Before the
Federal Communications Commission
Washington, DC 20554

In the matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	))	WC Docket No. 07-135
	)	
High Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	))	CC Docket No. 01-92
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	

COMMENTS OF COX COMMUNICATIONS, INC.

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April 1, 2011

SUMMARY

As the Commission strives to finally reform the intercarrier compensation regime, it has correctly identified the importance of a stable and measured transition to an interconnection scheme for Internet Protocol-based ("IP") telephony as a key component of any reform effort. Carriers already are moving towards this goal at their own respective speeds, as dictated by their existing facilities, the needs of their customers, and other factors. Thus, for the transition to succeed and to occur without disruption, it is critical that the Commission adopt a glide path for intercarrier compensation that will stabilize the relationships between carriers, rather than creating opportunities for further destabilization and arbitrage. The best way to achieve this result is to apply the same rates to Time Division Multiplexing ("TDM") and IP traffic through the transition period.

Compensation for interconnected voice over IP traffic is a particular concern because certain telecommunications carriers have seized upon a perceived uncertainty about the appropriate compensation regime as a way to reduce access costs and even local termination costs. The Commission can best address this critical issue, and prevent future disputes and uncertainty, by adopting rules for the transition that affirm the equal payment for IP- and TDM-based traffic, both for access services and local termination. An equal payment regime eliminates incentives to game the system through self help and other methods. Equal payments also will create appropriate incentives for providers to shift to IP-based interconnection as access prices decline along the Commission's glide path. Ultimately, the transition will be most stable if carriers are able to make the switch when it no longer makes economic sense to maintain TDM-based connections based on market conditions and the price of equipment, rather than on regulatory arbitrage and gaming.

The Commission can put an equal payment regime into effect under Section 69.5(b) of its rules, which already provides an obligation for long distance carriers to pay access charges, and which can be applied equally to interconnected voice over IP traffic regardless of how that service is classified. Similarly, Section 251(b)(5) of the Communications Act is appropriately read to require reciprocal compensation for all telecommunications traffic (and not just telecommunications service traffic), regardless of technology. There is no contrary precedent, and both the ESP exemption and the ISP-bound traffic rules do not prevent the Commission from adopting an equal payment rule for IP-based and TDM-based traffic.

Finally, Cox supports Commission action to address phantom traffic and access stimulation. The proposed signaling and call data requirements are an appropriate response to phantom traffic. Adoption of specific tariff requirements for carriers engaged in access stimulation, including excluding any revenue sharing payments from access costs, will curb this practice. The Commission should adopt a minutes-based trigger for special tariffing rules governing access stimulation and should adopt rules that ban the adoption of “local termination” tariffs by competitive LECs that are engaged in access stimulation.

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COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc. ("Cox"), by its attorneys, hereby submits its comments on issues in Part XV of the Commission's *Notice* in the above-captioned proceedings.[1]

Cox supports the Commission's proposed "glide path" for intercarrier compensation because a measured transition from a TDM- to IP-based interconnection scheme will best stabilize the relationships and payments between carriers. As described below, to minimize the risk of destabilization and arbitrage during the transition, the Commission should adopt a glide path that treats IP-based traffic in the same way as traffic that is based in TDM format.

[1] Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing a Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking,* WC Docket Nos., 10-90, 07-135, -5-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, FCC 11-13 (rel. Feb. 8, 2011) (the *"Notice"*). The comment dates for Part XV of the *Notice* were announced on March 2, 2011. *See* Connect America Fund; Developing a Unified Intercarrier Compensation, 76 Fed. Reg. 11,632, 11,657 (Mar. 2, 2011).

I. Introduction

Cox is the third largest cable company in the country, and a long-time provider of local telephone services. Cox was one of the pioneers of local telephone competition and began providing circuit-switched telephone service over its cable plant in 1997. Today, Cox provides local and long distance voice service to more than 2.6 million customers, some over circuit-switched facilities and some via interconnected voice over IP, in markets across the country. Cox operates as a certificated local exchange carrier in every market that it serves. Through its certificated entities, Cox also provides access services to long distance carriers that wish to reach Cox's customers.

