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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	CC Docket No. 01-338
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147

REPLY COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc. ("Cox"), by its attorneys, hereby submits its reply comments in the above-referenced proceeding.[1] For the reasons described below, the Commission should adopt the procedures implemented by the California Public Utility Commission ("CPUC") to govern adoptions of interconnection agreements pursuant to Section 252(i) of the Communications Act of 1934, as amended.[2] MCI has urged the Commission to adopt these CPUC procedures, and Cox wholeheartedly agrees with MCI's recommendation. Moreover, certain incumbent local exchange companies ("ILECs") have attempted to subvert the adoption process for their own purposes by attempting to impose new and unnecessary requirements on CLEC adoptions. The Commission should re-focus the adoption process on the intent of Congress to permit free adoption of existing interconnection agreements by prohibiting these

[1] Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability, *Report and Order on Remand and Further Notice of Proposed Rulemaking*, FCC 03-36, CC Docket Nos. 01-338, 96-98, 98-147 (rel. Aug. 21, 2003) (as context requires, the *"Notice"* or the *"Triennial Review Order"*).

[2] 47 U.S.C. § 252(i).

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practices. Like MCI, Cox has suffered abuse in Section 252(i) adoptions. Commission action is necessary to curb this unacceptable behavior.[3]

I. Introduction

For the reasons explained in its comments, Cox supports the Commission's retention of the current pick and choose rule because that mechanism is the best way to give competitive local exchange carriers ("CLECs") an opportunity to obtain interconnection on the terms and conditions most suited to their businesses.[4] MCI's comments also urge the Commission to retain this rule.

These reply comments respond to the MCI comments that address matters of crucial importance to CLEC adoption rights under Section 252(i).[5] As MCI proposes, Commission action is necessary to ensure that adoptions can be accomplished in an efficient and effective manner. In most jurisdictions outside California, Section 252(i) adoptions can be unnecessarily complicated and uncertain. Adoption of a uniform and streamlined process to be applied nationwide will bring much-needed order to such adoptions.

Over the last eighteen months, Cox has engaged in protracted efforts to adopt a series of interconnection agreements to enable it to serve its customers. In that time, Cox has devoted substantial time and expense in negotiations with incumbent local exchange carriers. For example, in the past two years, four of the five replacement interconnection agreements Cox adopted with two major ILECs involved extended negotiations instead of a simple administrative procedure. It took Cox from three to seven months to obtain these agreements.

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[3] Cox continues to support the approach described in its initial comments in this proceeding, but believes that the MCI proposal should be adopted as well.

[4] 47 C.F.R. § 51.809.

[5] Comments of WorldCom, Inc. ("MCI") at 20-2.

This process has furnished Cox with abundant experience in the various methods employed by ILECs attempting to impose non-statutory requirements on CLECs adopting interconnection agreements. In some cases, Cox has encountered tactics similar to those identified in MCI's comments, including demands that Cox accede to the ILEC's interpretation of an agreement, attempts to change provisions of an agreement and long delays between a request and completion of the adoption process.

For that reason, Cox supports MCI's recommendation that the Commission adopt rules incorporating the procedures established by the CPUC ("CPUC Rule 7") to govern Section 252(i) adoptions.[6] These rules increase certainty and make it difficult for ILECs to game the process by making adoption nearly automatic. Adopting the California procedures will go a long way toward curtailing the abusive practices now being employed by ILECs. The Commission also should determine that ILECs are not permitted to impose any conditions other than those specifically contemplated by the rules implementing Section 252(i).

II. The Commission Should Adopt the CPUC's Adoption Procedures.

Cox supports MCI's recommendation that the Commission adopt the procedures in CPUC Rule 7 as a rule for general applicability across the country for Section 252(i) adoptions. As described below, that rule provides for a simple, CLEC-driven process for quick adoption of existing agreements. Adopting this rule would streamline what has become a cumbersome process in jurisdictions other than California.

Cox has experience with CPUC Rule 7 through adoptions of agreements in which either SBC or Verizon is a party in California. This experience has impressed upon Cox the value of

[6] See Resolution 181, *California Public Utilities Commission Revised Rules Governing Filings Made Pursuant to the Telecommunications Act of 1996*, Rule 7, "Process for Adopting a Previously Approved Agreement (or Portions of an Agreement) Pursuant to 252(i)," 2000 Cal. PUC LEXIS 864 (2000).

such rule provisions. In December of 2001, Cox employed CPUC Rule 7 to adopt a replacement interconnection agreement with SBC-Pacific Bell, and in July of 2002, Cox employed the same procedures in its adoption of a replacement agreement with Verizon-California. Cox was able to adopt these agreements in an acceptable period of time and to avoid the improper conditions that ILECs have sought to impose unilaterally on Cox adoptions in other states.

While it is desirable to memorialize the adoption of an agreement, reducing the adoption to writing should not offer ILECs an opportunity for seeking either changes in the underlying agreement or additional benefits. Section 252(i) merely requires ILECs to make interconnection, services and network elements available to CLECs. Nowhere does it authorize ILECs to approve adoptions, let alone withhold approval until other concessions have been granted by CLECs. Accordingly, Section 252(i) is satisfied merely by a CLEC's notification to an ILEC that an adoption has taken place. Agreeing to the proper wording of an adoption letter should be no more than an administrative step.

CPUC Rule 7 furnishes straightforward procedures that permit a CLEC to notify the ILEC and the CPUC of the CLEC's intent to adopt. The ILEC has 15 days to agree to the proposal or oppose the adoption and seek arbitration. Importantly, the adoption goes into effect at the end of this period if the ILEC elects not to respond. The only justification for arbitration is to determine whether the adoption satisfies the Commission's pick and choose rule. There are only two grounds for contesting the request: the adoption either (a) is technically infeasible; or (b) would lead to higher costs than under the underlying agreement. If the ILEC cannot demonstrate the presence of one of these two grounds, then arbitration is not granted and the terms of the adopted agreement go into effect at the end of the 15-day period.

