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 long-time participant in the effort to reform the universal service and intercarrier compensation regimes, Cox Communications, Inc. ("Cox") supports the Commission's stated principles for reform, as set out in its February *Notice:* modernizing and refocusing the universal service and intercarrier compensation regimes to ensure all Americans have access to robust, affordable broadband and to accelerate the transition to IP networks; fiscal responsibility; and use of market-driven and incentive-based policies. The ABC Proposal provides a good foundation for Commission action but nonetheless falls short of the Commission's goals for reform by perpetuating some key competitive distortions and failing to resolve significant ambiguities that have opened opportunities for arbitrate in the past. In these comments, Cox proposes remedies for these failing in the ABC Proposal in response to the Commission's *Request for Further Comment,* and also offers an analysis of the jurisdictional issues raised by the Commission's effort to create a unified intercarrier compensation regime. Reform under the Commission's principles should ultimately result in a stable environment for intercarrier compensation with clear, certain rules of the road that allows providers of voice services to make long-term plans for deployment of and migration to next-generation networks. Reform should also result in the efficient deployment of broadband services to unserved areas by providers, competing on a level playing field, so that consumers everywhere will have affordable access to broadband services critical to participation in modern society. Cox offers several modifications to the ABC Proposal to ensure that several key elements of the framework will produce certainty and competitive neutrality in both the intercarrier compensation and universal service systems.

Ensure that Reform Results in Certainty

While the record demonstrates that there are good reasons not to adopt differential rates for voice over IP and TDM access services, Cox acknowledges that the Commission may determine that it is justified to adopt such rates as part of an overall package of reform. If the Commission does adopt differential rates, the differential should exist for the shortest time possible, starting no sooner than the date the rest of the intercarrier compensation rules go into effect. The Commission also should adopt very specific rules to prevent IXCs from gaming the system to avoid paying TDM rates. Technical solutions, such as signaling, will not work, because they can be manipulated. Rather, the Commission should specify a methodology to compute the percentage of voice over IP traffic or set safe harbors. One tool that may be appropriate for this purpose is the data provided to the Commission on Form 477.

The Commission also should require IXCs to pay voice over IP providers for access services at tariffed rates for the time prior to the effective date of the transition period. Moreover, IXCs have been using these services while relying on infrastructure, tariffs, and contracts that support the current access regime; therefore, by their own choice, they have agreed to pay the current access rates. There is no good policy or legal reason to allow them to avoid their obligations.

The transition should start no sooner than July 1, 2012 to allow carriers time to prepare to implement the new rules. The Commission should adopt the five-year transition proposed for intercarrier compensation in the ABC Proposal. This transition period is reasonable, and avoids costs and risks inherent in a longer transition. The transition should be uniform for all providers, and should be same for incumbent and competitive LECs alike.

High Cost Support. As the ABC Proposal suggests, the same five-year transition should apply to high cost support. Given the urgency of the need to deploy broadband in unserved areas, the Commission should adopt the fastest transition possible. A longer transition would cost more, limit the funds available for broadband or both, and also would complicate intercarrier compensation reform. The possibility that a small number of carriers might need additional assistance can be managed in a way that should not affect the Commission's broader objectives.

The Commission also should not attach any extraneous requirements to CAF support. While various parties have suggested obligations to provide Wi-Fi, provide backhaul or offer interconnection, these requirements would serve only to make deployment more expensive without advancing the Commission's central goals.

Ensure Reform that Does Not Distort Competition

Intercarrier Compensation. The Commission should act to limit the scope of the access replacement mechanism. While ideally it should not be made available to any price cap carrier, at a minimum the three largest carriers should be excluded. Any funds from the access replacement mechanism would have a minimal impact on these companies' revenues, and they already will be significant beneficiaries of access reform as large long distance carriers. The access replacement mechanism should not have any true-up.

The intercarrier compensation rules also should not deregulate transit service. Transit service is necessary so that competitive carriers can interconnect with all other providers, and the market for transit service is not sufficiently competitive. Moreover, as the courts and state regulators have concluded, transit is a form of interconnection subject to Section 251(c)(2) of the Communications Act.

The Commission should not adopt any new rules governing originating access. Originating access services are subject to price discipline in ways that terminating access is not, and the benchmarks for terminating access will put additional downward pressure on originating access rates.

High Cost Support. The Commission should not adopt a cost model for CAF support in price cap areas, and should instead use a hard cap based on current support levels. Use of a cost model will delay implementation of the CAF and cost models are subject to manipulation. Neither of these concerns applies to a hard cap.

The Commission also should not adopt a right of first refusal for incumbent carriers. Granting a right of first refusal would confer an unearned advantage on incumbent carriers that have not deployed broadband facilities. A right of first refusal also would eliminate the potential benefits of competitive bidding, which should be the primary means of funding broadband in unserved areas.

Commission Authority for Reforming Intercarrier Compensation Rules

The Commission has full authority to adopt intercarrier compensation rules. It derives this authority from Section 251(b)(5), which gives it power over all transport and termination of communications and from Section 251(g), which the Commission already has determined allows it address intrastate access services.

Further, the Commission can use its authority under Section 254 to condition access to universal service funding of all types on compliance with the intercarrier compensation framework. The Commission has adopted such eligibility conditions in the past, and they are consistent with maintaining efficiency in the expenditure of universal service funds.

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COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc. ("Cox"), by its attorneys, hereby submits its comments in response to the Commission's *Request for Further Comment* seeking responses to questions concerning proposals for reform of the high cost universal service program and intercarrier compensation submitted by parties in this proceeding.[1]

Cox supports many elements of the "ABC Proposal" submitted by a group of incumbent local exchange carriers ("LECs"), and the ABC framework provides a good foundation for Commission action.[2] However, there are certain elements of the ABC Proposal that should be modified to create certainty and to prevent competitive distortions during the industry's shift

[1] Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding, *Public Notice*, 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. Aug. 3, 2011) (the *"Request for Further Comment"*). Cox has included footnotes indicating what portions of the *Request for Further Comment* are being addressed by specific sections of these comments

[2] Letter from Walter B. McCormick, Jr., United States Telecom Association, Robert W. Quinn, Jr., AT&T, Melissa Newman, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, Michael D. Rhoda, Windstream, Shirley Bloomfield, NTCA, John Rose, OPASTCO, and Kelly Worthington, WTA, to Chairman Julius Genachowski, Commissioner Michael J. Copps, Commissioner Robert M. McDowell, Commissioner Mignon Clyburn, FCC, WC Docket No. 10-90 et al. (filed July 29, 2011) (the "ABC Proposal").

from circuit-switched to packet-switched networks. These comments focus on those areas in responding to certain questions posed in the *Request for Further Comment.*

I. Introduction

Cox is the third largest cable company in the country, and a long-time provider of local telephone services. Cox brought competition in local phone service against the incumbent LECs by providing circuit-switched telephone service over its cable plant as early as 1997. Today, Cox continues to compete successfully in markets across the country with the provision of 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. 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.