As a carrier that has long employed both circuit-switched and IP-based telephony, Cox is intimately familiar with the debates over IP interconnection and the perceived ambiguities in the intercarrier compensation scheme that have created opportunities for arbitrage and litigation. Most recently, in the middle of 2010, Verizon Communications and its long distance affiliates asserted that they were not required to pay access or local termination charges to Cox as to any traffic that was originated or terminated via voice over IP protocols and unilaterally reduced the rate they were paying for access services to $0.0007 per minute for all traffic, whether or not that traffic was transmitted to or from Cox's TDM customers.[2] Cox also has experienced first the challenges of phantom traffic and access stimulation, which further act to destabilize the current intercarrier compensation regime.

[2] Verizon is the largest company to refuse to pay Cox's lawful access and local-termination rates. Verizon has made the same claims against other providers, and appears to be spurring other carriers to assert that they, too, are somehow exempt from paying access or local termination charges. Actions like this already have cost providers tens of millions of dollars in lawful compensation and emphasize the urgency of Commission action in this proceeding.

The current proceeding offers the Commission a very timely opportunity to address these issues once and for all by giving carriers the clarity they need as the industry transitions to an IP interconnection regime. Specifically, the Commission should take the following actions to providing the most stable transition possible: (1) adopt a glide path – without "flash cuts" – to permanent, low intercarrier compensation rates and take the necessary steps to facilitate the changeover from TDM- to IP-based interconnection in an orderly and measured fashion;[3] (2) adopt call signaling requirements to reduce the amount of phantom traffic; and (3) adopt tariffing requirements and minutes of use-based triggers to address access stimulation. Like the claims of carriers that they need not pay access charges for traffic that is carried in IP format, phantom traffic and access stimulation also are forms of arbitrage that would undermine the orderly transition to the end state intercarrier compensation system envisioned in the National Broadband Plan and outlined in the *Notice.*

II. Equal Treatment of TDM-and IP-Based Traffic Would Provide Stability and Clarity during the Transition to an IP-Based Interconnection Regime

Cox supports the Commission's correct conclusions that, in the long run, the entire network should shift to IP-based interconnection, and that carriers and customers will benefit from that transition.[4] Virtually all carriers, including Cox, already are taking steps towards this transition. However, the speed at which this transition takes place for each carrier will be dictated by a number of factors, including existing facilities, capital budgets, and consumer demand for IP-based services. If the transition were left to the marketplace, these factors would

[3] *See Notice* at ¶17. As discussed in greater detail below, in determining the best path forward, the Commission should be cognizant of the significant incentives for carriers to game the system to reduce their costs for both access and local termination and for carriers that provide access and local termination to maximize their revenues from these services. In the absence of a unified rate, carriers are incented to pay the smallest amount possible to the providers of access and local termination services, who are incented to seek the highest rates possible for as long as they can. Moreover, these incentives will continue to arise no matter what specific rates the Commission adopts, *unless those rates are equal for all technologies* used to provide access and local termination services.

[4] *Id.,* ¶ 527.

ensure that the transition would occur as it became economically reasonable for carriers to use IP interconnection. The Commission's goal should be to ensure that its rules do *not* distort the market by creating new opportunities for arbitrage but instead help to stabilize the industry during the transition with clear rules of the road.