The CPUC procedures offer three important benefits that commend their adoption by the Commission for nationwide application. First, they speed up adoption by setting a deadline for final action. Also, they limit any objection to only the issues recognized as legitimate concerns by the Commission. Finally, they eliminate incentives for trying to alter the underlying agreement's terms. For these reasons, Cox encourages the Commission to adopt these procedures as components of its pick and choose rule.

III. The Commission Should Re-focus Adoptions on the Intent of Congress by Curbing Inappropriate Behavior.

The importance of adopting the California approach is confirmed by Cox's experience. Cox has found that some ILECs are transforming the Section 252(i) process into a protracted negotiation, often over irrelevant matters, but sometimes over an ILEC's attempt to significantly alter the adopted agreement. As highlighted in MCI's comments, Cox has encountered ILECs' attempts to alter the terms of the underlying agreement being adopted.

Such ILECs make unilateral attempts to change the agreement's terms to be more favorable to the ILEC. When Cox notifies an ILEC of its adoption of either all or a portion of an interconnection agreement, Cox generally is presented with a demand that it execute an adoption letter drafted by the ILEC ("ILEC Letter"). Two ILECs have routinely responded to Cox's inquiries by sending standard-form ILEC Letters that memorialize adoptions but also include substantive limitations on the terms of the agreement or require Cox to agree to the ILEC's interpretation of certain provisions.

Several provisions of these ILEC Letters are contrary to the basic requirements for adoption; however, Cox has been unable to date to persuade either ILEC to make any significant

change in those terms.[7] As a result, Cox has been unable to execute the ILEC Letters as proposed, and instead is required to enter into negotiations regarding the documents to be used and filed for adoption. In the case of one ILEC, Cox has drafted a responding letter for submission to the state commission along with the ILEC Letter. The Cox letter explains the few points of agreement between the two parties and the more numerous areas in which Cox disagrees with the ILEC Letter. Typically, the ILEC has agreed to append an explanation at the end of its ILEC Letters, stating that Cox agrees with only a minority of the textual provisions and is not executing the ILEC Letter but is instead responding in its own letter. Both of these letters are submitted to state commissions as a means of memorializing the parties' understanding of the adoption. Examples of an actual ILEC Letter from this carrier and the corresponding Cox Letter are attached as Exhibit A.

In the case of the other ILEC, after extensive negotiations required to, among other things, restore the change-of-law and termination provisions of the underlying adopted agreement, the ILEC has agreed to recast its proclamations and reservations in the first person ("*The Parties acknowledge...*" becomes "*ILEC acknowledges...*") and to include a section for Cox to assert its position (i.e., that it disagrees with the ILEC's recitation and believes that the recitation does not belong in the adoption document). Examples of an actual ILEC Letter from this carrier, before and after Cox's extensive negotiations and modifications, are attached as Exhibit B.

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[7] One company's ILEC Letters attempt to: (a) impose conditions upon its acceptance of the adoption itself and (b) create conditions under which the company could later unilaterally reject implementation of the adopted terms. The other company's ILEC Letter invariably includes numerous paragraphs detailing the company's interpretation of legal and regulatory rulings that affect obligations under the agreement and often grants the company new and/or novel rights not otherwise afforded it under the Act. As described below, the ILEC Letters also routinely include "change-of-law" and termination provisions that directly contradict the change-of-law and termination terms of the underlying agreements.

When these adoption exercises began, Cox sought to persuade these ILECs to abandon their demands that the ILEC Letters should essentially be legal briefs. Both ILECs insisted that adoption letters espouse legal and regulatory positions and arguments on a number of issues. This practice persisted even after Cox pointed out to both ILECs that many of these issues were tangential, if not wholly irrelevant. When it became clear, after a great deal of discussion, that no party could change the other's mind on this point, Cox acceded to the two-letter approach with one ILEC and a two-section approach with the other.

Of course, all this discussion took place while time was running out on the term of the underlying agreement or, as is the case with Cox's current adoption negotiations with one of the ILECs, before Cox could begin providing service in an area. The Commission's establishment of a straightforward process and a deadline for final action on adoptions by jurisdictions other than California would work to preserve the time value of all underlying agreements.

ILECs also have sought to insert special terms that would override the change-of-law or termination provisions of underlying agreements. Cox believes that the change-of-law and termination provisions found in the adopted agreements are satisfactory and that there is no justification for overriding them. However, certain ILECs attempt to add special conditions during the adoption process that would automatically trigger important changes in the underlying agreement upon the occurrence of some event.

Such a triggering event could be the Commission's issuance of a ruling after the adoption becomes effective. Under such provisions, interminable arguments between the parties would ensue, beginning with whether a Commission ruling is even relevant to the underlying agreement. It is impossible to predict the impact of future legal and regulatory rulings; therefore, more – not less – flexibility is called for in change-of-law provisions. Thus, it makes little sense

for the parties to bind themselves to particular action in such events. Indeed, the prudent course would be, as the underlying adopted agreements provide, to negotiate mutually-agreeable changes in the parties' rights and obligations, only after the parties have fully analyzed the future event's effect on the underlying agreement.

As the ILEC Letters attached at Exhibit A and Exhibit B clearly demonstrate, ILECs have an abiding interest in enforcing their positions on various legal and regulatory matters. The language employed by ILECs goes far beyond merely preserving their ability to assert positions in future proceedings. It constitutes an attempt to coerce CLECs into abandoning their own right or into agreeing with the interpretations being advocated by the ILECs as a means of achieving adoptions within a reasonable period of time. There is nothing in Section 252(i) that authorizes ILECs to demand such concessions as a condition of adoption. The Commission should rule, in the strongest possible terms, that such behavior is impermissible.

