

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

Application of Cox Kansas Telcom, LLC for                    )  
Waiver of Requirement to Offer Equal Access            )   Docket No.  
to Interexchange Carriers.                                    )

**APPLICATION OF COX KANSAS TELCOM, LLC**

COMES NOW, Cox Kansas Telcom, LLC ("Cox"), by and through its undersigned counsel, and respectfully submits this application requesting a waiver of the requirement to provide access to interexchange carriers within the local calling area when offering Lifeline service ("Application"). Cox will continue to provide long distance service to its customers, and only seeks permission to cease offering its customers the option to presubscribe to long distance service offered by a different provider ("stand-alone long distance"). In light of the Federal Communications Commission ("FCC") not including access to interexchange carriers in the definition of federal Lifeline, the decline of the stand-alone residential interexchange market, and because granting Cox's request will not harm Cox's Lifeline consumers, Cox respectfully requests that the State Corporation Commission of the State of Kansas ("Commission") issue an order granting Cox's Application. For its Application, Cox states as follows:

**I.     Introduction**

1.     The stand-alone long distance market has declined dramatically over the last two decades. In fact, stand-alone long distance services are generally no longer advertised or offered and, notably, wireless carriers never made this service element available to their subscribers. While the ability to dial long distance calls over traditional wireline service using the interexchange carrier of choice was historically important, the demand for separate long-distance service has and continues to plummet, and providing access to interexchange carriers is no

longer a relevant functionality or one that consumers demand. It is not surprising, then, that the Federal Communications Commission ("FCC") no longer requires incumbent local exchange carriers ("incumbent LECs" or "ILECs") to provide toll equal access, nor does it require carriers receiving federal high-cost and/or federal Lifeline support to offer equal access to interexchange carriers.

2. Cox, too, has seen a sharp decline in its customers seeking stand-alone long distance. Only a very small percentage of Cox customers currently use that service. As Cox upgrades its network platform, the cost to continue to provide that functionality is uneconomic given the minimal participation. As a result, it is neither technically nor economically feasible for Cox to continue to offer stand-alone long distance. Cox submits that granting its request is consistent with both FCC decisions and marketplace trends, is competitively neutral, and is in the public interest.

## **II. Background on the "Access to Interexchange Carriers" Requirement**

3. When the Commission adopted its equal access requirements in 1996,<sup>1</sup> the stand-alone long distance market represented the first competitive departure from the American Telephone and Telegraph Company ("the former AT&T") monopoly. While the ability to dial long distance calls over traditional wireline service using the interexchange carrier of choice was historically important, the demand and need for separate long distance service has since plummeted. Providing access to interexchange carriers is no longer a relevant functionality or one that consumers demand. This fact is reflected in decisions that the FCC has adopted in recent years. As detailed below, the FCC recently eliminated equal access obligations applicable

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<sup>1</sup> See K.S.A. 66-1,187(p); see also In re a General Investigation Into Competition Within the Telecommunications Industry in the State of Kansas, Docket No. 94-GIMT-478-GIT, Order (Apr. 4, 1996) at 17.



to ILECs. The FCC also no longer requires providers seeking either federal high-cost and/or federal Lifeline support to offer equal access to interexchange carriers.

**A. Access to interexchange carriers was important when the FCC and the Commission opened the long-distance market in the 1990s.**

4. Equal access to interexchange carrier obligations were put into place when the former AT&T was divested and the long distance toll market was opened up to competition.<sup>2</sup> Prior to divestiture, the former AT&T operated both long distance and local telephone operations across the United States, and as part of the break-up, the former AT&T was required to divest itself of the Regional Bell Operating Companies ("RBOCs"). Equal access obligations applicable to the RBOCs were adopted so that consumers could use the interexchange carrier of their choice – MCI and Sprint were then new competitors in the long-distance market at that time – to make toll calls by dialing 1+ the called party's number.<sup>3</sup> In opening the interstate long distance market to competition, the FCC codified the equal access requirement and made it applicable to all incumbent LECs, and not just the RBOCs.<sup>4</sup> Adopted in the 1980s, the FCC's equal access rules were not applicable to competitive LECs, like Cox.

