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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SUMMARY

As a carrier that has long employed both circuit-switched and IP-based telephony, Cox supports the Commission's efforts to reform the intercarrier compensation regime and the High Cost Program of the Universal Service Fund. In approaching this proceeding, the Commission should be guided by principles that advance consumer interests through both competition *and* innovation: (1) allowing consumers to dictate winners and losers; (2) decisively addressing fraud, waste and abuse; (3) focusing high-cost support narrowly; (4) carefully defining state roles; and (5) recognizing that broadband is an evolving service. Consumers will be best served by a Commission determination to end implicit subsidies and by specific steps that are designed to truly help make broadband more affordable to all Americans.

High Cost Support

To most efficiently promote the availability of broadband, the High Cost Program should be transformed to focus on deploying broadband to unserved areas. The Commission's initial goal of 4 Mbps downstream and1 Mbps upstream service is reasonable, but it should be subject to modification over time, and can be flexible in areas where it is not cost-effective to provide full broadband service.

Rather than rely on the reverse auction proposal, Cox believes the Commission should allocate subsidies through a more robust request for proposal ("RFP") process that treats all responsive bidders equally and allows for a solicitation of more fulsome bids. Funding should be prioritized to bidders that offer the maximum benefit per dollar, so that every bidder is competing against all other bidders nationwide. The Commission should set reserve prices based on current subsidy levels, and support service below the 4 Mbps/1 Mbps standard when the reserve cannot be met.

The RFP process should require bidders to make specific commitments in their own proposals, including a minimum investment of their own funds; build-out obligations; maximum prices; and compliance with performance goals and metrics. The Commission also should explore how it can make funding available to entities that are not ETCs or how to make it easier for providers to become ETCs, to maximize the opportunity for competitive bidding.

As new broadband funding is deployed, the Commission should phase down support for other services and in areas that already have broadband. The Commission should look to the 2009 NCTA proposal for the best approach to this phase-down. The NCTA proposal is built around ending high-cost support for telephone service in areas that are served by at least one unsubsidized provider of 4 Mbps/1 Mbps broadband service. In those areas, a transition period should begin and carrier of last resort obligations should be eliminated.

Intercarrier Compensation

The new intercarrier compensation regime should reduce charges for switched access and local termination in a coordinated, technology-neutral way. The central element of this transition should be a neutral glide path from the current rates to the final rates. This glide path should be agnostic as to the technology used to provide retail service, including IP-based technologies, because any regime that sets differential rates will increase the likelihood of arbitrage, disputes and other undesirable behavior during the transition. The transition should start with a uniform reduction of intrastate switched access rates to the current level of regional Bell company interstate switched access rates, followed by a uniform reduction of all intercarrier compensation rates to the final rate level. This transition should take place over a reasonable period of time and the Commission's approach also must account for the different approaches states have taken to intrastate access reform.

An important element of the transition is allowing providers to make up for lost revenues. The Commission should permit carriers to increase their SLCs and to increase their retail rates to up to 150% of the rates in nearby urban areas. Certain carriers that draw on the legacy high cost fund should continue to receive funding to make up additional losses after they have made these adjustments for a limited period.

The Commission also should adopt rules governing transit service. Transit is a critical element of interconnection, but incumbent carriers often resist providing it. The Commission should clarify that transit must be offered at cost-based rates.

Finally, the new intercarrier compensation regime should not create barriers to IP interconnection. The most important step the Commission can take is to ensure that incumbent LEC Section 251 and 252 interconnection obligations remain in effect during the transition to IP interconnection. The Commission also should adopt a framework for IP interconnection that includes the following principles: (1) incumbent LECs must negotiate IP-to-IP interconnection arrangements in good faith; (2) incumbent LECs must agree to directly interconnect at any technically feasible point of interconnection; (3) the "network edge" concept should not apply to IP interconnection; and (4) each provider is responsible for providing its own network facilities to the point of interconnection.

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COMMENTS OF COX COMMUNICATIONS, INC.