IV. Conclusion

For all these reasons, Cox Communications, Inc., respectfully requests that the Commission retain its current pick and choose rules and adopt additional rules incorporating the CPUC Rule 7 procedures for nationwide applicability to Section 252(i) adoptions. Such rules will help re-focus the adoption process to conform to the congressional intent to reduce the burdens of obtaining interconnection and will bring much-needed order to adoptions in all jurisdictions. Additionally, the Commission should condemn ILEC practices that delay and

obstruct adoptions and forbid ILECs from imposing any conditions other than those explicitly permitted by the Commission's rules on the adoption of interconnection agreements.

Respectfully submitted,

COX COMMUNICATIONS, INC.

By: _____
J.G. Harrington
Jason E. Rademacher

Its Attorneys

Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036

(202) 776-2000

November 10, 2003

EXHIBIT A

Cox-ILEC Adoption – "Two Letter" Example

ILEC Letter (as filed)

[Date]

Donald L. Crosby
Senior Counsel
Cox [_____] Telcom, Inc.
1400 Lake Hearn Drive
Atlanta, GA 30319

Re: Requested Adoption Under Section 252(i) of the TA96

Dear Mr. Crosby:

[ILEC], a [State] corporation, with principal place of business at [_____], has received your letter stating that, under Section 252(i) of the Telecommunications Act of 1996 (the "Act"), Cox [_____] ("Cox"), a [_____] corporation with its principal place of business at [_____], wishes to provide services to customers in [ILEC]'s territory, by adopting the Tandem Transit Traffic Service terms of the Interconnection Agreement between [CLEC] and [ILEC] ("[CLEC] Agreement") that was approved by the [_____] as an effective agreement in [_____], as such agreement exists on the date hereof after giving effect to operation of law (the "[ILEC] Tandem Transit Terms"). I understand you have a copy of the [ILEC] Tandem Transit Terms, which in any case, are attached hereto as Appendix 1. For avoidance of doubt, capitalized terms referenced in Appendix 1 shall be as defined in the [CLEC] Agreement. In addition, a copy of [ILEC]'s pricing terms is attached as Appendix 2. Please note the following with respect to your adoption of the [ILEC] Tandem Transit Terms:

1. By Cox's and [ILEC]'s signatures on this letter, Cox and [ILEC] hereby represent and agree to the following five points (1.A through 1.E):

   (A) Cox and [ILEC] agree to be bound by and Cox adopts in the service territory of [ILEC], the [ILEC] Tandem Transit Terms, as in effect on the date hereof after giving effect to operation of law. In applying the [ILEC] Tandem Transit Terms, agrees that Cox shall be substituted in place of [CLEC] in the [ILEC] Tandem Transit Terms wherever appropriate.

   (B) Notice to Cox and [ILEC] as may be required under the [ILEC] Tandem Transit Terms shall be provided as follows:

   To Cox:

   [_____]

   And to:

   [_____]

To [ILEC]:

[_____]

with a copy to:

[_____]

(C) Cox represents and warrants that it is a certified provider of local telecommunications service in [_____], and that its adoption of the [ILEC] Tandem Transit Terms will only cover services in the service territory of [ILEC] in [_____].

(D) In the event an interconnection agreement between [ILEC] and Cox is currently in effect in [_____] (the "Original ICA"), this adoption shall be an amendment and restatement of the Tandem Transit terms and conditions of the Original ICA, and shall replace in their entirety the terms of the Original ICA. This adoption is not intended to be, nor shall it be construed to create, a novation or accord and satisfaction with respect to the Original ICA. Any outstanding payment obligations of the parties that were incurred but not fully performed under the Original ICA shall constitute payment obligations of the parties under this adoption.

(E) [ILEC]'s standard pricing schedule for interconnection agreements in [_____] (as such schedule may be amended from time to time) (attached as Appendix 2 hereto) shall apply to Cox's adoption of the [ILEC] Tandem Transit Terms. Cox should note that the aforementioned pricing schedule may contain rates for certain services the terms for which are not included in the [ILEC] Tandem Transit Terms or that are otherwise not part of this adoption. In an effort to expedite the adoption process, [ILEC] has not deleted such rates from the pricing schedule. However, the inclusion of such rates in no way obligates [ILEC] to provide the subject services and in no way waives [ILEC]'s rights.

2. Cox's adoption of the [ILEC] Tandem Transit Terms shall become effective on May 9, 2003. The term and termination provisions of the [CLEC]/[ILEC] agreement shall govern Cox's adoption of the [ILEC] Tandem Transit Terms. Cox's adoption of the [ILEC] Tandem Transit Terms is currently scheduled to expire on October 7, 2005.

3. As the [ILEC] Tandem Transit Terms are being adopted by you pursuant to your statutory rights under section 252(i), [ILEC] does not provide the [ILEC] Tandem Transit Terms to you as either a voluntary or negotiated agreement. The performance by [ILEC] of the [ILEC] Tandem Transit Terms does not in any way constitute a waiver by [ILEC] of any position as to the [ILEC] Tandem Transit

Terms or a portion thereof, nor does it constitute a waiver by [ILEC] of all rights and remedies it may have to seek review of the [ILEC] Tandem Transit Terms, or to seek review in any way of any provisions included in these [ILEC] Tandem Transit Terms as a result of Cox's 252(i) election.