5. Similarly, when Kansas opened the intrastate toll market to competition, both the Legislature and Commission adopted provisions requiring all the incumbent LECs to offer equal access.<sup>5</sup> This equal access requirement allowed a customer to choose one interLATA toll provider and a different intraLATA toll provider where technically and economically feasible.

**B. FCC decisions reflect the demise of the stand-alone long-distance market.**

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<sup>2</sup> See *United States v. American Tel. & Tel.*, 552 F. Supp. 131, 195 (D.D.C. 1982), *affd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) ("MFJ").

<sup>3</sup> Prior to equal access being implemented, subscribers to interexchange carriers other than AT&T could be required to dial more than 20 digits to place an interstate long-distance call.

<sup>4</sup> See *Investigation of Access and Divestiture Related Tariffs*, 97 FCC Rcd 2d 1081 (FCC 84-51).

<sup>5</sup> See generally Docket No. 94-GIMT-478-GIT; see also, K.S.A. 66-1,187(p), K.S.A. 66-2002(b), K.S.A. 66-2003.

6. The recent FCC decisions to eliminate access to interexchange carriers from the federal definition of supported service is wholly consistent with other decisions in which the FCC concludes that consumers are not using or requiring access to the stand-alone long distance market. In fact, for the last two decades, FCC decisions plainly describe the on-going decline of the long-distance market. These decisions make clear that this is not a new trend or a trend that will be reversed soon or in the future since communication providers are moving away from TDM-based services and continuing to move towards all-distance service offerings to compete in the marketplace and meet consumers' demands.

#### **1. Elimination of Equal Access Requirement for ILECS**

7. In 2007, the FCC had already found that "there was significant evidence the stand-alone long-distance market [was] becoming a fringe market" and the market had given way to competition between service bundles.<sup>6</sup> Building on its 2007 finding, the FCC again concluded in 2013 that the stand-alone long distance market "has changed dramatically" since the decades when equal access requirements were established.<sup>7</sup> Then, in 2015, the FCC relieved ILECs nationwide of their equal access obligations, concluding that doing so was "warranted by the dramatic changes in the wireline voice market since these requirements were established, the regulatory disparity between incumbent LECs and their wireline competitors, and the costs associated with compliance."<sup>8</sup> The FCC determined "that the trend toward all-distance voice

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<sup>6</sup> See FCC 13-69, ¶¶ 13, 14 (citing *Section 272 Sunset Order*, 22 FCC Rcd at 16501-02) (footnotes omitted); see also, FCC 15-166, ¶ 49 (footnotes omitted); and see FCC 13-69, ¶ 16 (footnotes omitted) (In its 2013 order, the FCC eliminated the equal access scripting requirement for RBOCs, concluding: "In today's telecommunications marketplace, the EA Scripting Requirement does little to foster competition, as it only addresses the availability of stand-alone long distance service, which has become a fringe market. [ ] Thus, advising customers of the availability of stand-alone long distance service is unlikely to ensure that independent ILEC rates, terms and conditions for long distance service are just and reasonable and not unjustly or unreasonably discriminatory. For the same reasons, we conclude that retention of the EA Scripting Requirement is not "necessary for the protection of consumers" pursuant to Section 10(a)(2) of the Act [ ].").

<sup>7</sup> FCC 13-69, ¶ 14.

<sup>8</sup> FCC 15-166, ¶ 46.



services has continued.”<sup>9</sup> Moreover, the FCC found that “no party dispute[d] that demand for stand-alone long distance service for mass market or business customers has declined” and no party showed that “new customers are subscribing to [ ] [stand-alone long distance] service with any frequency.”<sup>10</sup>

## **2. Elimination of Equal Access as a "Supported Service"**

8. The FCC also no longer requires equal access as a supported service for companies providing subsidized high-cost or Lifeline service. In 1997, the FCC adopted rules governing the federal universal service programs after passage of the federal Communications Act of 1996 (“the Act”). The FCC adopted a “supported services” definition, setting out the service elements carriers must provide to be eligible to receive federal high-cost and/or Lifeline support. At that time, the FCC enumerated nine service elements, one of which was access to interexchange carriers.<sup>11</sup> Consistent with requirements in the Act, the FCC defined supported services in a technology-neutral way by referring to functional equivalents, which ensured that both wireline and wireless carriers could satisfy the definition and participate in the federal Lifeline program:

Access to interexchange service’ is defined as the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier’s network.<sup>12</sup>

9. While it made other changes to the program over the years, the FCC did not substantively modify its “supported services” definition for the federal high-cost program until

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<sup>9</sup> FCC 15-166, ¶ 49.