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

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 facilities-based 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

[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 the portions of the *Notice* other than Part XV 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).

circuit-switched facilities and some via interconnected voice over Internet Protocol ("IP"), in markets across the country. Cox operates as a certificated local exchange and long distance 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 successful, facilities-based competitor to the incumbent telephone companies, Cox has actively participated in the various efforts to reform the high cost fund and the intercarrier compensation regime. Cox's ability to compete is affected by the nature and extent of subsidies given to incumbent LECs and by the availability of fairly-priced transit services. Cox also draws from the high cost fund to provide service to rural regions in its service areas in both Oklahoma and Louisiana as a competitive eligible telecommunications carrier. As a contributor to and a recipient of high cost fund monies, Cox thoroughly supports the Commission's drive to eliminate waste, fraud, and abuse from both the Universal Service Fund and intercarrier compensation regimes, to rationalize the implicit subsidies hidden in the intercarrier compensation regime and to reallocate much-needed funds to areas unserved by next generation technologies.

II. Reform of the High Cost Program and Intercarrier Compensation Should Be Guided by Principles that Advance Consumer Interests Through Competition and Innovation.

The Commission's actions in this proceeding should be consumer-focused. Any reform should be designed to maximize consumer benefits while minimizing costs to consumers, including the costs of universal service funding. Today, consumers pay for universal service both directly and indirectly – directly through the contributions on their bills and indirectly through the intercarrier compensation system, which also contains significant hidden costs that come from arbitrage and litigation.

The Commission's proposals to replace the current high cost fund with the Connect America Fund and to reform intercarrier compensation promise to lower costs and promote innovation in telecommunications and broadband, while reducing fraud, waste and abuse. To achieve those results, however, the Commission must craft the new rules carefully. The following considerations will be central to this effort:

Consumers should dictate the winners and losers: New regulations should not give any segment of the industry an advantage or disadvantage in the competitive marketplace, but should empower consumers to make their own decisions about what service provider or technology they prefer. This is particularly important when the underlying differences, such as between Time Division Multiplexing "(TDM")-based services and IP-based services, are not visible to the customer.

Reform must address fraud, waste and abuse decisively: The Commission's rules should be clear and predictable to limit opportunities for fraud and arbitrage. The Commission also should penalize those who engage in fraud, waste and abuse, and should act swiftly in such cases to send a clear message that such actions will not be tolerated.

High-cost support should be narrowly focused: The Connect America Fund should place its primary emphasis on enabling affordable broadband where there is **none** today, while Lifeline should focus specifically on increasing broadband adoption. As experience has shown, providing universal service support in areas that already are served makes it nearly impossible to maintain funding at a reasonable level.

Federal and state roles should be defined carefully: Although the states have a role in both universal service and intercarrier compensation reform. To achieve the Commission's goals and ensure the public interest, it is important to recognize that reform will succeed only if it is implemented on a coordinated, uniform and nationwide basis. For that reason, the role of the states should be clear, and designed specifically to advance the goals and principles adopted by the Commission in this proceeding.

The framework for reform should recognize that the definition of broadband, unlike telephony, will be a moving target: The Commission's plans for both high-cost funding and intercarrier compensation should be designed to account for and enable innovation. Innovative services and technologies are critical to driving efficiency and bringing consumers what they want. Any program that is built around the assumption that providers must continue to offer service the way they do today (or did ten years ago) will, in the long run, be inefficient and much less likely to succeed.

III. The Commission Should Transform the High Cost Program to Focus on Deployment of Broadband Services to Unserved Areas.

A. The Connect America Fund Should Be Designed Initially to Bring 4 Mbps Broadband Service to Unserved Areas Through a Competitive Bidding Process.

The *Notice* proposes that the short term goal of the Connect America Fund should be to bring broadband service to unserved areas, starting with service that offers 4 Mbps downstream and 1 Mbps upstream speeds, and that the Commission should adopt a bidding process to determine which providers will receive the subsidies.[2] As described below, the 4 Mbps/1 Mbps proposal is a good starting point, and the Commission should adopt rules that will create appropriate incentives for providers to offer truly competitive proposals that maximize the scope of the service provided to consumers.

1. The Commission Should Adopt an Initial Speed of 4 Mbps Downstream and 1 Mbps Upstream for Supported Services.

The initial goal of supporting 4 Mbps/1 Mbps service is appropriate. This speed is sufficient for the vast majority of end users and the applications and content they want to use

[2] *Notice,* ¶ ¶ 266-273, 309-315.

today. There is no need for the Commission to require the most advanced service, particularly when most users today do not purchase the highest speeds available, and many choose to subscribe to services at speeds that are lower than 4 Mbps/1 Mbps or limit their use to applications such as e-mail that do not require higher speeds.[3] As discussed below, the Commission must balance appropriate minimum levels of broadband with the cost of making that service available to those who do not have access today.

