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September 19, 2003

**VIA FEDERAL EXPRESS AND
ELECTRONIC MAIL**

Luly E. Massaro, Clerk
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

Re: Docket No. 3550 - DPUC Implementation of the Federal Communications
Commission's Triennial Review Order - Comments on Procedure Schedule
and Discovery

Dear Ms. Massaro:

Cox Rhode Island Telcom, L.L.C. ("Cox"), through its attorneys, submits an original and nine copies of this letter in lieu of comments on proposed discovery procedures and scope in the above-referenced docket.

As a facilities-based provider of competitive telephone services in Rhode Island, Cox does not rely heavily on unbundled network elements ("UNEs"). Instead, Cox relies almost exclusively on self-provisioning of the facilities required to provide its customers with service. It does not, at this juncture, anticipate promulgating extensive discovery on other parties.

However, Cox anticipates that it will receive discovery requests from the incumbent local service exchange provider ("ILEC") as well as from other competitive local exchange carriers as they seek to prove their respective cases regarding the existence, or lack thereof, of impairment.

Cox and other new entrants' ability to respond in a meaningful and timely fashion to a blizzard of discovery requests is limited by available resources and data collection systems.

The initial information gathering process must be efficient if it is to work at all. As a result, the Commission must ensure that all discovery is narrowly focused and relevant. Cox understands the desire of various parties to obtain necessary information and materials in the discovery phase of this proceeding in an effort to prove their case. That desire must be balanced by the burden unlimited discovery will impose.

To facilitate an orderly discovery process, the Commission should require the parties to submit a list of proposed “base” discovery questions. The preliminary list would then be reviewed by the parties and the “base” discovery questions promulgated fairly quickly. Cox anticipates that this round would be limited to questions relating solely to the existence of the FCC specified triggers. This base discovery should be further limited in scope by requiring the ILEC to identify the geographic territories with respect to which it believes the triggers might be satisfied and where it plans to mount a challenge to the FCC’s finding of impairment.

A second round of interrogatories would follow wherein each company could seek to prove other components of its case. For this round, to avoid the inevitable tendency for discovery to become overbroad and burdensome, the existing discovery procedures must, given the difficult and unique nature of this proceeding, be modified to require that the party submitting interrogatories rank them in order of priority. The responding parties would then endeavor to respond first to the priority questions of all parties and, if resources and time permit, to the remaining questions.

It is likely that either the first “base” round or the second round of discovery would seek information that is proprietary or confidential and an adequate protective order must be in place. To the extent information is sought on a very granular basis about Cox’s self provisioning of switching, transport, and high capacity loops, and the identity of specific customers, release of the information to Cox’s competitors has immeasurable potential to cause grievous competitive harm to Cox. It would be exceedingly ironic if a proceeding brought to further facilities-based competition in the state requires existing competitors to provide information that ultimately destroys nascent competition.

At a minimum, the protective order adopted must create two tiers or categories of data. The first would be information that is sensitive but that can be made available to parties for use in this proceeding including granting access to their in-house subject matter experts and their in-house counsel. The second tier would involve information that is so competitively sensitive that its release should be limited to the Division, the Commission, and outside experts and outside counsel for the parties. For information in the second tier, the protective order should ensure that a limited number of copies are circulated, that the information is marked “Do Not Copy” and that the materials are returned at the end of the proceeding.

Cox is willing to submit a draft protective order for review and comment by the parties.

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Please time and date-stamp the extra copy of this letter and return it to me in the enclosed self-addressed, stamped envelope.

If you have any questions regarding this filing, please contact me.

Respectfully submitted,

A handwritten signature in cursive script that reads "Brian T. Fitzgerald / BTF".

Brian T. Fitzgerald (#6568)

BTF/rsb

Enclosure

cc: Jennifer J. Marrapese, Esq.
Service List (via Email and First Class Mail)