Cox has participated actively in this proceeding, on both intercarrier compensation and universal service issues. Cox, by virtue of providing both TDM and IP-based services, has an intimate understanding of the differences between those services and the characteristics they share. Cox also contributes to the federal Universal Service Fund ("USF") and draws from the High Cost and Lifeline Programs within the USF as a competitive Eligible Telecommunications Carrier (CETC).[3] Thus, Cox has ample experience on the impact of high-cost subsidies on our customers and on how high-cost subsidy mechanisms should work to bring service to unserved communities without disrupting the competitive market. Cox responds to the *Request for Further Comments* based on these experiences.

[3] Cox has a pending request for redefinition of a service area in Georgia, which would allow it provide additional service as a CETC in that state. *See* "Wireline Competition Bureau Seeks Comment on Cox Georgia Telcom, LLC Petition for Agreement in Redefining the Service Area of a Rural Telephone Company in Georgia," *Public Notice*, WC Docket No. 09-197, DA 11-1200 (rel. July 18, 2011).

As a facilities-based provider of multiple voice services that has competed successfully with the incumbent LECs, Cox has a keen interest in ensuring that reforms to both the high cost support and intercarrier compensation regimes do *not* produce or perpetuate distortions in competition. Cox also seeks to ensure that reform produces a clear, stable regulatory environment that enables providers to focus on the business of offering quality service to consumers. To these ends, the ABC Proposal lays out several sound ideas for reform of both systems. The proponents of the ABC Proposal have recognized correctly that the Commission should adopt an integrated package of reforms for high cost universal service and intercarrier compensation. They address key issues in the transition from the current high cost regime to the support for broadband through the Connect America Fund ("CAF"). They propose a transition to uniform, low intercarrier compensation rates, which is necessary to address today's environment of arbitrage and subterfuge.

However, the ABC Proposal also has significant flaws. These include the proposal for a cost model for price cap carriers, the proposed right of first refusal for CAF support, the implementation of the access replacement mechanism and the treatment of transit traffic.

While the proponents of the ABC Proposal present it as a unified, integrated package that they endorse only exactly as presented, the Commission correctly determined that it should ask a series of questions based not just on the ABC Proposal, but on the more complete RLEC Proposal and the framework submitted by the state members of the Federal-State Joint Board on Universal Service.[4] While Cox recognizes that compromises need to be made to craft a final package, those compromises should be designed to create a fair result, not to give some industry participants an unreasonable advantage. In the end, the Commission's role is not to balance the

[4] *Request for Further Comment* at 1-2.

interests of individual companies, but to consider the public interest as a whole.[5] For that reason, the Commission should modify the ABC Proposal to correct its flaws.

These comments also address an important question that is not specifically raised in the *Request for Further Comment:* The Commission's authority to adopt rules that affect intrastate access rates. As shown below, the Commission's powers under Section 251(b), Section 251(g) and Section 254 give it ample authority to act.

II. The Commission's Rules Governing Intercarrier Compensation for IP-Based Services Should Be Designed to Minimize Opportunities for Rate Arbitrage.[6]

The question of which rate to apply to voice over IP traffic has been of particular concern to Cox.[7] The ABC Proposal would create a separate tier of compensation for access traffic handled by voice over IP providers. Under the ABC plan, the rate for voice over IP traffic would be set initially to the current interstate rate, regardless of the originating and terminating points of a call, with this rate going into effect on January 1, 2012, six months before the remainder of the

[5] This, of course, is not the first time that a negotiated compromise has been offered to the Commission with the implicit threat that modifications will cause members of the group to defect. *See, e.g.,* Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, *Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45,* 15 FCC Rcd 12962 (2000) (adopting CALLS proposal for access reform after modification), *aff'd in part, rev'd in part, and remanded in part*, *Texas Office of Public Util. Counsel et al. v. FCC*, 265 F.3d 313 (5th Cir. 2001) (subsequent history omitted); Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, *Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166*, 16 FCC Rcd 19613 (2001) (adopting proposal for small carrier access reform with modifications). The Commission has not hesitated to modify such proposals when it has concluded that the public interest required changes.

[6] This section of the comments addresses issues discussed in Section II.E of the *Request for Further Comment.*

[7] *See* Comments of Cox Communications, Inc., WC Docket 10-90 et al. (filed Apr. 1, 2011), at 3-11 ("Cox April 1 Comments"); Reply Comments of Cox Communications, Inc., WC Docket No. 10-90 et al. (filed Apr. 18, 2011) ("Cox April 18 Reply Comments"); Letter of Samuel L. Feder, Jenner & Block, to Marlene Dortch, Secretary, FCC, WC Docket 10-90 et al., May 26, 2011 (describing ex parte meetings between cable operators, including Cox, and Commission staff concerning issues relating to compensation for calls transmitted in voice over IP formats); Letter of Samuel L. Feder, Jenner & Block, to Marlene Dortch, Secretary, FCC, CC Docket 01-92, Feb. 1, 2011 (describing ex parte meetings between cable operators, including Cox, and Commission staff concerning issues relating to failure of IXCs to pay access charges to companies terminating traffic via voice over IP).

plan, and would stay at that rate until the time that all access rates were dropped below the interstate rate.[8]

Cox's April 1 Comments demonstrated why the Commission should not consider proposals for differential access rates for TDM and voice over IP traffic.[9] The Commission should recognize that adopting differential rates for voice over IP and TDM traffic will upset reasonable, investment-backed expectations of companies that use voice over IP technology to provide access services.[10] And, in fact, the *Request for Further Comment* asks a series of questions about how applying different rates to voice over IP traffic would work, including questions about how to determine what traffic would be subject to the special voice over IP rate.[11]

However, to the extent that the Commission believes that it is necessary to adopt a rate differential for a limited period as part of a broader package of universal service and intercarrier compensation reform, Cox acknowledges attaining certainty in the rules of the intercarrier compensation system is more important, and that reform will have benefits that should outweigh the harms caused by a temporary differential in access rates *that is properly designed*. The Commission should be aware, however, that the design of any temporary differential rate regime is particularly important to access providers like Cox that serve end users with both TDM and voice over IP technologies, as they are the providers who are most vulnerable to gaming by interexchange carriers ("IXCs") seeking to minimize their access costs.