4. Nothing herein shall be construed as or is intended to be a concession or admission by [ILEC] that any provision in the [ILEC] Tandem Transit Terms complies with the rights and duties imposed by the Act, the decisions of the FCC and the Commissions, the decisions of the courts, or other law, and [ILEC] expressly reserves its full right to assert and pursue claims arising from or related to the [ILEC] Tandem Transit Terms.

5. [ILEC] reserves the right to deny Cox's adoption and/or application of the [ILEC] Tandem Transit Terms, in whole or in part, at any time:

   (a) when the costs of providing the [ILEC] Tandem Transit Terms to Cox are greater than the costs of providing them to [CLEC];
   (b) if the provision of the [ILEC] Tandem Transit Terms to Cox is not technically feasible; and/or
   (c) to the extent that [ILEC] otherwise is not required to make the [ILEC] Tandem Transit Terms available to Cox under applicable law.

6. Should Cox attempt to apply the [ILEC] Tandem Transit Terms in a manner that conflicts with paragraphs 3-5 above, [ILEC] reserves its rights to seek appropriate legal and/or equitable relief.

7. In the event that a voluntary or involuntary petition has been or is in the future filed against Cox under bankruptcy or insolvency laws, or any law relating to the relief of debtors, readjustment of indebtedness, debtor reorganization or composition or extension of debt (any such proceeding, an "Insolvency Proceeding"), then: (i) all rights of [ILEC] under such laws, including, without limitation, all rights of [ILEC] under 11 U.S.C. § 366, shall be preserved, and Cox's adoption of the [ILEC] Tandem Transit Terms shall in no way impair such rights of [ILEC]; and (ii) all rights of Cox resulting from Cox's adoption of the [ILEC] terms shall be subject to and modified by any Stipulations and Orders entered in the Insolvency Proceeding, including, without limitation, any Stipulation or Order providing adequate assurance of payment to [ILEC] pursuant to 11 U.S.C. § 366.

Please arrange for a duly authorized representative of Cox to sign this letter in the space provided below and return it to the undersigned.

Sincerely,

[_____]

_____

Reviewed and countersigned as to points A, B, C, D and E of paragraph 1:

COX [_____]

By_____

Title_____

While Cox agrees with points A, B, C, D and E of paragraph 1, Cox is not executing this letter. Instead, Cox's interpretation of the Adoption for the operations in [_____] of Cox and [ILEC] of the [ILEC] Tandem Transit Terms is set forth in Carrington F. Phillip's [Date] letter to [_____].

Corresponding Cox Letter (as Filed)

Carrington F. Phillip
Vice President
Regulatory Affairs

Cox Communication, Inc.
1400 Lake Hearn Drive, N.E
Atlanta, Georgia 30319
(404) 843-5791
(404)843-7909

[Date]

[ILEC]

RE: ADOPTION – TRANSIT TRAFFIC TERMS

Dear [_____]:

On [Date], Cox [_____] ("Cox") notified [_____] ("[ILEC]") of Cox's adoption, for the operations of Cox and [ILEC], of the Tandem Transit Traffic Service terms (" [ILEC] Tandem Transit Terms") of the Interconnection Agreement between [CLEC] and [ILEC] approved by the [_____] on [Date], in [_____]. This adoption was made pursuant to Section 252(i) of the Communications Act of 1934, as amended ("Section 252(i)"). Cox's adoption of the [ILEC] Tandem Transit Terms shall be referred to herein as the "Adoption."

Representatives of Cox and [ILEC] held discussions thereafter to determine whether the parties could execute a single understanding to memorialize the Adoption; however, they were unable to reach agreement on the wording of such a single document. Accordingly, the parties concluded that their understanding should be memorialized by two separate letters, each explaining that party's interpretation of the Adoption. [ILEC]'s letter of [Date] ("[ILEC] Letter"), presents its interpretation of the Adoption. Cox is not executing the [ILEC] Letter at the place provided at the end for Cox's signature. Instead, a notation appears there to explain that Cox's interpretation of the Adoption is expressed in this letter. This letter sets forth Cox's interpretation and is intended to be given weight equal to that of the [ILEC] Letter in determining the understanding of the parties.

Cox summarizes below, in response to the [ILEC] Letter by paragraph and numbered section, its interpretation of the Adoption and points out areas of agreement and disagreement.

At the end of the first sentences in the opening paragraph and in section 1(A) of the [ILEC] Letter, [ILEC] refers to the [ILEC] Tandem Transit Terms being adopted as they exist and as in effect "on the date hereof after giving effect to operation of law." Cox understands this provision to mean that, on [Date], the terms of the [ILEC] Tandem Transit Terms are those approved by the [_____] on [Date], as modified by any relevant legal decisions handed down between that approval date and the date of the Adoption. Cox is unaware of any such legal decision having been rendered during this period, and [ILEC] has not brought to Cox's attention any such decision. Therefore, in Cox's view, the terms of the [ILEC] Tandem Transit Terms are those approved by the [_____] on

[Date], and remain unaffected by "operation of law." Further, Cox believes that it is incumbent upon each party to ascertain whether any such decision has been rendered during this period and, if so, to incorporate it into the adoption process, thereby reaching an understanding between the parties as to the impact such a decision would have on the parties' operations pursuant to the Adoption.

Cox agrees with sections 1, 1(A)(with the interpretation explained above), 1(B), 1(C), 1(D) and 1(E) of the [ILEC] Letter.

Cox agrees with section 2 of the [ILEC] letter only to the extent that [Date] is the effective date of the Adoption. Cox disagrees with the balance of section 2 and believes that the relevant agreements speak for themselves.

Cox believes that sections 3, 4, 5, 6 and 7 of the [ILEC] letter should not be a part of the Adoption. Cox does not agree with [ILEC]'s positions set out in those sections and rejects those positions. Moreover, Cox does not waive any right and expressly reserves all of its rights to dispute at any time [ILEC]'s interpretation of law expressed in those sections of the [ILEC] Letter.