One other reason to choose this reasonable target speed is that it will facilitate the maximum number of bidders for broadband deployment in unserved areas. The more bids the Commission receives, the more likely it is that the bids will minimize the expenses covered by the fund. If the Commission were to designate a significantly higher speed, the number of potential bidders would decrease, and the basic costs of constructing the necessary facilities likely would be higher as well.

Given these considerations, the Commission also should recognize that in some cases it may have to subsidize service to be provided at lower speeds. Specifically, if the cost per customer of bringing 4 Mbps/1 Mbps broadband to certain areas is unusually high, it may be appropriate for the Commission to consider making funding available for alternative services or technologies that cannot meet that threshold.[4] These instances should be rare, but given the diversity of geography and population density in the United States, there likely will be places where it is impractical to provide standard broadband service at this time.

It is important to emphasize that the 4 Mbps/1 Mbps standard should not be set in stone. As the Commission already has acknowledged, the meaning of "broadband" changes over time

[3] Connecting America: The National Broadband Plan, Federal Communications Commission, at 135 (2010).
[4] The specific threshold is described in Section III.A.2, below.

as technologies and consumer expectations evolve.[5] This is not just a matter of speed, but also of other capabilities of broadband service, including new, as-yet-unanticipated functions that consumers may come to expect as a matter of general use. This makes broadband different from telephony, which has had the same basic functionality – connecting two people for the purpose of voice communication – since before the Commission existed. Consequently, the Commission should commit itself to periodic evaluations of the standard for services to be supported by the fund, and should set a time frame for those evaluations, such as every five years.

2. Subsidies Should Be Awarded Through a Process Designed to Maximize Funding Efficiency.

The design of the process for awarding subsidies is nearly as critical as the definition of which services are supported. As the Commission's experience has shown, the current process has bloated the high cost fund without necessarily providing significant benefits to consumers.[6] The creation of the Connect America Fund gives the Commission the opportunity to write on a clean slate and improve the efficiency of the fund. The Commission can maximize the benefits of universal service funding by creating a process that targets funding at the areas that need it most and that requires providers to compete against each other to obtain funding. Further, in designing this process, the Commission should ensure that its requirements are not so stringent that they preclude multiple bidders, which would reduce the efficiency of the bidding process.

Initially, the Commission will maximize the benefits from the Connect America Fund by targeting its funding at areas that have no broadband service of any kind. These are the areas that need the most attention, and they should be funded first. Once funding is provided to all eligible areas with no broadband service of any kind, then the Commission should provide

[5] *Notice*, ¶ 103.
[6] *Id.*, ¶¶ 171-174.

funding to areas that have service, but that do not meet the 4 Mbps/1 Mbps standard. This approach will maximize the number of Americans who have access to broadband.

The funding award process itself should be built around standard competitive bidding, similar to the process used for most government contracts. The process, which should be managed by the Universal Service Administrative Company ("USAC"), should start with the release of a request for proposals that details the requirements for the areas where funding will be provided. All responsive bidders should be treated equally – there should be no preferences or rights of first refusal for incumbent local exchange carriers or entities that are designated as the carrier of last resort for voice services in a covered area.

There are several other principles that should be incorporated into the funding process:

- **Awards should be prioritized to maximize the impact of the fund:** Providers that offer the maximum benefit per dollar should be given awards first. In essence, this means that providers will not just be bidding against competitors in the areas they choose to serve, but against all providers that are seeking funding. This way, the most efficient proposals will be funded, which is the best way to maximize the benefits derived from a limited fund. The Commission also should permit bidders to propose to serve multiple areas with a single proposal.
- **The Commission should set reserve prices for support within each covered area:** One of the Commission's overarching goals should be to stop the growth of the current high cost fund beyond its current size; therefore the Commission should use the current subsidy levels as a **ceiling** for Connect America Fund subsidies. Hence, rather than requiring the development of full-blown cost models, which are unnecessary, wasteful and subject to manipulation, the Commission should set reserve prices for bids within each covered area, set at the amount currently provided to the area on a per-line basis. This approach relies on existing data, so it does not require extensive calculations, and creates a reasonable ceiling on how much will be paid in a given area.[7] Most importantly, this permits a competitive process to set the right cost of subsidization of an unserved area, instead of depending on a theoretical model.
- **Where the reserve price cannot be met, the Commission should support service below the 4 Mbps/1 Mbps standard:** An unserved area should not