[8] ABC Proposal, Attachment 1 at 10.
[9] Cox April 1 Comments at 4-8.
[10] *Palazzolo v. Rhode Island,* 533 U.S. 606 (2001); *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978).
[11] *Request for Further Comment* at 17-18.

A. A Regime That Incorporates a Rate Differential for Voice over IP Access Charges Should Be Designed to Minimize Disruption to Voice over IP Providers.

The Commission should first minimize the potential harm of a differential rates system by keeping the period when a differential applies as short as possible. The shorter the period of the differential, the less opportunity there will be for any carrier to engage in arbitrage, and the less time there will be for TDM competitors to take advantage of the greater revenues they will receive from access service. At a minimum, any differential rate for voice over IP traffic should not take effect until the rest of the rules take effect, on July 1, 2012 or whatever other date the Commission chooses to begin the glide path to a low, unified rate for intercarrier compensation. There is no reason at all for the Commission to set a different rate for voice over IP traffic beginning six months before the rest of the rules take effect.

Second, the Commission should work with industry to adopt very specific rules to prevent carriers from exploiting the differential rates to their advantage. As the *Request for Comment* acknowledges, it will be very difficult to create a system that includes a rate differential for voice over IP traffic but that also prevents IXCs from avoiding their obligations by claiming that all, or nearly all, traffic should be subject to the voice over IP rate.[12]

While the Commission may be tempted to rely on a technological solution to address this issue, such an approach is unlikely to solve the problem. Much as phantom traffic has become a problem because carriers fail to provide the signaling information necessary to do proper billing, reliance on a flag, database field or other similar technology fix to indicate IP-based traffic will be subject to the same troubles. To prevent carriers from engaging in similar attempts to avoid

[12] *Request for Comment* at 17.

their obligations, the Commission should adopt a clear, rule-based approach to calculating payments.[13]

In other words, the determination should be made based on easily-verifiable data that and the access provider, any intermediary provider of transport and the IXC can rely on to avoid litigation and disputes. Thus, a more practical solution would be to adopt a specified methodology to compute percent-VoIP factors, or even to set safe-harbor factors that would permit retail and transit and transport providers to pay and bill correctly during the short period when VoIP and TDM would pay different rates.[14] Using a specified methodology or a safe harbor also has the advantages of simplicity, speed to deployment (even if calculated manually) and inexpensiveness.

One way to determine what proportion of traffic is TDM and what proportion is voice over IP is to use the Form 477 data filed every six months with the Commission. Form 477 requires filers to identify their voice service lines by technology, and the proportion of voice service lines served by a particular technology is a good proxy for the proportion of long distance minutes served by that technology. Form 477 also requires the information to be provided on a state-by-state basis, so any variations that might be present at the state level can be captured by using Form 477 data. Moreover, because Form 477 is submitted to the Commission and providing false information is subject to criminal penalties, the information included in the form is likely to be accurate.[15]

[13] As Cox noted in its April 18 Reply Comments, the Commission has acknowledged that false signaling is commonly used by IXCs to avoid paying access charges. Cox April 18 Reply Comments at 3.
[14] Any safe harbor would have to account for the differences in technology mixes that providers may have.
[15] The Commission could adopt other mechanisms as well, such as permitting access providers to rely on traffic studies to determine the proportion of voice over IP traffic. Regardless of the mechanism chosen, the Commission must ensure that it is the access provider, not the IXC, that controls the determination of the rate to be paid.

By creating certainty for access providers and by eliminating opportunities for IXCs to contest access charges, this approach will minimize the harm to access providers caused by a differential rate for voice over IP services. If the Commission does adopt a separate rate for voice over IP services, it should ensure that its mechanism for determining what traffic is subject to the voice over IP rate meets these requirements.

B. The Commission Should Require IXCs to Pay Voice over IP Providers for Access Services at Tariffed Rates for the Time Prior to the Beginning of the Transition Period.

The ABC Proposal explicitly avoids the question of what rates should be paid for access services provided using voice over IP technology before the new rules go into effect.[16] The Commission should not avoid that question, and instead should determine that IXCs must pay tariffed access charges for origination and termination of already incurred long distance calls by voice over IP providers.

The principal reason that IXCs should be required to pay standard access rates for already incurred traffic that was terminated to or originated by voice over IP customers is that they have chosen and agreed to use these access services under the tariffs that Cox and other providers have in place. They send and receive their traffic to access providers through established connections that are intended for access traffic, and expect the traffic to be transmitted just like any other access traffic. They have, in other words, been receiving a benefit from access providers, one that is necessary for the IXCs to remain in business, as they do not have connections to end users. For this reason, a decision to require IXCs to pay tariffed access charges is necessary to avoid giving those IXCs an undeserved windfall during this important transition.

[16] ABC Proposal, Attachment 1 at 10.

Critically, considering the number and extent of the disputes concerning voice over IP access charges, a Commission determination that tariffed rates apply until the time the new rules go into effect would create valuable certainty in the marketplace. A Commission ruling also would reduce the costs to both IXCs and access providers of attempting to resolve these disputes, which have the potential to drain resources from all parties for a significant period of time.

III. Reforms to the Intercarrier Compensation Regime Should Produce Certainty and Avoid Creating Competitive Distortions.

A. The Commission Should Adopt a Short, Uniform Transition Period for Intercarrier Compensation.[17]

Arguably, the biggest impact the Commission can have on the reform of the intercarrier compensation regime is to adopt a clear schedule for the transition to unified rates. Cox supports the ABC Proposal's transition period of five years, but proposes that it begin on July 1, 2012 for all services, and adopting a uniform transition for both incumbent LECs and competitive LECs.

First, five years is a reasonable period for a transition to the final intercarrier compensation rate. A shorter period would require something closer to a flash cut to bring either intrastate rates interstate rate down, which would be unnecessarily disruptive. A longer period would leave higher access rates in place for more time, which would be contrary to the Commission's goals and simply would delay the rationalization of intercarrier compensation rates.