Accordingly, Cox wholeheartedly endorses the Commission's intention "to avoid sudden changes or 'flash cuts' in our policies, acknowledging the benefits of measured transitions that enable stakeholders to adapt to changing circumstances and minimize disruption."[5] Immediate adoption of a $0.0007 rate for IP-based traffic would constitute exactly the type of flash cut the FCC seeks to avoid. Cox also agrees that clarity is essential to helping industry conduct a stable transition. The *Notice* explained that clarity is important because "[s]ervice providers will benefit from increased certainty and predictability regarding future revenues and reduced billing disputes and litigation, enabling companies to direct capital resources toward broadband investment."[6] In the absence of clear Commission guidance, carriers will attempt to interpret the rules for themselves, based on their own incentives, which will destabilize the regime even further and will delay the capital investments necessary for the transition to IP interconnection.[7] The Commission's rules for reforming intercarrier compensation can offer stability and clarity by applying equal compensation rates for both TDM- and IP-based traffic, thus: (1) limiting arbitrage; (2) reducing costly litigation and other disputes; and (3) minimizing unintended regulatory effects on carrier plans for transitioning to all-IP interconnection.

Also, a Commission rule treating the two types of traffic equally would logically reflect the fact that the two types of traffic are indistinguishable to providers of local termination and access services. Virtually all interconnected traffic enters and leaves the carriers' networks in

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[5] *Id.*, ¶ 12

[6] *Id.*, ¶ 493.

[7] Cox already has experienced this kind of self help through its dispute with Verizon.

TDM format, with standard signaling information.[8] As a result, IP-based traffic is no more distinguishable from TDM traffic than analog TDM traffic would be distinguishable from digital TDM traffic.[9] There is no way that a carrier can tell from the traffic itself whether the traffic it is terminating originated or was transmitted in IP or TDM format or that a carrier handing off traffic for termination can tell that it is being terminated in IP or TDM format.[10] Opportunities for arbitrage arise when discrepancies in price apply to the same product or service. As the *Notice* describes, carriers have strong reasons to try to reduce their access and local termination costs, and they are acting on those incentives today.[11]

Equal treatment of TDM-based and IP-based traffic also will make it less likely that carriers will try to game the system. Indeed, it is likely that left unchecked carriers would allege that all traffic they carry is IP-based if doing so would reduce their access and local termination charges. As the current behavior of some carriers demonstrates, the incentives that drive carriers to seek to minimize intercarrier compensation costs inevitably will lead them to make such claims. Claiming that all traffic is IP-based would be economically rational for these carriers, but would be harmful to providers that terminate traffic and would further destabilize a measured transition to IP-based interconnection.

Accordingly, a Commission affirmation that the same compensation scheme has applied, and continues to apply, to both types of traffic would eliminate the need to litigate whether traffic is of one type or another as well as the need to litigate whether one rate applies or another.

[8] Of course, in the case of phantom traffic, this signaling information often is erroneous.
[9] This also is true when traffic is exchanged in IP format: there is no way to tell if it originated as IP or TDM traffic.
[10] The indistinguishable nature of IP-based and TDM-based transport and origination is reflected in the access tariffs that carriers have filed with the Commission since the access charge regime was established in 1984. These tariffs make no distinction between types of traffic based on the underlying transmission protocol. There also are no Commission orders that would require carriers to treat IP-based traffic any differently under their access tariffs or any Commission intercarrier compensation decisions that distinguish between IP-based and TDM-based interconnected traffic.
[11] *See, e.g., Notice,* ¶ 507. These incentives also help explain why phantom traffic exists.

Cox and other service providers already are subject to disputes from carriers about the proper level of compensation for traffic that is transmitted in IP format at some point between the originating and terminating customers. These disputes arise solely because those carriers believe that they can pay less for what they believe to be interconnected voice over IP traffic than for TDM traffic.[12] It is for these reasons, among others, that the National Broadband Plan correctly concluded that an orderly transition should involve multiple steps over time to bring intercarrier compensation costs to a low, uniform level, with the goal of eventually eliminating all intercarrier compensation charges.[13]