[7] Since many high-cost subsidies currently are based on wire centers (for price cap LECs) and study areas (for rate-of-return LECs), there may still be a need for some modeling for the narrow purpose of assigning those subsidies to the relevant geographic areas (CBGs or whatever other area the Commission chooses) for the purpose of setting reserve prices.

become ineligible for support if 4 Mbps/1 Mbps service cannot be made available for less than the reserve price. Instead, bidders should be permitted to propose any lesser level of broadband service they can provide with support at the reserve price level. If there is no such bidder, the Commission should consider providing funding for satellite or other technologies that do not provide broadband access, but do provide service at higher speeds than currently available in an unserved area.

- **Bidders should be required to provide their own funding:** No provider should be offered a 100 percent subsidy. The Commission should, instead, require a minimum of 20 percent funding from the provider itself. Requiring a minimum level of self-funding will lessen the likelihood of fraud, waste and abuse.[8]
- **Bidders should be required to make specific commitments to ensure that service will be available at affordable rates:** The Commission's minimum standards for the service to be provided must go beyond the speed of service. They also should include specific commitments that ensure that subsidy payments will provide customers in high cost areas with real access to broadband; protect the investment the Commission and customers are making in these areas through the new Connect America Fund; are specific, so that potential bidders know both what to bid given their revenue expectations and what obligations they would undertake if they were to win; and generally are limited in duration and scope. These commitments should include (a) an obligation to build to every home and business in the area covered by the award at the time of the bid and at the time that build-out is completed; (b) an obligation to build to every additional customer within 100 feet of the original plant construction without imposing any customer-funded construction charges; (c) a maximum price for 4 Mbps/1 Mbps service of 150 percent of the prevailing price for that service in neighboring urban areas for at least the duration of the award period; and (d) accountability for compliance with specific performance goals and metrics.

The Commission also should evaluate the extent to which it can make funding available to entities that are not eligible telecommunications carriers ("ETCs") or, if that is not possible, how it can make it easier for providers to become ETCs. Obtaining ETC designation is a significant barrier to competitors that wish to qualify for high cost funding for telecommunications service today, as Cox has experienced first hand. If that barrier remains in place as high-cost subsidies move to broadband, the number of bidders will be limited and the

[8] In addition, the Commission should guard against double-dipping by specifically prohibiting any bidder from bidding on areas or projects for which the bidder had received other sources of funding, including state universal service funds, stimulus funds and traditional RUS grants and loans. Obviously, close coordination with NTIA, USDA and state agencies also will help prevent the Commission and USAC from committing resources and funding to areas where those government entities already have targeted for subsidies for broadband.

Commission's ability to make the Connect America Fund operate efficiently will be hampered. The current system, which gives states wide discretion to grant or deny ETC applications, effectively makes them the gatekeepers for which companies can receive high cost support. Further, state decisions on ETC applications often are affected by factors other than the potential benefits to consumers, such as the interests of incumbent rural LECs. Consequently, if the states retain their ability to prevent providers from qualifying for high-cost support, it will be difficult for the Commission to achieve its goals.

There are several approaches the Commission could take to address this issue. One is to consider whether the Commission can use its existing authority under Section 254 to designate ETCs when states cannot or will not do so, and apply that authority to applicants for the Connect America Fund.[9] Another possibility is that the Commission could make broadband support available only in areas where state approval processes and performance expectations meet specified requirements. This approach would give states the incentive to grant ETC status to more providers, and limit the ability of existing carriers to persuade state commissions to deny ETC status to potential competitors.

B. The Commission Should Phase Down High Cost Support for Other Services and in Areas that Already Have Broadband.

The Notice recognizes that it would be a mistake to try to maintain support for legacy voice services while creating a new support system for broadband services.[10] In the long run, such an approach would merely perpetuate an inefficient system and would give high cost providers little incentive to look forward as they design their networks and operations. As a result, a transition is necessary to end the current regime as the new regime is put into place.

[9] 47 U.S.C. § 254(e)(6)
[10] *Notice,* ¶ 21-22.