The transition period also should be the same for all providers to the maximum extent possible. Adopting different transition periods for different types of carriers would unfairly benefit the carriers with longer transition periods, and would complicate the transition process. While Cox recognizes that some small rural or rate of return carriers may, as a practical matter, require a longer transition than non-rural or price cap carriers, the Commission should limit the

[17] This section of the comments addresses issues discussed in Section II.A of the *Request for Further Comment.*

extent of any exceptions to carriers that truly need additional time. Moreover, competitive LECs should have the same transition periods as the incumbent LECs that compete with them. Competitive LECs also should retain their ability to impose access charges at parity with incumbent LECs, including in rural areas, including during any extensions granted to small rural or rate of return carriers.[18] Absent such parity, competitive LECs will be at a disadvantage in the marketplace. They will be faced with paying higher intercarrier compensation rates to the rural incumbent LECs benefitting from the extension while being able to collect only lower rates from those same companies. That means that competitive LECs would have the choice of accepting lower revenues or raising their retail prices at a time when those particular incumbent LECs do not face equivalent pressures.[19]

While Cox supports a prompt transition, it also recognizes that some time will be required for carriers to prepare to implement the new rules, particularly with regard to determining percentage-voice over IP factors. For that reason, the transition should not start until July 1, 2012, even if the rules are adopted relatively soon. This date should apply to any changes in the intercarrier compensation regime that the Commission adopts, including changes to rates for voice over IP services.[20]

[18] *See* 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 (2001) (*CLEC Access Reform Order*) (allowing competitive LECs serving rural areas to match access rates charged by competing rural carriers because "[i]f operation in [rural] areas justifies higher access rates for regulated incumbents, we conclude that it justifies equivalent rates for any competitor operating in the area").

[19] Moreover, this model also is consistent with the approach the Commission took in the *CLEC Access Reform Order*. *See id.*

[20] In particular, if the Commission adopts a differential rate for TDM and voice over IP services, it will take some time for access providers that use both technologies to determine how to bill them separately, even with Commission guidance on the process. *See infra* Section II.

B. The Access Replacement Mechanism Should Be Limited in Scope.[21]

The ABC Proposal includes an "Access Replacement Mechanism" for price cap carriers. This mechanism would make up for lost revenues that cannot be addressed through permitted increases in the subscriber line charge.[22] While there may be reason in limited cases to give price cap carriers additional transitional assistance, the scope of that support should be limited carefully. This is particularly true if the access replacement mechanism is made available only to incumbent LECs. Specifically, this funding should not be made available to the largest incumbent LECs – AT&T, CenturyLink and Verizon – and the Commission should not adopt a true-up that would give beneficiaries of the mechanism a chance to receive extra benefits after the fact.[23]

There are two primary reasons why the largest carriers should be excluded from any access replacement mechanism.[24] First, given the anticipated size of the fund for the mechanism, it is apparent that receiving payments from this fund would have little or no effect on whether intercarrier compensation reforms would "jeopardize the operations of" AT&T, CenturyLink and Verizon as broadband providers. In the last quarter, these companies had collective revenues of more than $63 billion, while the proposed fund would peak at $80 million a year, divided among all affected price cap carriers.[25] Thus, any payments from an access replacement fund are unnecessary to support these companies' operations.

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[21] This section of the comments addresses issues discussed in Section II.C of the *Request for Further Comment.*
[22] ABC Proposal, Attachment 1 at 12-13.
[23] Cox's focus is on the three largest incumbent LECs. However, arguably no price cap provider should be allowed to access the access replacement mechanism. All price cap carriers have significant pricing flexibility for their retail services. Given their predominant position in their geographic markets, these companies can use that pricing flexibility to make up any shortfall in revenues resulting from changes in the intercarrier compensation regime. After all, that is precisely what competitive LECs, like Cox, will have to do.
[24] ABC Proposal, Attachment 1 at 12-13.
[25] "AT&T Reports Strong Wireless Gains, Record Mobile Broadband Sales and Continued Strength in U-verse and Strategic Business Services in Second-Quarter Results," http://www.corp.att.com/emea/insights/pr/eng/q2_210711.html (visited August 23, 2011) (reporting $31.5 billion in quarterly revenues); "Verizon Reports Accelerated Revenue Growth, Expanded Margins And Strong 2Q Earnings

Second, these companies will be substantial beneficiaries of intercarrier compensation reform, because each is a significant provider of long distance service. Thus, any costs that the largest LECs will bear as a result of intercarrier compensation reform already will be offset by reduced expenses for access charges. Allowing them to receive support from an access replacement mechanism would be, in effect, a double benefit from intercarrier compensation reform. There is no good reason to allow these companies to benefit twice.

Third, it is not novel for the Commission to adopt different rules for carriers of different sizes. The Commission has done this in many cases, ranging from reporting requirements to the price cap rules.[26] All the Commission needs to do to make such a differentiation is to demonstrate that one group of carriers is differently situated than another, which certainly is true in this case.

Finally, the Commission should not adopt any true-up procedure for the access replacement mechanism. The existence of true-ups would reduce the incentives for carriers receiving this support to reduce their costs or take other steps to address their lost revenue, and almost certainly would add to the costs of the access replacement mechanism. In addition, establishing and implementing a process for true-ups would create an unnecessary administrative burden for the Commission and USAC, which already will face significant additional work as a result of having to manage legacy support, the CAF and other programs at the same time.

Performance," http://news.vzw.com/news/2011/07/pr2011-07-22.html (visited Aug. 23, 2011) (reporting quarterly revenues of $27.5 billion); "CenturyLink Reports Second Quarter 2011 Earnings," http://news.centurylink.com/index.php?s=43&item=2827 (visited Aug. 23, 2011) (reporting quarterly revenues of $4.4 billion); ABC Proposal, Attachment 1 at 13.

[26] *See, e.g.*, 47 C.F.R. § § 32.11 (designating classes of carriers for purposes of Uniform System of Accounts), 43.61 (requiring quarterly international traffic reports only from carriers that meet designated traffic levels), 61.41(a) (applying price cap rules only to specified groups of carriers).

C. The Commission Should Reject the ABC Proposal's Effort to Deregulate Transit Service.[27]

The ABC Proposal suggests that the Commission should eliminate regulation of tandem-based services, which would include transit.[28] This suggestion is the latest incumbent LEC effort to have the Commission declare that incumbent LECs do not have an obligation under Section 251(c) to provide transit to competing carriers. However, transit remains necessary to the provision of competitive local exchange service and is mandated by Section 251(c)(2) of the Communications Act.