In sections 5 and 6 of the [ILEC] letter, [ILEC] attempts to impose conditions upon its acceptance of the Adoption and to create conditions under which [ILEC] could later reject implementation of adopted terms. Cox objects to this effort as being contrary to the requirements of Section 252(i). Cox believes that all conditions required for the Adoption have been met and that [ILEC] may not reserve a right to later deny that any such condition has been met. [ILEC] is not free, under federal or state law, to impose any unilateral condition upon the Adoption. Cox intends to abide by these statements of federal and state law as interpreted by the appropriate authorities but does not accept [ILEC]'s interpretations and is not bound by them. Moreover, Cox does not waive any right and expressly reserves all of its rights to dispute at any time [ILEC]'s interpretation of law expressed in those sections of the [ILEC] Letter.

Sincerely,

Carrington F. Phillip
Vice President, Regulatory Affairs
Cox Communications, Inc.

EXHIBIT B

Cox-ILEC Adoption – "One Letter" Example

ILEC Letter (as Originally Proposed)

INTERCONNECTION AGREEMENT

UNDER SECTIONS 251 AND 252

OF THE

TELECOMMUNICATIONS ACT OF 1996

by and between

[ILEC]

and

COX [_____]

INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996

This Interconnection Agreement (this "Agreement"), under Sections 251 and 252 of the Telecommunications Act of 1996 (the "Act"), is effective as of the ____ day of _____, 2002 (the "Effective Date"), by and between The [_____] ("ILEC"), with its principal place of business at [_____], and Cox [_____] ("CLEC") with its principal place of business at [_____] (each a "Party" and, collectively, the "Parties").

WHEREAS, CLEC has requested that [ILEC] make available to CLEC interconnection service and unbundled network elements upon the same terms and conditions as provided in the Agreement for Network Interconnection and Resale between [OTHER CLEC] and [ILEC], approved by the [_____] under Section 252 of the Act on January 10, 1997 in [_____] (the "Separate Agreement"), a true and correct copy of which will be attached as Appendix 1 hereto; and

WHEREAS, [ILEC] has undertaken to make such terms and conditions available to CLEC hereby only because of and, to the extent required by, Section 252(i) of the Act subject to the reservations set forth below; and

WHEREAS, by executing this Agreement providing certain rates, terms and conditions, [ILEC] reserves all appellate rights with respect to such rates, terms and conditions and does not waive any legal arguments by executing this Agreement. It is [ILEC]'s intent and understanding of state and federal law, that any negotiations, appeal, stay, injunction or similar proceeding which impacts the applicability of such rates, terms or conditions to the underlying Agreement will similarly and simultaneously impact the applicability of such rates, terms and conditions to CLEC under this MFN. In the event that any of the rates, terms and/or conditions herein, or any of the laws or regulations that were the basis for a provision of the Agreement, are invalidated, modified or stayed by any action of any state or federal regulatory bodies or courts of competent jurisdiction, including but not limited to any decision by the Eighth Circuit relating to any of the costing/pricing rules adopted by the FCC in its First Report and Order, *In re: Implementation of the Local Competition Provisions of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996), (e.g., Section 51.501, et seq.), upon review and remand from the United States Supreme Court, in *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366 (1999) (and on remand *Iowa Utilities Board v. FCC*, 219 F.3d 744 (8th Cir. 2000)) or *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (June 1, 1999), the Parties shall immediately incorporate changes from the underlying Agreement, made as a result of any such action into this Agreement. Where revised language is not immediately available, the Parties shall expend diligent efforts to incorporate the results of such Actions into this Agreement on an interim basis,

but shall conform this Agreement to the underlying Agreement, once such changes are filed with the Commission ; and

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CLEC and [ILEC] hereby agree as follows:

1.0 Incorporation of Appendices by Reference

1.1 Except as expressly stated herein, the terms and conditions of Appendix 1 hereto (with all schedules and exhibits thereto) are incorporated by references in their entirety herein and form an integral part of this Agreement. Such incorporation is of the separate agreement as in effect on the date hereof after giving effect to operation of law. Pending the physical attachment of the Separate Agreement as Appendix 1 hereto, the parties hereby incorporate herein by reference the terms and conditions of the Separate Agreement as filed in Commission docket number 96-09-08. Notwithstanding the above, the attachments to the Separate Agreement pertaining to Meet Point Billing has been separately negotiated between the Parties and the attachments pertaining to Operator Services and/or Billing Services Agreements need be separately negotiated, upon the Parties mutual consent, at a later time.

1.2 References in Appendix 1 hereto to OTHER CLEC or to OTHER shall for purposes of this Agreement be deemed to refer to CLEC.

1.3 References in Appendix 1 hereto to the "Effective Date", the date of effectiveness thereof and like provisions shall for purposes of this Agreement be deemed to refer to the date first written above. Unless terminated earlier in accordance with the terms of Appendix 1 hereto, this Agreement shall continue in effect until July 23, 2002 (the "Termination Date").

1.4 Notices to CLEC under Appendix 1 hereto shall be sent to the following address:

[_____]

With copy to: [_____]

1.5 Notices to [ILEC] under Appendix 1 hereto shall be sent in accordance with the provisions of the Separate Agreement.

2.0 Clarifications

2.1 The entry into, filing and performance by [ILEC] of this Agreement does not in any way constitute a waiver by [ILEC] of any of the rights and remedies it may have to seek review of any of the provisions of the Separate Agreement, or to petition the Commission, other administrative body or court for reconsideration or reversal of any determination made by any of them, or to seek review in any way of any portion of this Agreement in connection with CLEC's election under Section 252(i) of the Act.