Cox supports the proposals to manage this transition made in the petition of the National Cable and Telecommunications Association ("NCTA").[11] In its petition, NCTA asked the Commission to establish procedures to reduce the amount of legacy high-cost support "provided to carriers in those areas of the country where there is extensive, unsubsidized facilities-based voice competition and where government subsidies no longer are needed to ensure that service will be made available to consumers."[12] The NCTA proposal is built around ending high cost support for telephone service in areas that are served by at least one provider of 4 Mbps/1 Mbps broadband service. In those areas, a transition period should begin and carrier of last resort obligations should be eliminated.

This transition should be the same for all carriers that are affected by it, and should reduce their funding over a specified period. This means that every affected carrier should transition at the same time and in the same manner. The Commission should not design different frameworks based on whether a carrier is subject to rate of return or price caps, whether the carrier is in the NECA pool or is an average schedule carrier or whether the carrier is rural or non-rural. Similarly, the transition should apply in the same way to competitive LECs as to incumbent LECs, so that legacy voice support for all carriers serving the same area will be reduced at the same time and at the same rate.

For this reason, the Commission should not eliminate the equal support rule, but should leave it in place until the transition from the legacy high cost fund is completed.[13] There is no reason to differentiate carriers currently receiving funding, particularly in the case of landline

[11] National Cable & Telecommunications Association Petition for Rulemaking to Reduce Universal Service High-Cost Support Provided to Carriers in Areas Where There is Extensive Unsubsidized Facilities-Based Voice Competition. GN Docket No. 09-51, WC Docket No. 05-337, RM-11584 (filed Nov. 5, 2009) ("NCTA Petition"); *Notice,* ¶391.

[12] NCTA Petition at i.

[13] Cox notes that the equal support rule, as implemented today, does not actually give competitive ETCs equal support. The cap on competitive ETC support effectively sets per-line draws from the high-cost fund for these carriers at a level that is lower than incumbent LEC per-line draws.

providers that face similar infrastructure costs and challenges in serving rural and other high cost areas, and that provide services that are direct substitutes for each other.[14]

The Commission also should eliminate carrier of last resort obligations as part of the transition process. These obligations should not apply anywhere where 4 Mbps/1 Mbps broadband service is available. While it would be simplest to eliminate these obligations as soon as 4 Mbps/1 Mbps service becomes available, Cox recognizes that the Commission may wish to adopt some transition mechanism for these obligations as well. As an interim step, then, the Commission could limit carrier of last resort obligations, and apply them only to prohibit affected carriers from imposing line-extension charges to customers located within 100 feet of existing wired, telephony-ready plant and to require service to all credit-worthy customers within the area covered by the obligations.

Finally, to ensure that all universal service funds are conserved appropriately, the Commission should prohibit providers from obtaining awards from the Connect America Fund if they are receiving any state universal fund payments that are intended to make up for funding lost as a result of reductions in payments from the legacy high cost funds. Permitting providers to double-dip in this way would undermine both the goal of reducing inefficiency in the system and the goal of having carriers look forward in their network design and operations. Equally important, permitting carriers to make up for their lost high cost support by adding a new subsidy payment would increase the burdens of universal service on consumers, contrary to the Commission's intent in this proceeding.

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[14] While Cox supports maintaining the equal support rule for all ETCs, it recognizes that the Commission could distinguish wireless providers from landline providers. Wireless providers are responsible for a disproportionate share of the growth of the current high cost fund, often provide services that are not viewed as direct substitutes for landline service and will have access to the Mobility Fund, which will not be available to landline ETCs.

IV. The Commission Should Adopt an Intercarrier Compensation Regime that Eliminates Excessive Charges in a Coordinated, Technology-Neutral Fashion.

A. Intercarrier Compensation Should Be Reduced Along a Neutral Glide Path.

The central element of the Commission's approach to intercarrier compensation should be reducing charges for interstate switched access, intrastate switched access and local interconnection to zero, or as close to zero as possible. This pricing will reflect the variable cost of exchanging the next minute or bit of traffic much more accurately than the current system because, as networks continue their evolution to IP-based technologies, the relevance of per-minute costs and rates will continue to diminish. Further, this result will eliminate opportunities and incentives for arbitrage, fraud and abuse.