Transit is necessary because competitive carriers cannot connect with all other carriers without incumbent LEC-provided transit. The Commission recognized the significance of transit in the 2005 intercarrier compensation rulemaking when it noted that "[w]ithout the continued availability of transit service, carriers that are indirectly interconnected may have no efficient means by which to route traffic between their respective networks."[29] The Connecticut Department of Public Utility Control addressed this issue in 2009, when it examined the availability of transit service in detail and concluded that:

> [T]he record does not support a finding that there are an adequate number of transit service providers or that they possess a sufficient market share which permits the service to be priced at a market rate. The Department also believes that the large disparity between the Telco's cost of providing transit service and the actual rates charged is a more accurate indication of the limited competition in the market. The lack of power that market forces have had on the Telco's transit service prices as exhibited by a large disparity between AT&T's cost of providing TTS [transit service] and the various rates charged to the different carriers also contributes to Department's belief that effective competition for this service does not exist.[30]

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[27] This section of the comments addresses issues discussed in Section II.B of the *Request for Further Comment.*

[28] ABC Proposal at 11. The ABC Proposal would deregulate tandem switching, which is used for transit services.

[29] Developing a Unified Intercarrier Compensation Regime, *Further Notice of Proposed Rulemaking,* 20 FCC Rcd 4685, 4740 (2005) (the *"2005 NPRM").* In the same passage, the Commission further explained that "[t]he record suggests that the availability of transit service is increasingly critical to establishing indirect interconnection – a form of interconnection explicitly recognized and supported by the Act." *Id.*

[30] Petition of Youghiogheny Communications – Northeast, LLC d/b/a/ Pocket Communications for a Declaratory Ruling that the Southern New England Telephone Company d/b/a AT&T Connecticut Is in Violation of Section 16-

Nothing significant has changed since 2009. While some companies have begun to provide tandem services, there are no competitors that have the same ubiquity as incumbent local exchange carriers. Indeed, in every market where Cox offers service, it must purchase tandem service from the incumbent LEC to reach at least some other carriers, even where another tandem service provider offers service. Without incumbent LEC transit service, Cox would be unable to connect calls to some customers on the public switched network.

Market data also support this conclusion. If transit were a competitive service, rates across the country would level out, as the costs of providing transit are essentially the same from place to place.[31] However, Cox's transit costs vary significantly in places where carriers have not been required to apply TELRIC rates. For instance, one incumbent LEC's transit charges in Cox's states range from $0.000934 to $0.0031019 per minute. This is a variation of more than three times from the lowest to the highest rate. This type of variation is indicative of an incumbent LEC taking advantage of its market power where it can, and demonstrates the necessity of regulating transit rates.

Moreover, Section 251(c)(2) requires transit to be made available at cost-based rates as a form of interconnection. This is the conclusion reached by two separate U.S. District Courts and every state regulatory commission to consider the issue.[32] As the U.S. District Court in Nebraska explained in 2008:

247B of the Connecticut General Statutes and the Department's Orders in Docket No. 02-01-23 Relating to Transit Traffic and Federal and State Laws and Regulations Relating to the Transit Traffic Factor, *Decision*, Docket No. 08-12-04 (Oct. 7, 2009), at 33.

[31] Unlike the costs associated with outside plant and end offices, the tandem and operational costs should not vary significantly from place to place.

[32] *Qwest Corp. v. Cox Nebraska Telcom, LLC,* 2008 WL 5273687 (D. Neb. 2008); *Southern New England Telephone Company v. Perlermino,* 2011 WL 1750224 (D. Conn 2011); *Brandenburg Telephone Co. et al. v. Windstream Kentucky East, Inc., Order*, Case No. 2007-00004 (Ken. Pub. Svc. Comm'n 2010); Telcove Investment, LLC's Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and Applicable State Laws for Rates, Terms, and Conditions of Interconnection with Southwestern Bell Telephone L.P. d/b/a SBC Arkansas, *Memorandum and Order,* Docket No. 04-167-U, (Ark.

> When Section 251(a) is read in conjunction with Section 251(c), it is clear that Congress imposed this obligation in Section 251(c) of the Act. Under Section 251(c), an ILEC must allow a CLEC to interconnect its facilities and equipment with the ILEC's network "for the transmission and routing of telephone exchange service and exchange access." 47 U.S.C. § 251(c)(2)(A); 47 C.F.R. § 51.305(a). Accordingly, an ILEC must provide transit service when a CLEC interconnects with the ILEC for the purpose of indirectly interconnecting with a third carrier. Otherwise, the indirect interconnection could not be used "for the transmission and routing of telephone exchange service and exchange access," and an ILEC could frustrate the flow of traffic and prevent carriers from indirectly interconnecting. Such a finding would render the "indirectly" language in Section 251(a) meaningless. The clear language of Section 251 requires ILECs to directly interconnect with competitors and facilitate competitors' ability to indirectly interconnect.[33]

Indeed, the Qwest court, in affirming the decision of the Nebraska Public Service Commission to require transit to be provided at TELRIC rates, held that "the unambiguous language of Section 251 demonstrates that an ILEC must provide transit under Section 251(c)(2)."[34]

Consequently, requiring transit to be made available at cost-based rates is necessary to ensure that competitive LECs can obtain interconnection with other carriers on reasonable terms and to prevent incumbent LECs from exploiting their market power and also is mandated by Section 251(c)(2). The Commission therefore should reject incumbent LEC efforts to obtain deregulation of transit service.

PSC, Sept. 15, 2005) at 37; Petition of Southwestern Bell Telephone, L.P. D/B/A SBC Arkansas for Compulsory Arbitration of Unresolved Issues for a Successor Interconnection Agreement to Arkansas 271 Agreement (A2A), *Memorandum Opinion and Order*, Docket No. 05-081-U (Ark. PSC, Oct. 31, 2005) at 17; Application by Pacific Bell Telephone Company d/b/a SBC California (U 1001 C) for Arbitration of an Interconnection Agreement with MCImetro Access Transmission Services LLC (U 5253 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996, Decision 06-08-029, Application 05-05-027, (Cal. Pub. Utils. Comm'n Aug. 24, 2006); Petition of Level 3 Communications, LLC, for arbitration pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and the applicable state laws for rates, terms, and conditions of an interconnection agreement with Michigan Bell Telephone Company, d/b/a SBC Michigan, *Decision of the Arbitration Panel*, Case No. U-14152, (Mich. PSC Dec. 10, 2004).

