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**Alexander V. Netchvolodoff**  
Senior Vice President of Public Policy

January 9, 2002

**VIA HAND DELIVERY**

Magalie Roman Salas, Esq.  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

**Re: Written Ex Parte  
GN Docket No. 00-185 – Inquiry Concerning High-Speed Access to  
the Internet Over Cable and Other Facilities**

Dear Ms. Salas:

Cox Communications, Inc. and its subsidiaries (“Cox”) respectfully submit this letter to provide further information regarding Cox’s cable modem service and cable telephone service, in response to contentions in the above-captioned proceeding regarding these two categories of services. In particular, Earthlink Inc. (“Earthlink”) asserts that cable operators cannot provide cable telephone service and cable modem service “under two separate regulatory regimes” – i.e., because cable telephone service is a telecommunications service, cable modem service also must be a telecommunications service.<sup>1</sup> These contentions are contrary to the dictates of the Communications Act.

Congress expressly recognized that a cable operator can engage in different lines of business and can provide simultaneously cable services, telecommunications services and information services over its facilities. As the Fourth Circuit explained in invalidating a local ordinance requiring a cable operator to provide multiple Internet service providers (“ISPs”) access to the cable modem platform,

[T]he Communications Act recognizes that some facilities can be used to provide more than one type of communications service, and it expressly contemplates that these multi-purpose facilities will receive different regulatory treatment depending on which particular service they are being used to provide. . . . Thus,

<sup>1</sup> Reply Comments of Earthlink, Inc., *In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, GN Docket No. 00-185, 1-5 (submitted Jan. 10, 2000) (“Earthlink Reply Comments”).

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under the Act, the same facilities can be regulated differently depending on the service they are providing at a given time.<sup>2</sup>

The Communications Act dictates that the Commission determine the regulatory classification of each service independently.<sup>3</sup> Cox therefore complies with the Title VI cable service regulatory framework in providing cable television service and abides by applicable Title II telecommunications service regulatory obligations in providing competitive cable telephone service. As discussed in Cox's prior submissions in this proceeding, the characteristics of cable modem service make it, not a telecommunications service, but both an information service and a cable service subject to Titles I and VI, as defined by the Communications Act.

Cox and other cable operators provision and offer residential cable television service, cable telephone service and cable modem service as separate products.<sup>4</sup> No service is a subset or component of another. Cox's provision of cable modem service does not involve the bundling of an ISP "component" with the cable telephone service, nor merely the conditioning of lines or addition of equipment to the cable telephony platform. Each service offered by Cox is entirely independent in its technology configuration, bandwidth allocation, customer functions and offering to the public.<sup>5</sup>

Cox offers to the public a circuit-switched telephone service that, like plain old telephone service ("POTS") and digital subscriber line ("DSL") service, provides a pure transmission path to transmit any information in any protocol to any destination of the customer's choosing. The customer can send a voice call or facsimile transmission to an individual, a data call to any ISP of the customer's choice to request Internet access service from that ISP, or a data transmission to an office's corporate local area network.<sup>6</sup> Cox's circuit-switched cable telephone service thus

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<sup>2</sup> *MediaOne Group, Inc. v. County of Henrico*, 257 F.3d 356, 364 (4th Cir. 2001).

<sup>3</sup> As Earthlink stated, "just as 'a cable operator does not lose its identity as a cable operator simply by offering additional types of services, it is equally true that a LEC does not lose its statutorily-defined identity as a local exchange carrier simply by being engaged in other lines of business.'" Earthlink Reply Comments at 1 (footnote omitted). A cable operator does not lose its separate regulatory identity as a cable modem service provider (i.e., a cable service and information service provider) simply by offering a separate local exchange service.

<sup>4</sup> Cox also provides private line service to business customers by installing new facilities entirely separate from the cable network, using the business model of competitive local exchange carriers such as the old Teleport Communications Group.

<sup>5</sup> Cox uses different parts of the spectrum, different customer premises equipment and different network equipment to provide each of its services.

<sup>6</sup> Cox's cable telephone service transmits data at the same narrowband rate as POTS. Current technology and network architecture do not allow high-speed data transmission over the circuit-switched cable telephony platform.

satisfies the definition of a telecommunications service, and Cox fully complies with applicable Title II requirements in the provision of this service.<sup>7</sup>

Cox's cable telephone service is far from being "equivalent" to its cable modem service.<sup>8</sup> Cable modem service does not offer a pure transmission path, but instead provides an enhanced service that integrates high-speed Internet access, content, information and other services. As detailed in Cox's prior submissions, Cox does not and cannot transmit information over the cable modem platform without performing enhanced information service functions. Cox has never offered directly to the public for a fee a pure transmission service over the cable modem platform, as required by the Communications Act telecommunications service definition. Accordingly, Cox's cable modem service is not a telecommunications service, but an information service and a cable service.<sup>9</sup>

We hope that the foregoing discussion will facilitate the Commission's analysis. Please do not hesitate to contact us if we can provide you with additional information.

Respectfully submitted,



Alexander V. Netchvolodoff

cc: W. Kenneth Ferree, Esq.  
Sarah Whitesell, Esq.  
Royce Sherlock, Esq.  
John Berresford, Esq.

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<sup>7</sup> Cox must vastly over-allocate spectrum to the circuit-switched cable telephone service in order to satisfy the common carrier requirements of this lifeline service.

<sup>8</sup> See Earthlink Reply Comments at 5.

<sup>9</sup> Moreover, the high bandwidth demands of cable television service and cable telephone service, discussed above, limit the amount of spectrum available for Cox's cable modem service – another factor that prevents Cox from providing unlimited access as a common carrier over the cable modem platform.