2.2 The Parties acknowledge that on January 25, 1999, the United States Supreme Court issued its opinion in *AT&T Corp. v. Iowa Utilities Bd.,* 525 U.S. 366 (1999) (and on remand *Iowa Utilities Board v. FCC*, 219 F.3d 744 (8th Cir. 2000)) and on June 1, 1999 issued its opinion in *Ameritech v. FCC*, No.98-1381, 1999 WL 116994, 1999 Lexis 3671 (1999). In addition, the Parties acknowledge that on November 5, 1999, the FCC issued its Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-96 (FCC 99-2238), including the FCC's Supplemental Order issued *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, in CC Docket No. 96-98 (FCC 99-370) (rel. November 24, 1999), portions of which became effective thirty (30) days following publication of such Order in the Federal Register (February 17, 2000) and other portions of which become effective 120 days following publication of such Order in the Federal Register (May 27, 2000). By executing this MFN Agreement, and providing certain UNEs and UNE combinations (to the extent provided for under such Agreement), [ILEC] does not waive any of its rights, remedies or arguments with respect to such decision, including its right to seek a modification to the underlying Agreement and this Agreement under the intervening law clause or other provisions of this Agreement to reflect the fact that [ILEC]'s obligation to provision UNEs identified in this Agreement is subject to the provisions of the federal Act, including but not limited to, Section 251(d), including any legally binding interpretation of those requirements that may be rendered by the FCC, state regulatory agency or court of competent jurisdiction. [ILEC] further reserves the right to dispute whether any UNEs identified in the Agreement must be provided under Section 251(c)(3) and Section 251(d) of the Act, and under this Agreement. The Parties acknowledge and agree that pursuant to [_____], approved by [_____] its [_____], [ILEC] was obligated to transition the provisioning of certain Advanced Services, as that term is defined in such [_____], to one or more separate Advanced Services affiliates under certain conditions. Because [ILEC] has transitioned such Advanced Services to its structurally separate affiliate(s), the Parties acknowledge and agree that [ILEC] has no further obligation to make available such Advanced Services for resale or to interconnect its Frame Relay network with CLEC, and has no further

obligation to make available such Advanced Services for resale or to provision Frame Relay interconnection under the rates, terms and conditions set forth herein.

2.4 The Parties further acknowledge that on April 27, 2001, the FCC released its Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, *In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-bound Traffic* (the "ISP Intercarrier Compensation Order.") By executing this MFN and carrying out the intercarrier compensation rates, terms and conditions herein, [ILEC] does not waive any of its rights, and expressly reserves all of its rights, under the ISP Intercarrier Compensation Order, including but not limited to its right to exercise its option at any time in the future to invoke the Intervening Law or Change of Law provisions and to adopt on a date specified by [ILEC] the FCC ISP terminating compensation plan, after which date ISP-bound traffic will be subject to the FCC's prescribed terminating compensation rates, and other terms and conditions.

2.5 Pursuant to the FCC's recent ISP Intercarrier Compensation Order, it is [ILEC]'s position that the reciprocal compensation provisions of the Separate Agreement are not available for adoption under Section 252(i) of the Act. In its ISP Intercarrier Compensation Order, the FCC concluded that MFNs into reciprocal compensation terms associated with the exchange and termination of ISP-bound calls (including legitimately related terms) were cut-off as of the effective date of such Order (May 15, 2001). The FCC also found that as of the date such Order was adopted (April 18, 2001), such terms had already been made available for a reasonable period of time and were no longer available for adoption. The FCC determined that ISP traffic is regulated under an entirely new framework promulgated under Section 201, and not Section 252, of the Act. Thus, because section 201 does not contain a right to adopt intercarrier compensation arrangements, it is [ILEC]'s position that carriers are precluded from adopting any rates, terms and conditions in an interconnection agreement associated with reciprocal compensation. Nevertheless, without waiving its position with respect to the FCC's ISP Intercarrier Compensation Order, but instead fully reserving all of its rights under such Order, [ILEC] has agreed not oppose CLEC's request to adopt the Separate Agreement in its entirety (including the reciprocal compensation rates, terms and conditions). Specifically, [ILEC] has decided not to expend scarce Company (and Department) resources to oppose CLEC's MFN request (as to the reciprocal compensation provisions) given the short amount of time left under the Term of the Separate Agreement and [ILEC]'s expectation that such Separate Agreement (and this MFN Agreement) will be noticed for termination/renegotiation in the near future.

2.6 As set forth above, [ILEC]'s decision not to oppose CLEC's request to adopt the Separate Agreement in its entirety shall not constitute a waiver by [ILEC] as to its positions relating to MFNs into reciprocal compensation rates, terms and conditions in light of the FCC's ISP Intercarrier Compensation Order. In addition, [ILEC]'s decision not to oppose CLEC's MFN request shall not constitute a concession or admission by [ILEC] as to the availability of reciprocal compensation provisions for MFN under

Section 252(i), the appropriateness of the actual reciprocal compensation provisions in the 1997 Separate Agreement that is the subject of CLEC's adoption request, or a concession or admission as to any other issue by [ILEC] that could be introduced or used by CLEC or any third party in any pending or future proceeding before a regulatory body or court of competent jurisdiction.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of this _____ day of _____, 2002.