[33] *Qwest v. Cox Nebraska Telecom*, 2008 WL 5273687 *6 (footnote omitted); *see also Southern New England Telephone v. Pelermino*, 2011 WL 1750224 *7 (citing *Qwest* with approval).

[34] *Qwest v. Cox Nebraska Telcom*, 2008 WL 5273687 *5.

D. There Is No Need to Adopt New Rules Governing Originating Access.[35]

While there is consensus that it is necessary to address terminating access rates, there is no need for the Commission to adopt rules governing originating access services. Originating access is subject to market forces that do not affect terminating access in the same way.

The difference between originating access and terminating access is that originating access is affected by the Commission's equal access rules. These rules give customers the ability to choose their long distance carriers, and therefore create opportunities for market pressures to affect originating access rates. Moreover, large customers can avoid paying originating access by purchasing dedicated facilities and bypassing the local exchange carrier altogether.

These factors mean that the economics of originating access are different than the economics of terminating access. Access providers have significantly less market power in the originating access market than they do in the terminating access market. There is, therefore, less need to reform the regulation of these services, as marketplace pressures will act on originating access over time. These pressures will be increased by reform of terminating access, which effectively will set benchmark rates for all access services. The Commission should, therefore, concentrate on terminating access and not address originating access in this proceeding.

IV. The Commission Has the Authority to Adopt Rules Governing All Intercarrier Compensation.

One central question that must be answered before the Commission can adopt a unified framework for reform of intercarrier compensation is the extent to which the Commission's rules can be applied to intrastate access services in light of the limitations in Section 2(b) of the Communications Act.[36] Many parties have advanced theories to support the Commission's

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[35] This section of the comments addresses issues discussed in Section II.A. of the *Request for Further Comment.*

[36] 47 U.S.C. § 152(b). The Commission's ability to set reciprocal compensation rates, which are another component of intercarrier compensation reform, is provided by Section 251(b)(5), and the Supreme Court has affirmed that the Commission can set appropriate rules for reciprocal compensation. 47 U.S.C. § 251(b)(5); *AT&T v. Iowa Utils.*

authority to reach intrastate access services.[37] Cox agrees that there are multiple bases for Commission action, including the Commission's power to condition access to universal service funding on compliance with other requirements.

A. The Commission Has Authority to Adopt Uniform National Rules Governing Intercarrier Compensation Under Sections 251(b)(5) and 251(g) of the Communications Act.

Two provisions of the Communications Act – Section 251(b)(5) and Section 251(g) – give the Commission the authority to adopt uniform national rules that govern intercarrier compensation for all types of traffic. The Commission can rely on these provisions to support its rules.

First, Section 251(b)(5) gives local exchange carriers the "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications."[38] Commission orders have established that this obligation is not limited to traditional local traffic. For instance, the Commission's *ISP-Bound Traffic Remand Order* determined that Section 251(b)(5) covers "the transport and termination of all telecommunications" exchanged with LECs.[39] Similarly, the Commission decided that intraMTA wireless traffic is covered by Section 251(b)(5), even though much of that traffic would be treated as intrastate toll traffic under a traditional analysis.[40]

Bd., 525 U.S. 366, 384 (1999) (FCC can set pricing methodologies for services covered by Section 251). Therefore, the focus of this section is on the Commission's jurisdiction to reform intrastate access rates.

[37] *See, e.g.*, Comments of Comcast Corporation, WT Docket No. 10-90 et al., Apr. 18, 2011 at 6-9, PaeTec et al., WT Docket No. 10-90 et al., Apr. 18, 2011 at 30-31, ABC Proposal, Attachment 5

[38] 47 U.S.C. § 251(b)(5).

[39] Intercarrier Compensation for ISP-Bound Traffic, *Order on Remand and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 9151, 9165-6 (2001).

[40] Implementation of the Local Competition Provisions in the Communications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499, 16014 (1996) (the "*Local Competition Order*").

By its terms, Section 251(b)(5) applies to any traffic exchanged with a LEC, whether by another LEC or by an IXC. Consequently, it can be applied to any access traffic handled by a LEC.

Section 251(g) provides additional support for the Commission's authority to adopt unified intercarrier compensation rules. Section 251(g) is a savings provision intended to preserve the pre-1996 Act intercarrier compensation structure until the time that the Commission chooses to modify that structure through its own later decisions.[41] As the Commission has held in the past, Section 251(g) is not limited to preserving interstate access, but also covers the intrastate portion of the access charge structure.[42] Thus, Section 251(g) is more expansive than the authority the Commission had prior to the enactment of the 1996 Act.

Most importantly, Section 251(g) specifically refers to the Commission's authority to adopt new regulations governing access services by giving the Commission the power to modify the access regime under rules "prescribed by the Commission after February 8, 1996."[43] Given that Section 251(g) covers the entire access regime, both interstate and intrastate, it follows that the Commission's authority to adopt rules also covers the entire regime.

The analysis under both Section 251(b)(5) and Section 251(g) is reinforced by the Supreme Court's decision in *Iowa Utilities Board.*[44] In that decision, the Supreme Court held that the Commission's rulemaking power under Section 201(b) covers all of the provisions of the Communications Act, including Section 251, because "the grant in §201(b) means what it says" when it refers to the entire Act "and *explicitly* gives the FCC jurisdiction to make rules governing

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[41] 47 U.S.C. § 251(g).
[42] *See 2005 NPRM*, 20 FCC Rcd at, 4722 (2005); *Local Competition Order,* 15 FCC Rcd at 15869 (concluding that "it would be incongruous to conclude that Congress was concerned about the effects of potential disruption to the interstate access charge system but had not such concerns about the effects on analogous state mechanisms.")
[43] 47 U.S.C. § 251(g).
[44] AT&T v. *Iowa Utils. Bd.,* 525 U.S. 366.

matters to which the 1996 Act applies.[45] Thus, Sections 251(b)(5) and 251(g) expanded the Commission's authority to cover intercarrier compensation and access charge matters that were previously given over to the states, and Section 201(b) confirms the Commission's authority to adopt rules implementing those provisions.

B. The Commission Can Condition Eligibility for Federal Universal Service Funding on Compliance with the Intercarrier Compensation Framework.