Further, the Commission should consider whether incentivizing carriers to shift to IP interconnection schemes would create unintended regulatory effects and distortions in the marketplace. Because there are capital and transition costs with any shift from TDM- to IP-based interconnection, the point at which a carrier's transition to IP-based interconnection makes economic sense is dependent on the potential revenues from providing IP interconnection as well as the costs of TDM-based interconnection. If the permissible intercarrier compensation charges for IP-based traffic were set lower than the permissible charges for TDM-based traffic, carriers that pay will only have incentives to allege that the traffic originated from or terminated to customers is IP-based, and there would be no regulatory or market incentive to shift to IP-based interconnection. If prices for the IP-based interconnection function itself were set lower than permissible prices for TDM-based interconnection some providers may actually delay the investment required to change over, because the economic crossover point would dictate such a delay.

[12] Cox notes that it disagrees with carriers' claims that they are not obligated to pay tariffed intercarrier compensation rates for IP-based traffic under the current rules.
[13] *Connecting America: The National Broadband Plan*, Federal Communications Commission, at 135-164 (2010).

In contrast, a regime in which the intercarrier compensation rates are independent of the technology or protocols used by the service provider will have little or no impact on where the crossover point occurs. In other words, the only way to ensure that the transition to IP interconnection occurs when it is economically efficient is to maintain intercarrier compensation at the same level for TDM- and IP-based traffic.

III. The Commission Has the Legal Authority to Mandate Identical Treatment of TDM and IP Traffic.

The *Notice* asks parties to analyze the Commission's ability to address the appropriate treatment of IP traffic for intercarrier compensation purposes. For the reasons described below, the Commission has the power to adopt rules that mandate identical payment rates for TDM and IP traffic.

Section 69.5. Most significantly, the Commission can affirm that Section 69.5(b) of its rules, which mandates the imposition of access charges, continues to apply to all access services, regardless of the technology employed.[14] As described above, today nearly all access traffic is exchanged in TDM format, which means that for practical purposes the local exchange switching facilities used for that traffic are functionally equivalent no matter whether the traffic ultimately reaches the end user in TDM or IP format.

Further, the traffic that *interexchange* carriers are transmitting is telecommunications service traffic, which is subject to the Commission's jurisdiction under Title II of the Communications Act.[15] This traffic reaches interexchange carrier networks in TDM format and leaves those networks in the same format. While those carriers may use IP format (or some other format) to transmit their traffic between the point where it is received and the point where it is

[14] 47 C.F.R. § 69.5(b).
[15] *See* 47 U.S.C. § 153(46) (defining telecommunications service as telecommunications provided for a fee to the public), (44) (defining a telecommunications carrier as a provider of telecommunications service and subjecting telecommunications carriers to common carrier regulation under the Communications Act).

handed off, that does not affect its status as telecommunications service traffic, as established in the Commission's "IP-in-the-middle" decision.[16] The Commission is well within its power to adopt rules governing how providers that offer interconnection to providers of telecommunications services can be compensated. Section 69.5(b) provides no basis to distinguish types of traffic based on how the end user is served. It applies to specific types of traffic – access traffic – and the transmission of that traffic on behalf of an interexchange carrier. In that context, differential treatment of TDM-based and IP-based traffic would be inconsistent with the underlying principles of Section 69.5(b).

Section 251(b)(5). A similar analysis applies to reciprocal compensation. Reciprocal compensation under Section 251(b)(5) of the Communications Act applies to "the transport and termination of telecommunications," and that provision makes no distinction as to technologies or formats used by providers to transmit that traffic.[17] The Commission has recognized this fact in the past, most notably in the case of traffic exchanged between local exchange carriers and wireless providers, even though they use different technologies and protocols to transmit their traffic once it is exchanged.[18]

Moreover, it is evident that access charges and reciprocal compensation are applicable when the entity that provides the services is a certificated carrier. As the Commission has acknowledged, companies that offer voice over IP services exchange traffic through certificated local exchange carriers. These interconnected competitive carriers are entitled to all of the rights of any local exchange carrier. This principle was established in the Time Warner declaratory

[16] Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges, *Order*, 19 FCC Rcd 7457 (2004).
[17] 47 U.S.C. § 251(b)(5).
[18] *See* Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and Order*, 11 FCC Rcd 15499 (1996).

ruling, and confirmed in the Commission's retention marketing decision.[19] It would be inconsistent with this line of cases to afford different treatment to those carriers in the case of traffic exchange, for either access or local termination.

