Before the
Federal Communications Commission
Washington, DC 20554

In the matter of	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
Lifeline and Link Up	)	WC Docket No. 03-109
Universal Service Contribution Methodology	)	WC Docket No. 06-122
Numbering Resource Optimization	)	CC Docket No. 99-200
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
Intercarrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68
IP-Enabled Services	)	WC Docket No. 04-36

Reply Comments of Cox Communications, Inc.

Cox Communications, Inc. ("Cox"), by its attorneys, hereby submits these reply comments in the above-referenced proceeding.[1] Cox submits these reply comments in support of

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1 *See* High Cost Universal Service Support, Federal-State Joint Board on Universal Service, Lifeline and Link Up, Universal Service Contribution Methodology, Numbering Resource Optimization, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Developing a Unified Intercarrier Compensation Regime, Intercarrier Compensation for ISP-Bound Traffic, IP-Enabled Services, *Order on Remand and Report and Order and Further Notice of Proposed Rulemaking*, CC Docket Nos. 96-45, 99-200, 96-98, 01-92, 99-68, WC Docket Nos. 05-337, 03-109, 06-122, 04-36, FCC 08-262 (rel. Nov. 5, 2008) (the "*Further Notice*").

the comments filed by the National Cable and Telecommunications Association[2] and also to address certain issues related to universal service contributions and the availability of high cost funding to wireline competitive carriers.

In particular, Cox agrees with NCTA that reform of the Commission's intercarrier compensation regime should ensure that all providers of competitive voice services, regardless of the technology used, retain full access to interconnection and numbering resources and are subject to the same termination rates for their traffic throughout any transition process. Cox also agrees with NCTA that the Commission should shorten the proposed transition period from the ten years proposed in the *Further Notice* and should conclude that it is unnecessary to determine the regulatory classification of voice over IP service in this proceeding. Finally, Cox submits that the Commission should retain the identical support rule, at least for wireline providers or, at a minimum, should grandfather existing wireline competitive ETCs by continuing to apply the rule for those carriers.

I. Interconnection and Related Rights Should Be Unaffected by the Technology Used by a Provider.

As a provider of both circuit-switched and IP-based voice services, Cox is well aware of the similarities and differences between these types of services. While the services use different technologies, one critical similarity is that both services require cost-based interconnection; indeed, they are identical in that respect. The Commission previously has recognized the importance of interconnection for voice over IP services, most notably in the *Time Warner Order*.[3] It must continue that commitment here and maintain interconnection rights for all

[2] *See* Comments of the National Cable and Telecommunications Association, filed Nov. 26, 2008 ("NCTA Comments").

[3] Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act, As

competitive voice providers in any new intercarrier compensation regime.[4] The Commission also must recognize that different providers offer voice service using different business models, and that all of these approaches need to be accommodated to avoid creating regulatory disadvantages for particular providers and their customers.[5]

As NCTA notes, the application of interconnection provisions works in both directions, and should be applied to incumbent carriers as well.[6] In the absence of regulatory oversight, incumbent LECs continue to have the ability and the incentive to leverage their market and network power in anticompetitive ways. An incumbent that offers voice over IP service should not be excused from its Section 251 and 252 obligations by virtue of its choice of technology, nor should the incumbent be freed of these obligations based upon its competitors' status as voice over IP service providers. Exempting incumbents on the basis of the technology they (or their competitors) use would have the effect of gutting the interconnection requirements that Congress crafted in 1996, leaving competitive carriers worse off than they were before the 1996 Act became law. That was not the intent of Congress, and would be inconsistent with the public interest in a competitive phone environment.[7]

Amended, To Provide Wholesale Telecommunications Services to VoIP Providers, *Memorandum Opinion and Order*, 22 FCC Rcd 3513 (2007) ("*Time Warner Order*").

4 The Commission also should affirm explicitly that current transit arrangements shall remain in place until the Commission takes further action.