The Commission's commitment to reforming the high cost universal service program provides one additional basis for it to assert authority over intrastate access charges. As is evident from the *Notice* and the additional proposals the Commission is now considering, high cost support issues and intercarrier compensation are inextricably intertwined.[46] Together, they form a significant part of the revenue stream for carriers in high cost areas, and the Commission has, in the past, recognized that the costs in high cost areas can justify access rates that are higher than in denser, lower-cost areas[47] Many carriers serving high cost areas also are significant beneficiaries of the Schools and Libraries Program, Lifeline and Link-Up and the Rural Health Care Program.

Given this relationship, and the inclusion of transitional support for high cost carriers in the intercarrier compensation reform package, the Commission reasonably could conclude that eligibility for federal universal service funding should be tied to a carrier's compliance with the intercarrier compensation reform framework. In practice, the two should be tied together, because a carrier that did not reduce its access charges and kept receiving universal service funding would have more total revenue than anticipated under the Commission's rules. This

[45] *Id.* at 378, 380 (emphasis in original).
[46] Connect America Fund, *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), ¶ 9 (noting that "because of the interrelationship between USF and ICC, and the importance of both to the nation's broadband goals, reform of the two programs must be tackled together"); ABC Proposal, Attachment 1 at 1 (stating that plan consists of "three inextricably-linked components").
[47] *See, e.g., CLEC Access Reform Order*, 16 FCC Rcd at 9944.

would mean that universal service funds were being used inefficiently, and also would result in unreasonably high profits for any company that did not comply with the intercarrier compensation rules.

The Commission's authority to condition access to universal service funding on compliance with other requirements is clear. In fact, the Commission has taken this approach repeatedly since Section 254 was enacted in 1996. For instance, carriers are eligible for schools and libraries funding only if they offer their lowest prices in response to requests for service.[48] Similarly, eligibility for Lifeline funding is limited to carriers that do not charge a local number portability fee to Lifeline customers and that follow specified procedures to verify customer eligibility.[49] The purpose of these requirements is to conserve the available universal service funding and ensure that it is used efficiently. The same considerations would support requiring compliance with the intercarrier compensation framework to obtain access to universal service funding.

Moreover, adopting this approach would give the strongest incentives to comply to the carriers that would be most likely to try to avoid lowering their access rates. As the Commission knows, carriers with high access rates also are highly likely to be recipients of significant universal service funding. They would be unlikely to risk losing that funding by failing to comply with the requirements of the access framework.

Finally, this analysis is independent of any of the other bases for Commission authority to adopt rules governing intercarrier compensation. Thus, even if a court found that another jurisdictional theory would not support intrastate access reform, that conclusion would not affect

[48] 47 C.F.R. § 54.511(b).
[49] 47 C.F.R. §§ 54.401(e), 54.410.

the Commission's power under Section 254, or its ability to condition the availability of universal service funding on compliance with the intercarrier compensation framework.

V. Reform to the High Cost Support Mechanism Must Result in an Efficient and Competitively Neutral Disbursement of Funds for the Deployment of Broadband to Unserved Areas.

As drafted, several elements of the ABC Proposal would fail to follow the Commission's stated principals for reform, would result in the inefficient use of CAF support and would create undue advantages for incumbents. In particular, the use of cost models for price cap areas and inclusion of a right of first refusal would be harmful. These elements effectively unbalance the costs and benefits of high cost reform, and therefore should be modified. However, the Commission should retain the proposed transition period and also should reject calls for additional conditions on CAF support, which would raise costs and make it more difficult to extend broadband to unserved areas.

A. The Commission Should Not Adopt a Cost Model for CAF Support for Price Cap Areas and Instead Should Set a Hard Cap on CAF Support.[50]

The ABC Proposal includes creation of a cost model to determine CAF support for price cap carriers. The Commission should reject the use of a cost model, and instead should use current high-cost fund support levels as a hard cap on CAF support.

There are several reasons that using current support levels as a cap is superior to creating and applying a new cost model. First, using the current support levels as a cap will limit the costs of the CAF, and make CAF support predictable. In particular, a cap ensures that the size of the fund will not grow, and should ensure lower deployment costs for broadband services over time.

[50] This section of the comments addresses issues discussed in Section I.C.1 of the *Request for Further Comment.*

Second, adopting a cost model will delay implementation of the CAF. The Commission's experience with efforts to develop universal service cost models demonstrates that this is a significant risk.[51] Previous efforts often have been unsuccessful, and it takes many months to develop a model before it can be evaluated. Moreover, a cost model will start to become inaccurate the day it is completed, so even if there were no delay inherent in the process of testing such models, they either would have to be replicated on a regular basis or would be less and less reflective of the affected companies' actual costs over time. In comparison, adopting a hard cap will require very little effort, the support levels will be easy to determine quickly, and there is no reason to worry about whether a cap will become outdated.

Third, cost models would be susceptible to manipulation. The outcome of any modeling exercise necessarily would be sensitive not just to the inputs, but to the assumptions about how those inputs interact. For instance, today there are many technologies that can deliver broadband to consumers, and modelers could simply pick the technology based on the economic interests of the model's sponsors.[52]This is one reason that development of a cost model would be contentious and difficult, but it also means that small changes in the model or in the inputs could have significant effects on the support available to individual carriers. Given the amount of money at stake, carriers will have significant incentives to game the modeling process. These considerations would not affect a hard cap, since it would be based on known data that is not subject to manipulation.

[51] *See, e.g.*, Federal-State Board Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs, *Tenth Report and Order*, 14 FCC Rcd 20156, 20161-4 (describing multi-year process for developing cost model).

[52] In this proceeding, in fact, parties and the Commission have offered multiple models, each of which has different results. *See* ABC Proposal, Attachments 2 and 3 (detailing results and methodology for ABC Proposal cost model), Letter from David A. LaFuria, Counsel to United States Cellular Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Aug. 6, 2011 (providing "proof of concept implementation of a forward looking economic cost model" for wireless universal service support); "The Broadband Availability Gap," OBI Technical Paper No. 1 (rel. Apr. 21, 2011) (using model to determine costs of deploying broadband where it is not now provided).

B. The Commission Should Not Adopt a Right of First Refusal for Incumbent Carriers.[53]

The ABC Proposal would give incumbent carriers a right of first refusal to CAF support. The underlying assumption behind the right of first refusal appears to be that it would be more efficient to allow incumbents the first chance at support funding. While it may be more advantageous for the incumbents, there is no reason to think it would be beneficial to the public interest, and would necessarily lead to the more efficient deployment of broadband. Consequently, the Commission should not grant the incumbents this advantage.