Cox [_____]	**[ILEC]**
By: _____	By: _____
Printed: _____	Printed: _____
Title: _____	Title: _____
Date: _____	Date: _____

Cox's Negotiated Adoption Letter (as Filed)

INTERCONNECTION AGREEMENT

UNDER SECTIONS 251 AND 252

OF THE

TELECOMMUNICATIONS ACT OF 1996

by and between

[ILEC]

and

COX [_____]

INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996

This Interconnection Agreement (this "Agreement"), under Sections 251 and 252 of the Telecommunications Act of 1996 (the "Act"), is effective as of the twenty-second day of March, 2002 (the "Effective Date"), by and between [_____] ("[ILEC]"), with its principal place of business at[_____], and Cox [_____] ("Cox") with its principal place of business at [_____] (each a "Party" and, collectively, the "Parties").

WHEREAS, Cox intends to adopt the terms and conditions provided in the Agreement for Network Interconnection and Resale between [CLEC] and [ILEC], approved by the [_____] under Section 252 of the Act on January 10, 1997 in docket number [_____] (the "[OTHER CLEC] Agreement"), a true and correct copy of which will be attached as Appendix 1 hereto and is incorporated herein by this reference; and

WHEREAS, [ILEC] has undertaken to make such terms and conditions available to Cox hereby only because of and, to the extent required by, Section 252(i) of the Act subject to the reservations set forth below; and

WHEREAS, by executing this Agreement providing certain rates, terms and conditions, the Parties reserve all appellate rights with respect to such rates, terms and conditions and do not waive any legal arguments by executing this Agreement;

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Cox and [ILEC] hereby agree to Sections 1.0 and 2.0 and Cox and [ILEC] hereby take separate positions in Section 3.0 as follows:

1.0 Incorporation of Appendix by Reference

1.1 Except as expressly stated herein, the terms and conditions of Appendix 1 hereto (with all schedules and exhibits thereto) are incorporated by reference in their entirety herein and form an integral part of this Agreement.

1.2 References in Appendix 1 hereto to OTHER CLEC or to OTHER shall for purposes of this Agreement be deemed to refer to CLEC.

1.3 References in Appendix 1 hereto to the "Effective Date", the date of effectiveness thereof and like provisions shall refer to the Effective Date of this Agreement. Unless terminated earlier in accordance with the terms of Appendix 1

hereto, the Agreement shall continue in effect until July 23, 2002 (the "Termination Date") or, absent the receipt by one Party of written notice from the other Party at least sixty (60) days prior to the Termination Date that such Party does not intend to extend the Term, such later date as may be determined by a request for termination by either Party after the Termination Date, according subsection 18.3 of this Agreement.

1.4 Notices to Cox under Appendix 1 hereto shall be sent to the following address:

[_____]

With copy to: [_____]

1.5 Notices to [ILEC] under Appendix 1 hereto shall be sent in accordance with the provisions of this Agreement".

2.0 No Waiver

2.1 The entry into, filing and performance by [ILEC] and Cox of this Agreement does not in any way constitute a waiver by [ILEC] or Cox of any of the rights and remedies they may have to: (1) seek review of any of the provisions of the Agreement; or (2) to petition the Commission, other administrative body or court for reconsideration or reversal of any determination made by any of them; or (3) to seek review in any way of any portion of this Agreement in connection with Cox's adoption under Section 252(i) of the Act.

3.0 Parties' Positions

3.1 Cox's Position:

Cox believes that Section 3.0 should not be a part of this Agreement. Cox's execution of this Agreement does not imply that Cox agrees with [ILEC]'s positions set out below. Moreover, by executing this Agreement, Cox does not waive any right and expressly reserves all of its rights to dispute at any time [ILEC]'s interpretation of law expressed in Section 3.

3.2 [ILEC]'s Position:

By executing this Agreement, [ILEC] does not agree with Cox's positions set forth in Section 3.1 above and does not waive any of its rights with respect to Cox's assertions, but instead [ILEC] expressly reserves all of its rights in that regard.

3.2.1 [ILEC] acknowledges that on January 25, 1999, the United States Supreme Court issued its opinion in *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366

(1999) (and on remand *Iowa Utilities Board v. FCC*, 219 F.3d 744 (8th Cir. 2000)) and on June 1, 1999 issued its opinion in *Ameritech v. FCC*, No.98-1381, 1999 WL 116994, 1999 Lexis 3671 (1999). In addition, [ILEC] acknowledges that on November 5, 1999, the FCC issued its Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-96 (FCC 99-2238), including the FCC's Supplemental Order issued *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, in CC Docket No. 96-98 (FCC 99-370) (rel. November 24, 1999), portions of which became effective thirty (30) days following publication of such Order in the Federal Register (February 17, 2000) and other portions of which become effective 120 days following publication of such Order in the Federal Register (May 27, 2000). By executing this Agreement, and providing certain UNEs and UNE combinations (to the extent provided for under such Agreement), [ILEC] does not waive any of its rights, remedies or arguments with respect to such decision, including its right to seek a modification to the underlying [CLEC] Agreement and this Agreement under the intervening law clause or other provisions of this Agreement to reflect the fact that [ILEC]'s obligation to provision UNEs identified in this Agreement is subject to the provisions of the federal Act, including but not limited to, Section 251(d), including any legally binding interpretation of those requirements that may be rendered by the FCC, state regulatory agency or court of competent jurisdiction. [ILEC] further reserves the right to dispute whether any UNEs identified in the Agreement must be provided under Section 251(c)(3) and Section 251(d) of the Act, and under this Agreement.

3.2.2 [ILEC] acknowledge and agree that pursuant to the [_____], approved by the [_____] its [_____], it is [ILEC]'s position that [ILEC] was obligated to transition the provisioning of certain Advanced Services, as that term is defined in such Conditions, to one or more separate Advanced Services affiliates under certain conditions. Because [ILEC] has transitioned such Advanced Services to its structurally separate affiliate(s), it is [ILEC]'s position that it has no further obligation to make available such Advanced Services for resale or to interconnect its Frame Relay network with Cox, and has no further obligation to make available such Advanced Services for resale or to provision Frame Relay interconnection under the rates, terms and conditions set forth herein.

