use of the same frozen categorization percentages that they used in 2001, regardless of the actual uses of their current plant, is not sufficient to properly separate costs between jurisdictions. . . . We believe that the freeze and the FCC staff directive to ignore direct assignment rules have led to a mis-assignment of special access costs. This mis-assignment is created by the growth in interstate special access lines and revenues over time without a commensurate growth in interstate assignment of costs. This mis-assignment is accentuated by the fact that much of the revenue benefit due to the growth in the number of special access circuits would have been allocated to the interstate jurisdiction given the FCC's assertion of jurisdiction over certain exchange special access lines with even minimal levels of interstate traffic. In contrast the associated special access costs under the freeze would in large part have been allocated to the state jurisdiction at the same relative level as before the freeze.[21]

Although to date, no action has been taken on the Proposal, it is evident that both the FCC and the Board believe it is important that the cost-revenue mismatch caused by

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[18] *Id.* At p. 5.

[19] Proposal at 2-3.

[20] *Id.* at 3 *citing Smith v. Illinois Bell Tel. Co.*, 282 U.S. 133, 148 (1930).

[21] *Id.* at 5-6. Subsequent to the release of the Proposal, the Board sought comment on the Proposal as well as issues related to comprehensive permanent separations reform that the FCC had referred to it. *See Federal-State Joint Board on Separations Seeks Comment on Proposal for Interim Adjustments to Jurisdictional Separations Allocation Factors and Category Relationships Pending Comprehensive Reform and Seeks Comment on Comprehensive Reform*, CC Docket No. 80-286, Public Notice, 25 FCC Rcd 3336.

the freeze of category relationships be addressed. Grant of this waiver would be a step in that direction in that it would allow Eastex to properly allocate its costs enabling the Cooperative to receive additional cost-based settlements without in any way burdening the high-cost fund.[22]

1. The Cooperative Would Receive Additional Cost-Based Settlements Without Burdening the High-Cost Fund

Specifically, grant of this waiver would allow Eastex to allocate more of its costs to the interstate jurisdiction which would allow the Cooperative to receive additional cost-based settlements that would come from interstate pool settlements – not from the high-cost loop fund.[23] Accordingly, grant of this waiver would not burden the high-cost loop fund in any manner.

To illustrate, as shown in Section II of Attachment 2, based on 2009 cost data, Eastex estimates that if the FCC grants this instant waiver, the proportion of net investment allocated to the intrastate jurisdiction would decrease while net investment allocated to the interstate jurisdiction would increase resulting in a shift of 13 percent of net investment to interstate. Similarly, Eastex estimates that the proportion of expenses

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[22] The majority of Eastex's costs which have been mis-allocated are special access costs.

[23] Eastex is a "cost company." The Commission has explained the NECA pooling process as it relates to cost companies as follows: "Incumbent LECs that participate in NECA pools collect access charges from interexchange carriers at the rates contained in tariffs filed by NECA. Each pool participant receives settlements from the pools to recover the cost of providing service plus a pro-rata share of the pool's earnings. NECA pool participants' interstate access charge settlements are determined either on the basis of cost studies or average schedule formulas. Cost companies are incumbent LECs that receive compensation for interstate telecommunications services based on their actual interstate investment and expenses, calculated from detailed cost studies. Average schedule companies are those incumbent LECs that receive compensation for use of their interstate common carrier services on the basis of formulas that are designed to simulate the disbursements that would be received by a cost company that is representative of average schedule companies." *Federal-State Joint Board on Universal Service; Iowa Telecommunications Services, Inc.; and Wellman Cooperative Telephone Association, Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules; Petition for Waiver of Sections 69.605(c) and 54.305 of the Commission's Rule*, CC Docket No. 96-45, Order, DA 10-1027 (rel. June 4, 2010) at para. 12.

allocated to the intrastate jurisdiction would decrease while expenses allocated to the interstate jurisdiction would increase resulting in a shift of 7 percent to interstate. As shown in Section I of Attachment 2, this 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.[24] All of the additional settlements would come from the NECA interstate traffic sensitive pool settlements and would actually reduce the burden on the high-cost loop fund.[25]