First, granting a right of first refusal would give incumbents the advantage in obtaining access to funding for broadband simply because they received funding for legacy services. There is no logical connection between the two subsidy mechanisms, and this would merely reinforce the advantage that incumbent carriers were granted through their decades-old monopolies. There is no evidence at all that granting a right of first refusal would lead to any consumer benefits; in fact, if an incumbent has not already deployed broadband in an area, there is reason to believe that giving it new money will not lead to the best outcome for consumers.

In fact, if there is no broadband in an area, there is no public policy rationale for preferring any provider, let alone granting an exclusive or initial right to a provider to determine the best way to deploy broadband in the unserved area. This is a critical point – Cox continues to agree with the *Notice's* conclusion that the best way to bring broadband to unserved areas is a competitive bidding process that allows all terrestrial service providers to participate equally. If incumbent LECs are the most efficient providers – as they claim while seeking a right of first refusal – then the bidding process will award them the subsidies to construct broadband infrastructure. If they are not, then both the consumers who live and work in the unserved area

[53] This section of the comments addresses issues discussed in Section I.C.2 of the *Request for Further Comment.*

and the broader public that contributes to the CAF will benefit from a more efficient distribution of broadband subsidies than would have resulted from granting a right of first refusal.

In addition, affording a right of first refusal to incumbents will reduce the likelihood that consumers and the fund itself will obtain the benefits that would result from competition for CAF support. If only one provider has a right to the support, it will have few incentives to offer better services than the minimum required by the rules or to accept less than the maximum possible subsidy. If, however, there is competition for the support, these incentives are reversed. This not only could result in better service, but likely would lower the cost of deployment as well.

C. The Commission Should Adopt the Shortest Reasonable Transition Period for High Cost Reform.[54]

Nearly all participants in this proceeding agree that reform of the high cost fund is critical, and has been for years. The urgency of the need for reform has increased steadily while the Commission has considered these issues, and certainly is greater now than it was in 2008 when the basic framework that underlies the proposals in this proceeding was first described, or even than it was in 2010 when the Commission completed the National Broadband Plan.[55] Consequently, any transition period from the current rules to the new regime should be as short as reasonably possible, while accounting for the ability of carriers to adapt to the new rules.

The ABC Proposal suggests a 5-year transition period.[56] This is a reasonable period, at least in areas where all providers are subsidized, as it balances the need to support broadband as fast as possible against the possibility that too quick a transition will be harmful to carriers

[54] This section of the comments addresses issues discussed in Section I.H of the *Request for Further Comment.*
[55] High-Cost Universal Service Support, *Order on Remand and Report and Order and Further Notice of Proposed Rulemaking*, 24 FCC Rcd 6475(2008); *Connecting America,: The National Broadband Plan* (rel. Mar. 16, 2010), at 136-8 (describing broadband availability gap).
[56] ABC Proposal , Attachment 1 at 1.

receiving support today.[57] While it might be possible for the Commission to adopt a shorter transition period, it should not consider a longer transition.

A longer transition would have significant disadvantages. The first is that it would either cost more than necessary (if the Commission decided to ramp down legacy support more slowly than it ramped up broadband support) or would limit the funds available for broadband, thereby slowing deployment and reducing the benefits to consumers and unserved communities in general. In essence, in a longer transition the Commission would be faced with the choice of increasing costs to carriers and consumers or delaying achievement of an important policy goal. Neither of these outcomes is desirable.

A longer transition also could complicate intercarrier compensation reform. In practical terms, changes to high cost universal service and intercarrier compensation are linked, so the longer it takes to complete the universal service transition, the longer it will take to complete the rationalization of intercarrier compensation rates.

Finally, the possibility that a small number of carriers will need additional assistance for some time after the transition ends should not prevent the Commission from moving forward with its overall policy as quickly as possible. The Commission can issue waivers in exceptional cases without having to change the transition period for other carriers that do not have a specific reason to need more time..

[57] In areas where an unsubsidized provider already offers broadband service, the transition should be shorter. High-cost subsidies create distortions in markets, which can be tolerated where there is no competition. In markets where there is unsubsidized competition, there are no benefits that offset those distortions, so the subsidies should be eliminated as soon as possible.

D. The Commission Should Not Attach Any Extraneous Obligations to CAF Support.

As Cox described in its initial comments on the development of the CAF, the Commission should impose some obligations on companies that receive CAF support.[58] These obligations, such as minimum investments, build-out requirements and performance obligations, relate directly to the nature and purpose of the CAF. Some parties, however, have suggested that the Commission impose additional obligations that are unrelated to the goal of ensuring that broadband is available across the country.[59] The Commission should reject these proposals and should adopt only those requirements that are central to that goal.

The proposed additional requirements are wide-ranging. They include interconnection obligations, mandatory resale, providing backhaul capacity so that unserved communities can deploy their own networks and adding Wi-Fi connectivity to networks deployed under the CAF program.[60] Nearly all of them would make it more expensive to deploy broadband service in unserved areas, and all of them would make it less likely that providers would be willing to invest the capital necessary to deploy that service. The likely result is that there would be fewer bidders to provide service, that costs would go up and that fewer areas would be served. Given the Commission's goals, any additional requirements that would hinder meeting these objectives should be rejected.

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[58] Comments of Cox Communications, Inc., WC Docket No. 10-90 et al. (filed Apr. 18, 2011), at 4-9.
[59] *See, e.g.*, Letter from Ad Hoc Telecommunications Users Committee, Google, Inc., Skype Communications S.A.R.L., Sprint Nextel Corporation and Vonage Holdings Corp. to Julius Genachowski, Chairman, FCC, Michael Copps, Commissioner, FCC, Robert McDowell, Commissioner, FCC and Mignon Clyburn, Commissioner, FCC, WC Docket No. 10-90, GN Docket No. 909-51, WC Docket. No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WC Docket No. 06-122, Aug. 18. 2011, at 6 (arguing for "wholesale access" and other "public interest obligations" to be associated with broadband support under the CAF).
[60] *See, e.g., id.*

VI. Conclusion

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

Respectfully submitted,

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Certificate of Service

I, Theresa A. Jones, certify that on this 24th day of August, 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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