3.2.3 [ILEC] further acknowledges that on April 27, 2001, the FCC released its Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, *In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-bound Traffic* (the "ISP Intercarrier Compensation Order.") By executing this Agreement and carrying out the intercarrier compensation rates, terms and conditions in the Agreement, [ILEC] does not waive any of its rights, and expressly reserves all of its rights, under the ISP Intercarrier Compensation Order, including but not limited to its right to exercise its option at any time in the future to invoke the Intervening Law or Change of Law provisions or any other provisions/Sections of the Agreement and to adopt on a date specified by [ILEC] the FCC ISP terminating compensation plan, after which date ISP-bound traffic will be

subject to the FCC's prescribed terminating compensation rates, and other terms and conditions.

3.2.4 Pursuant to the FCC's recent ISP Intercarrier Compensation Order, it is [ILEC]'s position that the reciprocal compensation provisions of the Separate Agreement are not available for adoption under Section 252(i) of the Act. It is [ILEC]'s position that in its ISP Intercarrier Compensation Order, the FCC concluded that MFNs into reciprocal compensation terms associated with the exchange and termination of ISP-bound calls (including legitimately related terms) was cut-off as of the effective date of such Order (May 15, 2001). It is [ILEC]'s position that the FCC also found that as of the date such Order was adopted (April 18, 2001), such terms had already been made available for a reasonable period of time and were no longer available for adoption. It is [ILEC]'s position that the FCC determined that ISP traffic is regulated under an entirely new framework promulgated under Section 201, and not Section 252, of the Act. Thus, based upon [ILEC]'s belief that section 201 does not contain a right to adopt intercarrier compensation arrangements, it is [ILEC]'s position that carriers are precluded from adopting any rates, terms and conditions in an interconnection agreement associated with reciprocal compensation. Nevertheless, without waiving its position with respect to the ISP Intercarrier Compensation Order, but instead fully reserving all of its rights under such Order, [ILEC] has agreed not oppose Cox's request to adopt the [CLEC] Agreement in its entirety (including the reciprocal compensation rates, terms and conditions). Specifically, [ILEC] has decided not to expend scarce Company (and Department) resources to oppose Cox's request to adopt the Agreement (as to the reciprocal compensation provisions) given the short amount of time left under the Term of the [CLEC] Agreement and [ILEC]'s expectation that such Agreement (and this MFN Agreement) will be noticed for termination/renegotiation in the near future.

3.2.5 As set forth above, [ILEC]'s decision not to oppose Cox's request to request to adopt the [CLEC] Agreement in its entirety shall not constitute a waiver by [ILEC] as to its positions relating to the MFNs into reciprocal compensation rates, terms and conditions in light of the FCC's ISP Intercarrier Compensation Order. In addition, [ILEC]'s decision not to oppose Cox's MFN request shall not constitute a concession or admission by [ILEC] as to the availability of reciprocal compensation provisions for MFN under Section 252(i), the appropriateness of the actual reciprocal compensation provisions in the 1997 [CLEC] Agreement that is the subject of Cox's adoption request, or a concession or admission as to any other issue by [ILEC] that could be introduced or used by Cox or any third party in any pending or future proceeding before a regulatory body or court of competent jurisdiction.

3.2.6 It is [ILEC]'s intent and understanding of state and federal law, that any negotiations, appeal, stay, injunction or similar proceeding which impacts the applicability of such rates, terms or conditions to the underlying [CLEC] Agreement will similarly and simultaneously impact the applicability of such rates, terms and conditions to Cox under this Agreement. In the event that any of the rates, terms and/or conditions

herein, or any of the laws or regulations that were the basis for a provision of the Agreement, are invalidated, modified or stayed by any action (the "Action") of any state or federal regulatory bodies or courts of competent jurisdiction, including but not limited to any decision by the Eighth Circuit relating to any of the costing/pricing rules adopted by the FCC in its First Report and Order, *In re: Implementation of the Local Competition in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996), (e.g., Section 51.501, et seq.), upon review and remand from the United States Supreme Court, in *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366 (1999) (and on remand *Iowa Utilities Board v. FCC*, 219 F.3d 744 (8th Cir. 2000)) or *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (June 1, 1999), the Parties shall promptly incorporate any changes from the underlying [CLEC] Agreement, made as a result of any such Action into this Agreement. Where revised language is not immediately available, the Parties shall expend diligent efforts to incorporate the results of the Actions into this Agreement on an interim basis, but shall conform this Agreement to the underlying [CLEC] Agreement, once such changes are filed with the Commission.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of this _____ day of _____, 2002.

Cox [_____]	**[ILEC]**
By: _____	By: _____
Printed: _____	Printed: _____
Title: _____	Title: _____
Date: _____	Date: _____

CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, a legal secretary at Dow, Lohnes & Albertson, PLLC do hereby certify that on this 10th day of November, 2003, copies of the foregoing Reply Comments of Cox Communications, Inc. were served by hand-delivery to the following:

Chairman Michael K. Powell
Federal Communications Commission
445 12th Street, SW, Room 8-B201
Washington, DC 20554

Commissioner Kathleen Q. Abernathy
Federal Communications Commission
445 12th Street, SW, Room 8-B115
Washington, DC 20554

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, SW, Room 8-A302
Washington, DC 20554

Commissioner Kevin J. Martin
Federal Communications Commission
445 12th Street, SW, Room 8-A204
Washington, DC 20554

Commissioner Jonathan S. Adelstein
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, DC 20554

William Maher, Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-C450
Washington, DC 20554

Vicki Lynne Lyttle

Vicki Lynne Lyttle