

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

In the Matter of	)	
	)	
Telecommunications Carriers Eligible to	)	
Receive Universal Service Support	)	
	)	
COX COMMUNICATIONS, INC.	)	WC Docket No. 09-197
	)	
Petition for Forbearance	)	
	)	
	)	
	)	
	)	

**PETITION OF COX COMMUNICATIONS, INC. FOR FORBEARANCE**

Pursuant to Section 10 of the Communications Act of 1934, as amended (the “Act”),<sup>1</sup> Cox Communications, Inc., on behalf of itself and its telephone operating subsidiaries (collectively, “Cox”) petitions the Commission to forbear from enforcing Section 214(e)(5) of the Act and Section 54.207 of the Commission’s rules (which implements Section 214(e)(5))<sup>2</sup> in connection with pending and future Cox applications for limited designation as an eligible telecommunications carrier (“ETC”) to participate in the Lifeline program.<sup>3</sup> More specifically, Cox seeks such forbearance with respect to those areas in which Cox will seek designation as an ETC from the FCC or the relevant state commission pursuant to Section 214(e)(2) and Section 214(e)(6) of the Act.<sup>4</sup>

As explained herein, Sections 214(e)(5) and 54.207 are intended to prevent recipients of high-cost universal service support from engaging in “cream-skimming” — *i.e.*, the practice of

---

<sup>1</sup> 47 U.S.C. § 160.

<sup>2</sup> 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207.

<sup>3</sup> Cox requests that forbearance apply to any current or future telephone operating subsidiary. A list of Cox’s current telephone operating subsidiaries is attached hereto as Exhibit A.

<sup>4</sup> 47 U.S.C. § 214(e)(2).

targeting only the lower-cost portions of a rural study area. The Commission has explained that, where a competitive ETC obtains support based on the cost of serving particularly high-cost portions of a rural incumbent carrier's study area without actually serving those areas, it can distort competition and potentially undermine universal service.<sup>5</sup> Thus, Sections 214(e)(5) and 54.207 effectively require an ETC to either: (i) serve the entirety of relevant rural study areas; or (ii) complete boundary modification proceedings at the federal and state levels to demonstrate that the provision of service to a portion of the incumbent carrier's service territory would not result in cream-skimming or otherwise harm the public interest.

However, concerns regarding cream-skimming have no application in the context of Lifeline services, as the Commission has made clear.<sup>6</sup> Carriers that receive support only for serving low-income consumers, as opposed to serving high-cost areas, have no incentive or ability to engage in cream-skimming. Accordingly, because Cox would not seek any high-cost support, but rather would seek designation as an ETC only for the limited purpose of receiving Lifeline support, enforcement of Sections 214(e)(5) and 54.207 would be unnecessary and would waste federal, state, and company resources. This requested forbearance would strongly promote the service objectives embodied in the Act and reflected in Commission policy. Indeed, the Commission has granted substantially identical forbearance requests in the past.<sup>7</sup> Therefore, Cox respectfully requests that the Commission grant this Petition expeditiously, so that low-income customers can benefit from the variety of high-quality calling plans provided by Cox without any unnecessary delay.

---

<sup>5</sup> See, e.g., Virginia Cellular, LLC, *Memorandum Opinion and Order*, 19 FCC Rcd 1563, at ¶ 32 (2003). See also Federal-State Joint Board on Universal Service, *Recommended Decision*, 12 FCC Rcd 87, at ¶ 172 (1996).

<sup>6</sup> See Virgin Mobile USA, L.P., *Order*, 24 FCC Rcd 3381, at ¶ 38 n.101 (2009) (“In addition, we need not perform a creamskimming analysis because Virgin Mobile is seeking eligibility for Lifeline support only.”) (“*Virgin Mobile Forbearance Order*”)

<sup>7</sup> See, e.g., Telecommunications Carriers Eligible for Universal Service Support; Cricket Communications, Inc. Petition for Forbearance, *Order*, 26 FCC Rcd 13723 (2011) (“*Cricket Forbearance Order*”); Telecommunications Carriers Eligible for Universal Service Support; Cricket Communications, Inc. Petition for Forbearance, *Order*, 27 FCC Rcd 1374 (2012) (“*Cricket Compliance Plan Order*”).