5 *See* NCTA Comments at 8-14.

6 *See id.* at 15.

7 *See* Preamble to the Telecommunications Act of 1996, Pub. Law. No. 104-104, 110 Stat. 56 (1996).

A. The Commission Should Adopt Reasonable Transition Rules.

1. Voice Over IP and Traditional Telephone Services Should Be Subject to the Same Termination Rate Rules Throughout Any Transition Period.

NCTA's comments identified a troubling ambiguity in the *Further Notice*, which proposed uniform intercarrier compensation rates during the transition, but also included a footnote suggesting that "the status quo" would be retained for voice over IP traffic until the "final uniform reciprocal compensation rates" go into effect.[8] Any rules the Commission adopts should ensure that there is no ambiguity and that voice over IP services immediately are subject to the same rules for setting termination rates as traditional telephone services and will remain so throughout any transition period.

The Commission should adopt this approach for two distinct reasons. First, there is no reason to subject voice over IP traffic and traditional telephone traffic to different rules. Because voice over IP services and circuit-switched services compete with each other throughout the voice services marketplace, establishing a level playing field prevents any market participant from enjoying an artificial competitive advantage. Second, establishing a uniform requirement that plainly addresses both circuit-switched and voice over IP services will prevent circuit-switched providers from seeking to prevent voice over IP providers from realizing the benefits of intercarrier compensation rate reductions during the term of the transition.

2. The Transition Period Should Be Five Years.

The *Further Notice* proposes a transition period for the shift to a new intercarrier compensation regime that will last ten years. As described in NCTA's comments, this is at least twice as long as the transition should be.[9]

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8 NCTA Comments at 23, quoting *Further Notice*, Appendix A, ¶ 213, n.555.

9 NCTA Comments at 23.

While a transition period is appropriate, a more reasonable balance of risks and benefits would produce a period much shorter than ten years. Based on the draft Appendices A and C, it does not appear that such a long transition is necessary to accommodate any specific requirement. If the Commission were to adopt its proposal to require state commissions to adopt interim uniform rates, for instance, there is no reason to believe that those proceedings could not be completed in time to implement the state-set transition rates much sooner than the four years suggested in the *Further Notice*, and certainly no valid reason to take another six years to then move to the end-state reciprocal compensation rate.[10] Given the track record of state commissions determining TELRIC rates, and their experience in addressing other rate issues, it is likely that they could complete these proceedings within a year, and they certainly would be able to complete the task soon enough to put the state-determined rates in effect no later than two years from the effective date of the rules.

B. The Commission Should Not Make a Determination of the Regulatory Classification of Voice over IP Services in this Proceeding.

One of the most significant issues for the Commission in this proceeding is how to integrate both circuit-switched and voice over IP services into a revised intercarrier compensation regime. As NCTA explained in its comments, the Commission already has concluded that it has broad jurisdiction under Section 251(b)(5) to reach all "telecommunications."[11] Whether voice over IP service is characterized as an information service or a telecommunications service, it has a telecommunications component, as telecommunications is a necessary element of the statutory definitions of both information

10 *See Further Notice*, Appendix A, ¶ 196.

11 NCTA Comments at 6-7, citing *Further Notice*, Appendix A at ¶ 8.

services and telecommunications services.[12] Thus, under either classification, the Commission's authority under Section 251(b)(5) would extend to voice over IP service as well as more traditional circuit-switched services.

The Commission accordingly does not need to reach the thorny question of how to classify voice over IP services in order to update its intercarrier compensation framework. Rather, given the significant repercussions throughout the market for competitive communications services that such a decision will have, the Commission should make that decision only when necessary and only with the benefit of a full record on the topic.

II. The Identical Support Rule Should Be Retained for Wireline Competitive Carriers.

The *Further Notice* proposes eliminating the current identical support rule for competitive eligible telecommunications carriers ("ETCs").[13] This proposal is based largely on concerns about the impact of wireless ETCs on the Universal Service Fund. However, the same reasoning does not apply to wireline competitive ETCs, and the Commission thus should retain the identical support rule for those carriers.