The Enhanced Service Provider Exemption. While the Commission has adopted some exemptions from its access rules and standard intercarrier compensation requirements, those decisions do not affect the Commission's power to adopt appropriate rules here. Instead, they reinforce the Commission's authority to act.

Most notably, the enhanced service provider ("ESP") exemption from access charges would not prevent the Commission from adopting identical treatment for IP-based and TDM-based traffic even if the Commission were to determine that voice over IP is an information service.[20] That exemption is specific and narrow, and it serves only to ensure that ESPs are treated as end users, not carriers, as to calls that they receive when they choose to use local exchange business services for access to the public switched telephone network ("PSTN"). Even when a customer is subject to the ESP exemption, the carrier is entitled to collect access charges on long distance calls to and from the enhanced service providers. Thus, if someone calls the ESP from another state, both the originating and terminating local exchange carriers collect access charges on that call.

Moreover, ESPs operating under the exemption differ in significant ways from interconnected voice over IP providers. ESPs do not provide end users with access to the PSTN,

[19] Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers, *Memorandum Opinion and Order*, 22 FCC Rcd 3513 (Wir. Comp. Bur. 2007); Bright House Networks, LLC v. Verizon California, Inc., *Memorandum Opinion and Order*, 23 FCC Rcd 10704 (2008).

[20] MTS & WATS Market Structure, *Memorandum Opinion and Order*, 97 FCC 2d 682, 711-5 (1983) (establishing the ESP exemption); Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, *Report and Order & Order on Further Reconsideration & Supplemental Notice of Proposed Rulemaking*, 6 FCC Rcd 4524, 4534 (1991); Access Charge Reform, *First Report and Order*, 12 FCC Rcd 15982 (1997) ("*Access Charge Reform First R&O*").

while interconnected voice over IP, by definition, provides access to all points on the PSTN.[21] In other words, ESPs cannot collect access charges or local termination charges because they are the end points of the communications, while interconnected voice over IP providers offer connections to the end points, their customers. This distinction is critical and demonstrates why the ESP exemption is not relevant to a discussion of intercarrier compensation for interconnected voice over IP providers.[22]

The ISP-Bound Traffic Decision. The Commission's ability to act herein also is not affected by the "ISP-bound traffic decision."[23] That decision, like the ESP exemption, is quite narrow, and applies only to local traffic that is bound for Internet service providers. It does not address the question of termination of calls using Internet protocol, since the underlying assumption in that decision is that the calls are being sent to a local exchange carrier and that the Internet service provider receives them in TDM format like any other end user. In addition, that decision does not address the ability of carriers to impose access charges when an end user makes a long distance call to an ISP. Consequently, this case does not impinge on the Commission's discretion to adopt an appropriate regime for traffic that is originated or terminated in IP format.

IV. The Commission Should Adopt Rules to Address Phantom Traffic and Access Stimulation

Cox has had firsthand experience with the challenges of phantom traffic and access stimulation and supports Commission action to limit these abuses of the intercarrier compensation regime to the extent possible.

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[21] 47 C.F.R. § 9.3 (defining interconnected voice over IP).
[22] *See, e.g.*, Access *Charge Reform First R&O*, 12 FCC Rcd at 16133.
[23] *See* Intercarrier Compensation for ISP-Bound Traffic, *Order on Remand and Report and Order*, 16 FCC Rcd 9151 (2001), *remanded but not vacated by WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002); *see also* Intercarrier Compensation for ISP-Bound Traffic, IP-Enabled Services, *Order on Remand and Report and Order and Further Notice of Proposed Rulemaking,* 24 FCC Rcd 6475 (2008).