## BACKGROUND

*Cox.* Cox has long been a leader in the provision of high-quality video, voice and broadband services to consumers and businesses around the country. Cox was one of the first facilities-based competitors in the local telephone business and was a pioneer in offering broadband Internet access over its cable facilities. Cox is now the third-largest provider of video and broadband services, with more than 6 million total customers. As a telephone provider, Cox has been an ETC for over a decade. Cox has repeatedly won awards for the quality of its service, including multiple J.D. Power and Company awards for telephone and Internet service.

*Cox as an Eligible Telecommunications Carrier.* Cox's long experience as a telephone competitor has included receiving certification as an eligible telecommunications carrier and Cox currently provides Lifeline service to over 100,000 customers in eight states under the federal Lifeline Program.<sup>8</sup> These areas encompass portions of the study areas of several rural telecommunications carriers. Cox intends to seek ETC designation in various additional rural service areas for the purpose of receiving available low-income support (*i.e.*, Lifeline support). This forbearance request covers only such applications and would not apply with respect to any future requests for high-cost Connect America Fund support Cox may consider.

*Sections 214(e)(5) and 54.207.* Under Section 214(e)(1) of the Act, an ETC must offer supported services and advertise the availability of and charges for such services "throughout the service area for which the designation is received[.]"<sup>9</sup> Section 214(e)(5) of the Act, in turn, provides that "[i]n the case of an area served by a rural telephone company, 'service area' means such company's 'study area' unless and until the Commission and the States . . . establish a different definition of service area for such company."<sup>10</sup> Section 54.207 of the Commission's rules specifies a series of steps that must be followed at the federal and state levels to ensure that

---

<sup>8</sup> See, e.g., Wireline Competition Bureau Consents to Four Service Area Redefinitions, *Public Notice*, 27 FCC Rcd 5018 (2012) (allowing ETC designation to become effective in areas served by rural telephone companies).

<sup>9</sup> 47 U.S.C. § 214(e)(1).

<sup>10</sup> 47 U.S.C. § 214(e)(5).

the provision of service to smaller portions of those areas would not result in cream-skimming or otherwise harm the public interest.<sup>11</sup> These steps may take years to complete, at great cost to both the carrier and relevant regulators. Such wasteful delay is entirely unnecessary when a carrier applies for Lifeline-only ETC designation in rural territories.

As noted above, Cox’s service areas overlap with a number of rural study areas. Yet, because its service extends only to those areas it is authorized by local franchise areas to serve, Cox does not serve the entirety of any of those study areas. Consequently, Sections 214(e)(5) and 54.207, if enforced, would preclude Cox from operating as an ETC until the Commission and the states could redefine Cox’s service areas to be narrower than the relevant rural study areas — even though the Commission has made clear that no “cream-skimming” analysis is necessary where an ETC applies only for low-income support.<sup>12</sup>

***Forbearance Standard.*** Section 10(a) of the Act provides that the Commission shall forbear from applying any provision of the Act to a telecommunications carrier if the Commission determines that:

- (i) enforcement of such provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with the carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (ii) enforcement of such provision is not necessary for the protection of consumers; and (iii) forbearance from applying such provision is consistent with the public interest.<sup>13</sup>

Section 10(b) of the Act further provides that, in evaluating whether forbearance would be consistent with the public interest, the Commission must consider whether such forbearance would promote competitive market conditions or enhance competition.<sup>14</sup>

---

<sup>11</sup> 47 C.F.R. § 54.207.

<sup>12</sup> See *Virgin Mobile Forbearance Order* at ¶ 38 n.101 (2009) (“In addition, we need not perform a creamskimming analysis because Virgin Mobile is seeking eligibility for Lifeline support only.”).

<sup>13</sup> 47 U.S.C. § 160(a).

<sup>14</sup> 47 U.S.C. § 160(b).