To reach that result, however, a transition will be required. The terms of the transition are important because they will affect the economics of the industry and, if the transition is designed improperly, could give certain providers unwarranted marketplace advantages. To avoid adverse results, the Commission should design a transition that applies in the same way to all providers, is agnostic as to the technology involved and includes a reasonable period for a glide path to the final intercarrier compensation regime.

It is particularly important that the transition be designed so that all providers are subject to the same rules and requirements. While different providers use different technologies and network architectures to serve their customers, the services they offer to other carriers – notably connections to those customers – are functionally equivalent. Consequently, there is no good reason to differentiate among providers when determining intercarrier compensation rates, particularly if that differentiation is based on the technology employed in the retail interconnected services offered by those providers.

As Cox described in its comments on Part XV of the *Notice*, this evenhanded approach should apply equally to intercarrier compensation rates for IP-based retail service. Differentiation of rates for TDM-based and IP-based retail services almost certainly would increase the likelihood of arbitrage, disputes and other undesirable behavior during the transition, just as those behaviors are happening today in the absence of specific Commission guidance in this area.[15]

Adopting an identical transition for all providers has other advantages as well. It will ensure nationwide uniformity by removing the potential for multiple interpretations and approaches that could arise at the state level over particular services and providers. This also will prevent delays in the transition in certain parts of the country, as would be likely if states were required to adjudicate these issues. Moreover, a national, predictable glide path will facilitate a speedier transition to IP interconnection, one of the Commission's goals in this proceeding.[16]

The transition should occur over a reasonable period, rather than through a flash cut that drops intercarrier compensation rates immediately. The Commission has recognized in the past that such "glide path" transitions are appropriate to avoid immediate financial disruption, even in cases where the Commission believed that initial rates were excessive.[17] Given the extent to which many providers depend on access charges, and the need to recover costs through other mechanisms, a measured transition is a necessity.

The transition should take place over a reasonable period. It would start with a freeze on all intercarrier compensation rates as soon as the new rules become effective. In the first phase,

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[15] *See* Comments of Cox Communications, WC Docket 10-90 *et al.*, filed April 1, 2011 ("Cox Part XV Comments").
[16] *Notice*, ¶ 679
[17] *See, e.g.*, Access Charge Reform: Reform of Access Charges Imposed by Competitive Local Exchange Carriers, *Seventh Report and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 9923, 9944-45 (2001).

all intrastate switched access rates would be reduced in equal increments to the current level of regional Bell company interstate rates.[18] In the next phase, all intercarrier compensation rates – interstate switched access, intrastate switched access and reciprocal compensation – would be reduced in equal increments to zero or to a level near to zero set by the Commission.[19] At the end of the transition, intercarrier compensation rates would reach their final, permanent levels.

B. Carriers Should Be Permitted to Adjust Retail Rates to Make Up for Lost Intercarrier Compensation.

While reducing intercarrier compensation is important, the Commission should recognize that the reductions will affect the ability of providers to recover their costs. For that reason, the new rules should offer specific opportunities for providers to recover the costs no longer covered by intercarrier compensation. These opportunities should include the ability to raise the subscriber line charge ("SLC") and to encourage rural carriers to increase their retail service rates to more accurately reflect their costs. At the same time, carriers that do not take advantage of these opportunities should be required to impute such increases to their revenues before drawing from the legacy High Cost Program, the Connect America Fund or any other access replacement mechanism.

The first step the Commission should take is to increase the cap on the SLC. The SLC is designed to capture the fixed costs of providing access to the interstate network. Thus, shifting cost recovery from per-minute access charges to the SLC is entirely appropriate. Using the SLC to recover interstate access costs also is more in line with the way long distance service is priced

[18] In states not served by a regional Bell company, the interstate switched access rates of the largest incumbent LEC would be used as the benchmark.

[19] A final rate other than zero is likely reasonable in instances where traffic exchange is not reasonably balanced (perhaps at any ratio higher than 55-45). A final rate of zero or even bill-and-keep, would be appropriate for any traffic exchange that is reasonably balanced, *i.e.*, up to 55-45.

at the retail level, since most customers now purchase plans that provide for unmetered service, rather than paying on a per-minute basis.

Second, the Commission should work with the states to ensure that rural incumbent LECs are permitted to adopt reasonable increases in their prices for retail telephone services. Today, these services often are underpriced compared to service in urban areas, in large part because of the subsidies that rural carriers receive. To avoid rate shock, these increases should be limited, and rates in rural areas should be capped at 150% of the rates in nearby urban areas.