2. The Additional Settlements Would Be Used to Expand and Enhance Broadband Offerings

Eastex will use the additional cost-based settlements to reduce the $8.7 million debt that has already been incurred which was used to deploy DSL throughout the Cooperative's rural service territory. Additionally, Eastex will use the additional settlements to continue expanding its network and enhancing broadband service to its subscribers. One of the ways that it will accomplish this will be to continue to shorten loop lengths to provide more bandwidth. Eastex will also continue to install more fiber to the more than ninety anchor institutions within its service territory to provide critical broadband infrastructure as well as to provide infrastructure to other service providers for their use. For example, the Cooperative already provides copper and fiber facilities to cell towers enabling wireless carriers to provide service in this rural portion of Texas.

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[24] *See* Attachment 3 using 2009 cost data to illustrate that costs related to DSL are the primary driver for the shift in costs to interstate if the FCC were to grant this waiver allowing Eastex to unfreeze its categories.

[25] These numbers do not take into consideration the near-term universal service reform proposals which the Commission is currently considering and would need to be adjusted to reflect whatever rule changes are adopted. *See In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, and Lifeline and Link-Up*, WC Dockets No. 10-90 et al., Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011).

C. Costs Are Not Being Recovered from the State Universal Service Fund

As explained above, due to the operation of the Frozen Category Rules, costs that should have been allocated to the interstate jurisdiction instead have been allocated to the state jurisdiction. As explained below, for Eastex, these mis-assigned costs are not recovered from the Texas Universal Service Fund. Accordingly, absent grant of this waiver, Eastex will never be able to recover these costs.

In December 1998, the Public Utility Commission of Texas ("PUC") adopted a new set of rules which expanded and restructured the Texas Universal Service Fund ("TUSF"). Under these rules in order for a telecommunications provider in Texas to receive funds from the TUSF, it must apply for designation as an Eligible Telecommunications Provider for state Universal Service Fund ("USF") support and an Eligible Telecommunications Carrier for federal USF support. As part of this proceeding, on January 1, 1999, the PUC began implementing the Small and Rural ILEC ("SRILEC") universal service funding plan. This plan called for monthly per-line TUSF support to replace the amount of implicit support Incumbent Local Exchange Carriers ("ILECs") received from the intraLATA toll pool and reductions in toll rates which created an "explicit" funding of distributions from the SRILEC plan. This new plan also required USF payments to small and rural ILECs to be made monthly, based on a one-time "snapshot" per-access line basis. Specifically, this monthly amount is calculated by dividing the amount of the TUSF support for each SRILEC study area for the 1997 test year by the number of eligible lines which results in the amount of support per year and then dividing this amount by twelve to determine the monthly payments.

Accordingly, during the entire time that Eastex's categories have been frozen, the Cooperative has been unable to recover the mis-assigned costs due to the fact that TUSF support has been locked in on a per-line basis. Grant of this waiver would allow proper allocation allowing Eastex to recover these costs from interstate pool settlements.

IV. Conclusion

As demonstrated herein, "good cause" exists for grant of this waiver and grant would advance the public interest. Specifically, grant of this waiver would allow Eastex to properly allocate its costs enabling the Cooperative to receive additional cost-based settlements without in any way burdening the high-cost fund. The additional settlements would be used by Eastex to reduce the debt which it incurred in order to provide robust broadband to the Cooperative's rural subscribers as well as continue expanding its network and enhancing broadband service to its subscribers, anchor institutions and other providers that rely on its network.