A. The Identical Support Rule Is Reasonable When Applied to Wireline Carriers.

One of the Commission's chief concerns in applying the identical support rule to competitive ETCs is that their cost structures are not the same as those of incumbent ETCs and, consequently, the rule results in a windfall for competitors. While this may be true of wireless providers, there is no reason to believe that it is true of competitive landline carriers. Landline competitors also offer a true primary line substitute for incumbent services, so providing these competitors with identical support is consistent with competitive and universal service principles.

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12 *See* 47 U.S.C. § 3(20), (46).

13 *See Further Notice*, Appendix A, ¶ 53.

Moreover, the evidence suggests that the identical support rule does not create any incentives for landline competitors to attempt to game the system.

First, wireline competitors, unlike wireless providers, have cost structures that are very similar to those of incumbent carriers. A wireline competitor must deploy facilities underground or on poles to reach the customer's premises before it can serve the customer, in the same way that an incumbent carrier does. In general, wireline competitors also are subject to state regulatory regimes similar to those that cover incumbents. While competitors may have some cost advantages because of the technologies they deploy, landline competitors' operations are much more like those of incumbent carriers than those of wireless providers.

Second, retaining the identical support rule for competitive wireline services is appropriate because it ensures that complete substitutes are treated in the same way. As the Commission has recognized in recent high cost orders, wireless service is not a complete substitute for landline service.[14] Wireless service is different from landline service for many reasons, including that (1) it often is still viewed by most customers as a complement to wireline service; (2) it is associated with individuals instead of households; and (3) it does not deliver the same E911 experience as wireline service. There is no argument, however, that competitive wireline service is a complete substitute for incumbent offerings. It offers the same features and the same level of reliability and generally is priced in similar ways. Making support available to competitive wireline carriers under the identical support rule recognizes and is consistent with this substitutability.

Third, the evidence shows that wireline competitive ETCs have not distorted or contributed significantly to the recent growth in the demands placed on the universal service

[14] *See, e.g.*, High-Cost Universal Service Support, *Order*, 23 FCC Rcd 8834, ¶ 20 (2008).

system. In 2007, wireline competitive ETCs accounted for less than one percent of the total lines funded through the high cost fund, and only approximately $20 million out of the total of $4.3 billion spent by the fund. They accounted for less than three percent of the total competitive ETC lines and less than three percent of the amount paid to competitive ETCs. These statistics demonstrate that wireline competitive ETCs do not create any significant drain on the High Cost Fund. In light of the reasons for retaining the identical support rule for wireline competitive ETCs, and the low cost of retaining the rule, there is no basis to eliminate it for those carriers.

B. At a Minimum, Current Wireline Competitive ETCs Should Remain Subject to the Rule.

While there is a strong case for retaining the identical support rule in its entirety for wireline competitive ETCs, there is an even stronger case for keeping it in place for carriers that are already designated to receive support from the High Cost Fund. No matter what else the Commission does, it should allow these carriers to continue to obtain support on this basis.

An adequate grandfathering scheme would establish a date in the near future when all wireline carriers that have applied for and/or been designated as ETCs and have applied for High Cost Fund disbursements may continue to receive high cost funding support consistent with the identical support rule. New wireline ETCs submitting applications after that date would no longer be eligible for such support. Cox proposes that the Commission fix that date as six months following the Commission's Order resolving this proceeding. This period would permit carriers to execute current plans for facilities deployment that are legitimately based on an expectation of high cost funding support, while permitting carriers to adjust their future high cost area deployment plans to reflect the new realities of the Commission's reforms.

III. Conclusion

For all these reasons, Cox respectfully requests that the Commission adopt rules that are consistent with these reply comments.

Respectfully submitted,

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December 22, 2008