<sup>10</sup> FCC 15-166, ¶ 49 (footnotes omitted).

<sup>11</sup> 47 C.F.R. § 54.101(a)(6) (1997). The service elements included: voice grade access, local usage, dual-tone multi-frequency signaling, single party services, access to emergency services, access to operator services, access to interexchange carriers, access to directory assistance and toll limitation for qualifying low-income consumers. See *Universal Service First Report and Order*, 12 FCC Rcd 8776 at 8810, ¶ 61.

<sup>12</sup> 47 C.F.R. § 54.101(a)(7) (1997).

2011 and the federal Lifeline program until 2012 when it transitioned to its current “voice telephony service” definition.<sup>13</sup> Specifically, in reforming its universal service and intercarrier compensation rules in 2011, the FCC modernized its Lifeline services definition to ensure it was technology-neutral such that voice service could be provisioned over any platform.<sup>14</sup> In formally extending the voice telephony service definition to the federal Lifeline program in early 2012, the FCC expressly recognized how significantly the telecommunications market had evolved from when the federal Lifeline program was first established in the 1980s and only ILECs were providing local service. While wireless and voice over internet protocol (“VoIP”) service did not exist as a retail offering at that time,<sup>15</sup> by 2012, competitive providers (and primarily wireless carriers) received a majority of federal Lifeline total program support.<sup>16</sup>

10. Notably, the FCC expressly decided it would not define its supported service in terms of “local” service as it had done since at least 1997.<sup>17</sup> The FCC recognized that service offerings had evolved and providers were no longer distinguishing between local and long distance usage.<sup>18</sup> Consequently, the FCC confirmed that federal Lifeline providers were free to satisfy the obligation to provide local usage via service offerings that bundle local and long distance minutes.<sup>19</sup> Not surprisingly, the FCC recognized both the benefits that consumers enjoy when subscribing to a bundle and that consumers no longer required access to interexchange carriers as a separate service element.

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<sup>13</sup> See *USF/ICC Order*, 26 FCC Rcd 17663 (“*USF/ICC Order*, FCC 11-161”); and *In Re Lifeline & Link Up Reform & Modernization*, 27 FCC Rcd 6656 (“*FCC 12-11*”).

<sup>14</sup> *USF/ICC Order*, FCC 11-161, ¶¶ 77-78.

<sup>15</sup> FCC 12-11, ¶ 20.

<sup>16</sup> *Id.* at ¶ 21.

<sup>17</sup> *Id.* (footnote omitted).

<sup>18</sup> *Id.* at ¶¶ 48-49.

<sup>19</sup> *Id.*



11. Similarly, in addressing the need for a limited toll limitation requirement, the FCC acknowledged that the marketplace had changed so significantly over the last decade that the need to control long-distance calling costs was no longer relevant for the most part. For example, the FCC recognized that many carriers do not distinguish between toll and non-toll calls in pricing voice telephony, and low-income consumers can subscribe to flat price plans, regardless of the location of the called party.<sup>20</sup> The FCC concluded that “higher priced long distance or ‘toll’ calling *is increasingly irrelevant in today’s marketplace*” and that consumers have numerous service options with pricing that are not based on the location of the called party and, thereby, the need for toll limitation service for such plans is moot.<sup>21</sup>

12. Finally, in addition to modernizing the federal Lifeline program, the FCC also updated corresponding requirements applicable to eligible telecommunications carriers (“ETCs”). Prior to 2012, the FCC required any carrier seeking designation as an ETC to acknowledge that it could be required to provide equal access in the future if no other ETC provides equal access.<sup>22</sup> In eliminating the equal access service element, the FCC necessarily eliminated the corresponding ETC requirement.

### **III. Request for Waiver of Requirement to Offer Equal Access to Interexchange Carriers**

13. Cox is a certificated competitive local exchange carrier and provides local exchange service and long distance service in its authorized service territories in Kansas.<sup>23</sup> Additionally, Cox was designated as an ETC for the purpose of receiving federal Lifeline

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<sup>20</sup> *Id.* at ¶ 229.