## DISCUSSION

Forbearance from enforcement of Sections 214(e)(5) and 54.207 is appropriate and, indeed, required because: (i) enforcement is not necessary to ensure that Cox's rates, terms and conditions are just, reasonable, and non-discriminatory; (ii) enforcement is not necessary to protect consumers; and (iii) forbearance is consistent with the public interest.<sup>15</sup>

### **I. Enforcement of Sections 214(e)(5) and 54.207 Is Not Necessary to Ensure that Cox's Rates, Terms and Conditions Are Just, Reasonable, and Non-Discriminatory.**

A carrier seeking forbearance from the enforcement of a provision of the Act must demonstrate that enforcement is not necessary to ensure that the carrier's rates, terms and conditions are just, reasonable, and non-discriminatory. This prong of the analysis is easily satisfied because Sections 214(e)(5) and 54.207 have no bearing on a carrier's relationship with its customers. Rather, Sections 214(e)(5) and 54.207 serve to ensure that ETCs serving rural areas are not able to engage in cream-skimming, while at the same time preventing ETCs from complicating certain calculations with respect to high-cost support in rural areas.<sup>16</sup> The Commission affirmed this analysis in the *Cricket Forbearance Order* when it concluded that "application of the conformance requirements set forth in section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules" to a Lifeline-only ETC "is not necessary to ensure that rates remain just and reasonable ...."<sup>17</sup>

Far from leading to rate increases or unreasonable service terms, forbearance would enable Cox to make Lifeline discounts available to low-income subscribers in its footprint, thus giving consumers access to even lower competitive rates and innovative services. Nor would the requested forbearance in any way diminish the benefits of competition, which helps to ensure

---

<sup>15</sup> See *Cricket Forbearance Order* at ¶ 2 (forbearance from enforcement of Sections 214(e)(5) and 54.207 "furthers the Act's and Commission's goals of promoting access to affordable service for low-income consumers by reducing barriers to carriers participating in the Lifeline program").

<sup>16</sup> See *Virgin Mobile Forbearance Order* at ¶ 38 n.101.

<sup>17</sup> *Cricket Forbearance Order* at ¶ 2.

that rates are just, reasonable, and non-discriminatory.<sup>18</sup> To the contrary, by enabling Cox to obtain available discounts for Lifeline-eligible customers, forbearance would better enable Cox to serve low-income customers and compete with other Lifeline-eligible carriers. Cox has long provided affordable telephone service options, and Lifeline would enable Cox to appeal even more to low income consumers and expand affordable access and provide an alternative to existing Lifeline offerings. In addition, forbearance would not prevent the Commission from enforcing Section 201 or Section 202 of the Act, which require all carriers to charge just, reasonable, and non-discriminatory rates.<sup>19</sup> For these reasons, enforcement of Sections 214(e)(5) and 54.207 is not necessary to ensure that a Lifeline provider's rates, term, and conditions are just, reasonable, and non-discriminatory.<sup>20</sup>

## **II. Enforcement of Sections 214(e)(5) and 54.207 Is Not Necessary To Protect Consumers.**

A carrier seeking forbearance from enforcement of a provision of the Act also must demonstrate that such enforcement is not necessary to protect consumers. Again, Sections 214(e)(5) and 54.207 do not govern the relationship between the carrier and its customers and thus are not consumer protection provisions. Thus, forbearance here cannot harm consumers. Instead, forbearance would protect consumers by enabling those who are eligible to obtain Lifeline discounts. Moreover, the requested forbearance would not affect the consumer protection provisions of the Act (*e.g.*, Sections 201, 202, and 222), or the Commission's rules — including Sections 54.101 and 54.201.<sup>21</sup> Similarly, the requested forbearance would not affect Cox's ability to provide E-911 or other critical services to consumers because Cox's provision of Lifeline service is no different than its provision of non-Lifeline service. Cox also would continue to meet its proven high standard of customer service it has set for itself throughout all

---

<sup>18</sup> *See, e.g., id.* at ¶ 19.

<sup>19</sup> 47 U.S.C. §§ 201, 202.

<sup>20</sup> *See Virgin Mobile Forbearance Order* at ¶ 19 n.53 (citing *CTIA v. FCC*, 330 F.3d 502, 512 (D.C. Cir. 2003)).

<sup>21</sup> *See, e.g.*, 47 U.S.C. §§ 201, 202, 22; 47 C.F.R. §§ 54.101, 54.201.

of its service areas, including in those areas where it is designated as an ETC. As the Commission has concluded, forbearance would “provide additional competitive choices to many low-income consumers who cannot afford non-discounted offerings.”<sup>22</sup> Moreover, “there is no evidence that forbearance from the conformance requirement for the limited purpose of being a Lifeline-only ETC would harm consumers currently served by the rural telephone companies in the relevant service areas.”<sup>23</sup> Thus, enforcement of Sections 214(e)(5) and 54.207 is not necessary to protect consumers.