To create appropriate incentives for high cost carriers to adopt higher SLCs and rationalize their retail rates, the Commission should limit the availability of legacy high cost funding so that carriers that have not adopted these measures cannot rely on the federal high cost fund. After the first three years of the transition, any carrier that previously drew from the high cost fund should be required to have reset its SLC and its retail rates or, if it has not, to impute the revenues that would have resulted from a reset SLC and retail rates in calculating the support it can receive. In making this calculation, the Commission should use the national average retail rate for local service and the national SLC cap. Regardless, any carrier that has access to state-level universal service funding to make up for access charge reductions should be ineligible for additional support from the federal fund. As described above, this kind of limitation is necessary to prevent double-dipping and to avoid imposing additional burdens on consumers supporting federal and state universal service programs.

These limitations should apply whether the Commission leaves the existing high cost fund in place during the transition, or makes legacy high cost funding available through the

Connect America Fund.[20] They also should apply to all recipients of high cost funding, including rural incumbent LECs, competitive LEC ETCs and wireless ETCs.

C. The Commission Should Adopt Specific Rules Governing Transit Service.

Transit service is a key part of the intercarrier compensation ecosystem because it ensures that all carriers can interconnect with all other carriers indirectly on an economically reasonable basis. The Commission must ensure that fair and economical transit rates are in place to develop and maintain a competitive telecommunications marketplace. Consequently, it should clarify that incumbent LECs must provide transit at cost-based rates, consistent with the requirements of Sections 251 and 252 of the Communications Act.[21]

Transit is significant because it serves to ensure that all carriers are interconnected in the public switched telephone network. Direct interconnection is often preferable to indirect interconnection. However, there are times when direct interconnection is unavailable, uneconomic or impractical. Competitive carriers may refuse to interconnect directly when call volumes are low or when direct interconnection would be unusually expensive because of the configuration of their networks. Moreover, states often are reluctant to order direct interconnection between competitive carriers and sometimes lack the jurisdiction to order direct interconnection when neither of the carriers is an incumbent LEC.[22] In Cox's experience, for these reasons even the most energetic efforts to obtain direct interconnection do not always succeed. As a result, competitive carriers are forced to rely on indirect interconnection through

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[20] *See, e.g.*, Section III(A)(2) *supra*.
[21] 47 U.S.C. §§ 251(c), 252(d)(1).
[22] This is particularly common when one of the carriers is a wireless provider.

transit arrangements.[23] Indeed, despite efforts to obtain direct interconnection, Cox still incurs significant expenses each month to pay incumbent LECs for transit services.

The incumbent LEC is the only entity that offers complete, reliable and ubiquitous indirect interconnection. Simply put, all carriers interconnect with the local incumbent LEC, and so the incumbent LEC is the only provider in a position to offer the ability to interconnect indirectly with every other provider.[24] Moreover, even if there were alternatives, and even when a provider has direct interconnection, there are good reasons to maintain the ability to obtain indirect interconnection via transit service, including ensuring redundancy in the case of network outages or natural disasters.

Despite the importance and necessity of indirect interconnection, incumbent LECs have been resistant to providing transit service at cost-based rates. For instance, Cox was forced to seek arbitration on this issue in Nebraska when Qwest refused to offer transit under Section 251(c).[25] The Commission also has recognized that transit issues are significant.[26] The Commission can address this issue by determining that transit services are interconnection services under Section 251(c), and therefore must be provided at cost-based rates determined under Section 252 and the Commission's rules. Such a determination will ensure that transit remains available and is offered at appropriate rates.

[23] The transiting function also must remain available during the transition to IP interconnection to maintain network connectivity, including the uninterrupted exchange of traffic and transparent call completion for end users.
[24] Some companies like Neutral Tandem do offer indirect interconnection in some areas, but many providers do not choose to connect with non-ILEC tandem services, so those companies do not provide a complete solution.
[25] *See Qwest Corp. v. Cox Nebraska Telcom, LLC*, No. 4:08CV3035, 2008 U.S. Dist. LEXIS 102032, 2008 WL 5273687 (D. Neb. 2008).
[26] Developing a Unified Intercarrier Compensation Regime, *Further Notice of Proposed Rulemaking*, 20 FCC Rcd 4685, 4740 (2005).