<sup>21</sup> *Id.* at ¶ 229 (emphasis added).

<sup>22</sup> See 47 C.F.R. § 54.202(a)(5) (2010).

<sup>23</sup> See Docket No. 00-COXC-197-COC (docket for authority to operate as an interexchange telecommunications service provider in Kansas); see also Docket No. 00-COXT-928-COC (docket for authority to provide switched local exchange and exchange access service in Kansas).

support in certain wire centers of AT&T.<sup>24</sup> When Cox first commenced service in 1999, it utilized only circuit-switch technology. Now, Cox utilizes two types of technologies to provide service – circuit-switched and VoIP. Cox will continue to deploy a network utilizing IP technology and transition away from the circuit-switched network. In transitioning to IP technology and continuing to upgrade its underlying platform, it becomes unduly costly, particularly given how few Cox customers currently use that functionality.

14. Accordingly, and as detailed below, Cox requests a waiver of the requirement to provide its customers with equal access to interexchange carriers.

**A. Granting the Application is reasonable, consistent with FCC decisions, and provides technology- and competitive-neutrality.**

15. First, as explained above, the stand-alone long distance market has dramatically changed in the decades since the “access to interexchange carriers” service element was included in the definitions of basic service and Lifeline. FCC decisions demonstrate that access to interexchange carriers is not a minimum communication need for consumers today. Indeed, in 2015, at least one carrier informed the Cox companies that they should not presubscribe customers to such carrier since it no longer offered a stand-alone long distance service offering.<sup>25</sup> The Commission should not continue to require Cox to provide service elements that are not required under federal Lifeline,<sup>26</sup> or that other providers using similar technology are not required to provide.

16. Second, although Cox currently can provide equal access to its customers, as Cox invests to modernize its network and supplant existing network arrangements, recreating equal

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<sup>24</sup> See Docket No. 10-COXT-174-ETC.

<sup>25</sup> Letter from Sprint Communications Group, LP to Cox, dated February 2, 2015, requesting that Cox no longer allow its customers to choose Sprint as a stand-alone long distance provider, attached hereto as **Attachment A**.

<sup>26</sup> 47 U.S.C. § 254(f) states that the Commission “may adopt regulations not inconsistent with the [FCC]’s rules to preserve and advance universal service.”



access arrangements would be wasteful and divert funds that could be used to provide better, more advanced services that residential customers actually value and use. Cox's network planning does not include equal access for residential customers because it is no longer demanded by consumers and is not incorporated in modern network planning. In making changes to its network, Cox's business model no longer supports offering equal access to interexchange carriers. It would be neither economically nor technically feasible for Cox to continue to offer that functionality.

17. Third, and closely related, in order to be technology-neutral, non-discriminatory, and to promote competition and choices for consumers, the Commission should not impose more burdensome and costly requirements on Cox than are imposed on other providers. Doing so is not consistent the Act and would not be in the public interest. Currently, there is a significant burden for Cox to maintain the capability to provision residential customers with alternative interexchange carriers even though few or none choose to do so in any given year. For example, Cox must have certain processes in place, including third party verification, and it must maintain connectivity to multiple interexchange carriers. Since other providers are not required to incur such burdens, it is reasonable for the Commission to grant this Application and, thereby, place Cox in a similar position as other telecommunications providers, such as wireless providers.

18. Finally, the Commission should support a competitive environment that is technology-neutral in the context of providers using different technologies. The Commission should not require a provider using one technology to comply with more burdensome and costly rules than providers using a different methodology.

**B. Granting this Application is in the public interest and will not harm Cox's customers.**

19. As discussed above, the access to interexchange carrier obligations adopted decades ago is no longer relevant or needed as it once was when the FCC and the Commission acted to open the national and Kansas markets, respectively. Cox's experience with stand-alone long distance customers is similar to that reflected in the FCC decisions discussed above. Cox currently has a *de minimis* number of customers subscribed to a different long distance carrier. Cox submits that less than 1% of its residential customers subscribe to stand-alone long distance service. Because so few customers utilize this service element and because consumers may subscribe to numerous options – whether from Cox or from other competitors such as wireless and wireline VoIP providers – granting this Application is in the public interest and will not harm customers.<sup>27</sup>

20. Moreover, it is fair and equitable to treat Cox similarly to many other carriers who do not face a requirement to offer equal access to interexchange carriers. Granting the waiver requested in this Application levels the playing field in telecommunications service.