Respectfully Submitted,

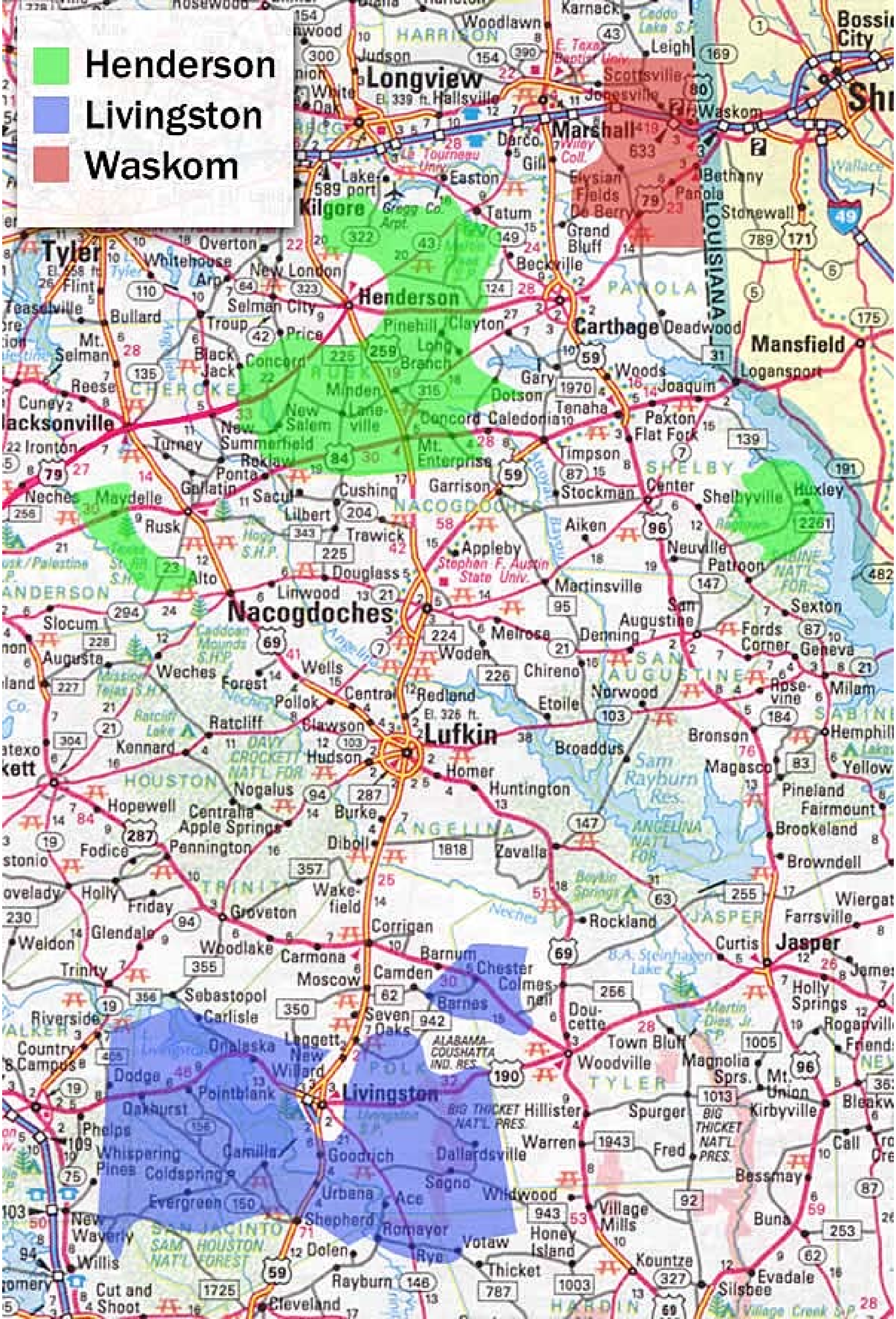
Eastex Telephone Cooperative, Inc.

Allen Dorman

By: Allen Dorman, General Manager

Date: May 18, 2011

ATTACHMENT 1



Henderson
Livingston
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Tyler
Henderson
Carthage
Mansfield
Jacksonville
Rusk
Nacogdoches
Center
Shelbyville
San Augustine
Lufkin
Jasper
Livingston
Woodville
Cleveland

ATTACHMENT 2

Eastex Telephone Cooperative, Inc.