D. The Intercarrier Compensation Framework Should Not Create Any Barriers to IP Interconnection.

The *Notice* recognizes that the transition to IP interconnection will be an important step forward in the evolution of the nation's communications networks.[27] The Commission correctly wishes to avoid creating any disincentives for that transition to take place, but also must recognize that there are limits to its ability to make the transition happen sooner than the market would dictate.

The single most important way to prevent regulation from serving as a barrier to IP interconnection is for the Commission to ensure that incumbent LEC interconnection obligations under Sections 251 and 252 remain in effect during the transition to IP interconnection.[28] This is a real concern because incumbent LECs, including Verizon and AT&T, have indicated their belief that interconnection, including IP interconnection should be governed by "commercial negotiations," rather than by Sections 251 and 252.[29] Furthermore, since many interconnection agreements will expire in the next twelve to eighteen months, without Commission clarification incumbent LECs will have a window to assert these types of claims.[30]

Thus, in the absence of a Commission determination, it is likely that competitive providers will be forced to fight the issue of the right regulatory framework for interconnection on a state-by-state basis during the transition if they wish to use IP-based interconnection. Given

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[27] *Notice*, ¶ 679.

[28] As NCTA noted in 2008, "[e]ven if an ILEC provides interconnected VoIP services that are classified as information services, the Commission must make clear that at least one entity involved in the provision of that services will be subject to the interconnection obligations of Section 251(c), *i.e.*, an ILEC cannot avoid these obligations simply by using IP-based equipment to provide voice service or partnering with an affiliated or unaffiliated wholesale carrier." Comments of NCTA, WC Docket No. 05-337, *et al.*, Nov. 26, 2008, at 15.

[29] *See In the Matter of International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act, A National Broadband Plan for Our Future,* Transition from the Legacy Circuit-Switched Network to Broadband, *NBP Public Notice #25*, Comments of Verizon and Verizon Wireless, Dec. 21, 2009, at 5 ("The Commission should reject proposals to extend legacy interconnection regulations to IP networks."), Comments of AT&T Inc., Dec. 21, 2009, at 17 ("The current intercarrier compensation regime – with all the arbitrage and inefficiencies associated with that regime – will be replaced with the unregulated IP-based model that currently characterizes the exchange of Internet traffic.").

[30] Cox Part XV Comments at 3.

the costs and uncertainties of litigating arbitrations, there will be little incentive to undertake such an effort, and therefore a lack of certainty would impede the transition to IP interconnection.

Indeed, as Cox explained in 2008:

> Exempting incumbents on the basis of the technology they or competitive LECs use would have the effect of gutting the interconnection requirements that Congress crafted in 1996, and leaving competitive carriers worse off than they were before the 1996 Act was enacted. That was not the intent of Congress, and would be inconsistent with the public interest in a competitive telecommunications environment.[31]

Further, the Commission should move expeditiously to adopt a regulatory framework for IP-based interconnection that includes certain key principles. These principles are as follows:

- **Incumbent LECs must be required to negotiate direct IP-to-IP interconnection on reasonable terms and conditions and in good faith.** This is a basic requirement for fair negotiations. Incumbents should not be permitted to use their size and market power to dictate terms.
- **Incumbent LECs must agree to directly interconnect with competitive LECs at any technically feasible point of interconnection.** This principle is consistent with basic Section 251(c) obligations.
- **The "network edge" concept should not be applied to IP interconnection.** This approach is not relevant to IP network technology and design because there is no geographic foundation to apply it to them.
- **Each provider is responsible for the cost of providing its own network facilities to the point of interconnection.** The costs covered by each interconnecting carrier include trunking and any other facilities required to reach the point of interconnection.

If applied to all IP-based interconnection, these principles will ensure that such interconnection is not rendered economically disadvantageous by differences in how different types of interconnection are regulated. By maintaining a level playing field, the Commission will ensure that decisions about when to adopt IP interconnection are economically rational.

[31] Reply Comments of Cox Communications, Inc., WC Docket No. 05-337, *et al*., Dec. 3, 2008, at 4.

V. Conclusion

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

Respectfully submitted,

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April 18, 2011

Certificate of Service

I, Theresa Jones, certify that on this 18th day of April 2011, I caused a copy of the foregoing Comments of Cox Communications, Inc. to be served on the following by first class mail.

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