#### **IV. Conclusion**

21. As a long time provider of Lifeline service in Kansas, Cox requests a waiver of the requirement to provide access to interexchange carriers to its Lifeline customers. Requiring Cox to maintain its obligation to offer equal access to interexchange carriers would be economically and technologically burdensome and would place Cox at a competitive disadvantage with similarly situated carriers. In contrast, granting Cox's request is consistent with recent FCC decisions, will ensure that providers utilizing VoIP technology to provide Lifeline service will be treated in the same manner, regardless of their regulatory status, is technologically- and competitively-neutral, and is, therefore, in the public interest.

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<sup>27</sup> For its existing customers subscribed to a different long distance provider, Cox initially will grandfather those customers, and later will assist them in transitioning to a different Cox service plan if they so choose.



WHEREFORE, Cox respectfully requests that the Commission grant Cox's Application for a waiver of the requirement to offer equal access to interexchange carriers.

Respectfully submitted,

A handwritten signature in cursive script that reads "Susan B. Cunningham". The signature is written in dark ink and is positioned above a horizontal line.

Susan B. Cunningham (KS Bar No. 14083)

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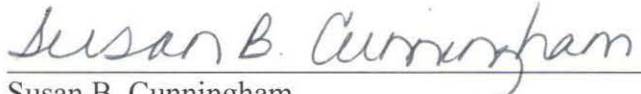
*Attorney for Cox Kansas Telcom, LLC*

Attachment

**VERIFICATION**  
K.S.A. 53-601

STATE OF KANSAS       )  
                                  )  
COUNTY OF SHAWNEE   )       ss:

I, Susan B. Cunningham, verify under penalty of perjury that I have caused the foregoing Application of Cox Kansas Telcom, LLC, for a waiver of the requirement to offer equal access to interexchange carriers to be prepared on behalf of Cox, and that the contents thereof are true and correct to the best of my knowledge, information, and belief.

  
\_\_\_\_\_  
Susan B. Cunningham

August 1, 2017





February 2, 2015

Suzanne L. Howard, Cox Communication  
Director of Regulatory Affairs  
1400 Lake Hearn Dr.  
Atlanta, Ga. 30319

**Re: Sprint federal filing to grandfather LD service to existing customers**

Sprint Communications Company L.P. ("Sprint") has made a federal 214 filing to grandfather all of its existing consumer and business long distance services (with the exception of TRS casual caller service). The asked for effective date of this filing was January 5, 2015. In connection with this filing, Sprint is providing you notice that it will no longer accept new PICed customers. Sprint's federal 214 application to grandfather its consumer and long distance services to existing customers was approved on December 22, 2014.

This will require some action on your part. First, please remove any opportunities in your "equal access" scripts for new customers to choose Sprint or be assigned to Sprint. Second, please note that Sprint will continue to accept growth on existing business accounts, so procedures will need to remain in place for existing business customers to add growth LD service.

Sprint recognizes that often a central management company handles this type of information for a group of companies. To make sure that this notice gets to all of your LEC affiliates in a timely manner, please share this information with them.

Sprint recognizes that many LECs require customers to call the LEC to add long distance circuits or to make a PIC change. In those circumstances where a current Sprint business customer calls for new service, the LEC should honor that request and send the information on the new service to Sprint using current CARE procedures. Sprint often sends existing customer growth requests to the LEC through its current electronic bonding procedures. The LEC should honor such requests coming from Sprint. To the extent necessary, Sprint representatives will cooperate with customers to make any required calls to the LEC to facilitate the addition of new service for existing business accounts.

With the FCC approval of Sprint's 214 application to grandfather consumer and business services to existing customers, Sprint will no longer accept any new customers. To avoid customer confusion, Sprint requests that the LEC review its PIC choice scripting and processes in order to assure that new customers are not allowed by the LEC to PIC Sprint. Sprint has grandfathered current customers and will not accept new PIC assignment or choice after January 5, 2015.

If you have any questions concerning this matter, please call Jim Severance at 913.315.3339 or e-mail him at [james.w.severance@sprint.com](mailto:james.w.severance@sprint.com).

Sincerely,

Sprint