I. Revenue Impact - Un Freezing COE and CWF Categories

	Federal USF HCLF Support	Interstate Pool Settlements	TOTAL
Impact	$ (584,005)	$ 2,577,407	**$ 1,993,402**

II. Cost Impact Analysis - Shift to Interstate

	Original State Costs	Unfreeze Cat State Costs	Cost Shift to Interstate	Percentage Shift to Interstate
Net Investments	$ 46,199,000	$ 40,358,648	**$ 5,840,352**	**13%**
Expenses	$ 26,058,310	$ 24,205,510	**$ 1,852,800**	**7%**

This shows the amount of net invest and expenses reassigned to Interstate during the 2009 study period.

ATTACHMENT 3

Eastex Telephone Cooperative, Inc.

Central Office Equipment (COE) Category Impact Summary

Part 32 Account	COE Category	Description	12/31/09 Costs	Frozen Category Factors	UnFrozen Category Factors	Frozen Cat. Allocated Costs 12/31/09	Unfrozen Cat. Allocated Costs 12/31/09	Variance	Interstate Allocator	Interstate Impact
2210	2	Tandem Switching		0.015476	0.015476	$ 332,453	$ 332,453	$ -	0.394667	$ -
	3	Local Switching		0.984524	0.984524	$ 21,148,807	$ 21,148,807	$ -	0.277922	$ -
	5	Equal Access								
	Total	Switch Investment	$ 21,481,260	1.000000	1.000000	$ 21,481,260	$ 21,481,260	$ -		$ -
2230	4.11	WideBand Exchange xDSL		0.084403	0.379988	$ 3,214,560	$ 14,472,121	$ 11,257,561	1.000000	$ 11,257,561
	4.121	Exchange Trunk EAS		0.076063	0.021363	$ 2,896,903	$ 813,628	$ (2,083,274)	0.000000	$ -
	4.122	Exchange Trunk Toll		-	-	$ -	$ -	$ -		
	4.123	Exchange Trunk Special		-	-	$ -	$ -	$ -		
	4.13	Exchange Line Circuit		0.653071	0.532366	$ 24,872,709	$ 20,275,553	$ (4,597,156)	0.250000	$ (1,149,289)
	4.21	IX Circuit - Other Company		-	-	$ -	$ -	$ -		
	4.22	IX Circuit - Wideband		-	0.011030	$ -	$ 420,090	$ 420,090	1.000000	$ 420,090
	4.23	IX Circuit - Other		0.186463	0.055253	$ 7,101,593	$ 2,104,371	$ (4,997,222)	0.440000	$ (2,198,777)
	4.3	Host / Remote		-	-					
	Total	Circuit Investment	$ 38,085,764	1.000000	1.000000	$ 38,085,764	$ 38,085,764	$ -		$ 8,329,585

Eastex Telephone Cooperative, Inc.

Cable & Wire Facilities (C&WF) Category Impact Summary

Part 32 Account	Cable & Wire Category	Description	12/31/09 Costs	Frozen Category Factors	UnFrozen Category Factors	Frozen Cat. Allocated Costs 12/31/09	Unfrozen Cat. Allocated Costs 12/31/09	Variance	Interstate Allocator	Interstate Impact
2410	1	Exchange Line		0.917459	0.943430	$ 98,654,972	$ 101,447,560	$ 2,792,588	0.250000	$ 698,147
	2.1	Exchange Trunk - EAS		0.031263	0.021427	$ 3,361,733	$ 2,304,013	$ (1,057,720)	0.000000	$ -
	2.2	Exchange Trunk - Toll		0.000000	0.000000	$ -	$ -	$ -	0.000000	$ -
	2.3	Exchange Trunk - WB		0.016102	0.011036	$ 1,731,445	$ 1,186,671	$ (544,774)	1.000000	$ (544,774)
	2.4	Exchange Trunk -		0.000000	0.000000	$ -	$ -	$ -	0.000000	$ -
	3	Inter-exchange		0.035176	0.024108	$ 3,782,454	$ 2,592,360	$ (1,190,094)	0.410000	$ (487,939)
	4	Host / Remote		0.000000	0.000000	$ -	$ -	$ -	0.000000	$ -
	Total	Cable and Wire Investment	$ 107,530,604	1.000000	1.000000	$ 107,530,604	$ 107,530,604	$ 0		$ (334,565)