### **III. Forbearance from Applying Sections 214(e)(5) and 54.207 Is Consistent with the Public Interest.**

Finally, a carrier seeking forbearance from the enforcement of a provision of the Act must demonstrate that forbearance is consistent with the public interest. In this case, forbearance from the enforcement of Sections 214(e)(5) and 54.207 of the Act against Cox not only is consistent with, but would strongly promote, the public interest. As the Commission has concluded, requiring a Lifeline-only ETC “to conform its service areas to those of the rural carriers in the states they seek to participate only in the Lifeline program would result in numerous redefinition proceedings, which could delay their entry into those markets, make it more difficult to market to potential Lifeline consumers on a statewide basis, and deprive low income consumers in areas where the incumbent wireline provider is a rural telephone company of an additional choice of service provider.”<sup>24</sup> Indeed, the requested forbearance would expedite Cox’s ability to market Lifeline offerings to the public, thereby providing consumers with a valuable opportunity to obtain discounted service that includes a host of advantages.

Cox has a long history of providing unparalleled value and service to all of its customers, regardless of income. In 2011, Cox Communications received top honors in the J.D. Power and Associates annual survey for Residential Telephone in the East & West Regions. Moreover,

---

<sup>22</sup> *Cricket Forbearance Order* at ¶ 11.

<sup>23</sup> *Id.*

<sup>24</sup> *Cricket Forbearance Order* at ¶ 12.

because Cox already has been designated an ETC in several states, it has substantial experience providing its high standards of service to Lifeline-eligible customers. Grant of forbearance will allow Cox to leverage that experience across additional service areas, enabling Cox to scale its discounted offerings to a greater number of low-income customers.

Forbearance would enhance Cox's ability to serve low-income customers, and thus promote the public interest. In particular, forbearance would enable Cox to introduce a competitive alternative that responds to the particular needs of low-income consumers, consistent with Commission policy generally and the specific guidance provided in Section 10(b) of the Act. At the same time, forbearance from the enforcement of Sections 214(e)(5) and 54.207 against Cox would not harm the public interest. As explained above, such enforcement is not necessary to ensure that Cox's rates are just, reasonable, and non-discriminatory, or to otherwise protect consumers.

Further, enforcement is not necessary to advance the universal service policies of Section 214 of the Act. First, as the Commission already has found, there is no need to perform a "cream-skimming" analysis where, as here, an ETC seeks to receive only low-income support.<sup>25</sup> Second, and perhaps more importantly, forbearance from the enforcement of Sections 214(e)(5) and 54.207 simply would facilitate Cox's ability to provide Lifeline service. Forbearance would not prevent the Commission or a state commission from designating Cox as an ETC within some defined "service area" (*i.e.*, its existing coverage area), nor would it negate the service obligations specified in Section 214(e)(1) of the Act and the Commission's implementing rules.

#### **ANTI-DRUG ABUSE CERTIFICATION**

No party to this Petition is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1998, 21 U.S.C. Section 862.

---

<sup>25</sup> See *Virgin Mobile Forbearance Order* at ¶ 38 n.101 (2009).



# Exhibit A

Cox Communications, Inc.  
Telephone Operating Subsidiaries

COX COMMUNICATIONS, INC. TELEPHONE OPERATING SUBSIDIARIES

Cox Arizona Telcom, LLC  
Cox Arkansas Telcom, LLC  
Cox California Telcom, LLC  
Cox Colorado Telcom, LLC  
Cox Connecticut Telcom, LLC  
Cox District of Columbia Telcom, LLC  
Cox Florida Telcom, LP  
Cox Georgia Telcom, LLC  
Cox Idaho Telcom, LLC  
Cox Iowa Telcom, LLC  
Cox Kansas Telcom, LLC  
Cox Louisiana Telcom, LLC  
Cox Maryland Telcom, LLC  
Cox Missouri Telcom, LLC  
Cox Nebraska Telcom, LLC  
Cox Nevada Telcom, LLC  
Cox North Carolina Telcom, LLC  
Cox Ohio Telcom, LLC  
Cox Oklahoma Telcom, LLC  
Cox Rhode Island Telcom, LLC  
Cox Virginia Telcom, Inc.