A. Phantom Traffic

Phantom traffic is an artifact of the significant differences between access prices and prices for local termination, including reciprocal compensation. While long-term modifications to the intercarrier compensation regime will eliminate the incentive for carriers to create phantom traffic, phantom traffic is likely to persist during any transition period, and it is appropriate for the Commission to take steps to prevent it.

Cox supports the proposal in the *Notice* to amend the current rules "to require that the calling party's telephone number be provided by the originating service provider and to prohibit stripping or altering call signaling information."[24] Providing a calling party's telephone number and other relevant call signaling information is a basic element of interconnection and is necessary to ensure proper access billing. Adopting this rule will give the Commission and carriers a new, valuable tool in responding to phantom traffic.

B. Access Stimulation

Access stimulation is another way that carriers can take advantage of economic inefficiencies in the access charge system and specifically of the inability of interexchange carriers to choose terminating access providers. Access stimulation is particularly troubling because the majority of it is caused by rate-regulated incumbent carriers charging rates that appear to be above cost.[25]

Cox supports the Commission's proposal to adopt changes in its tariffing rules that would apply to incumbent LECs and competitive LECs once they meet a specified trigger.[26] Cox

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[24] *Notice,* ¶ 626.

[25] Indeed, as the Commission notes, since these carriers typically are sharing revenues with their "customers," the rates likely are significantly above actual cost. *Id.,* ¶ 659.

[26] Those changes would include requiring NECA-pooled carriers to leave the pool and file their own tariffs; requiring new cost justifications for carriers that meet the trigger; shifting carrier rate calculations from an historical cost basis to a projected cost basis; excluding any revenue sharing payments from calculations of the costs of

agrees with the elimination of revenue-sharing payments from the calculation of access costs; without the ability to treat these payments as costs, carriers will have no incentive to engage in access stimulation and could, in fact, lose money as a consequence of access stimulation activities. It will, in this context, be important for the Commission to be vigilant in reviewing any cost showings provided in connection with modified tariffs to be sure that providers do not hide revenue sharing arrangements in some way.

Cox also supports adopting a trigger that is based on minutes of use, rather than on revenues. Drastic changes in terminating minutes of use without equivalent increases in the numbers of customers served or in originating minutes of use should be a reliable enough indicator of access stimulation. To avoid sweeping carriers under the rules if they are not engaged in access stimulation, the Commission should ensure that the triggers are set to account for organic growth or acquisitions, which will permit a carrier to balance significant increases in terminating access traffic against any changes in its operations.

Certain competitive LECs also engage in forms of traffic stimulation, both for access and local services. Their costs of terminating such one-way traffic may be even lower than those of incumbent providers, which means that lower access or local termination rates can prove profitable enough to justify stimulation of traffic. The most common method used by competitive LECs to impose costs on other providers is through the filing of "local termination" tariffs, many of which are not reviewed by regulators to ensure that the rates and conditions are just and reasonable. To curb the growth of this form of arbitrage, the Commission should ban the use of local call termination tariffs where there is no interconnection agreement between the originating provider and a terminating provider that is stimulating traffic. By adopting such a

carriers that meet the trigger; and requiring competitive LECs that meet the trigger to benchmark their rates against the largest carrier in the state. *Id.*, ¶¶ 661-6.

rule, the Commission would encourage negotiation and, if need be, arbitration of interconnection agreements with these carriers, and minimize the disruptive and costly allocation of resources as high volumes of traffic are shifted based on the highest available termination tariff in place.

V. Conclusion

For all of these reasons, the Commission should adopt rules consistent with these comments.

Respectfully submitted,

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April 1, 2011

Certificate of Service

I, Cynthia Porter, certify that on this 1st day of April 2011, I caused a copy of the foregoing Comments of Cox Communications, Inc. to be served on the following by hand delivery.

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