Matthew A. Brill
Direct Dial: 202.637.1095
matthew.brill@lw.com

555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304
Tel: +1.202.637.2200 Fax: +1.202.637.2201
www.lw.com

LATHAM & WATKINS LLP

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September 27, 2011

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notification of Ex Parte, *Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92; *High-Cost Universal Service Support,* WC Docket No. 05-337; *Establishing Just and Reasonable Rates for Local Exchange Carriers,* WC Docket No. 07-135; *Connect America Fund,* WC Docket No. 10-90; *A National Broadband Plan for Our Future,* GN Docket No. 09-51

Dear Ms. Dortch:

On September 23, 2011, Terri Natoli of Time Warner Cable Inc. ("TWC") and the undersigned (representing TWC), together with Grace Koh and Barry Ohlson of Cox Enterprises, Inc. and J.G. Harrington of Dow Lohnes PLLC (all representing Cox Communications, Inc. ("Cox")), met with the following Commission staff members regarding several intercarrier compensation ("ICC") reform proposals advanced in the above-captioned proceedings: Zac Katz, Legal Advisor to Chairman Genachowski; Sharon Gillett, Rebekah Goodheart, and Patrick Halley of the Wireline Competition Bureau; and Michael Steffen of the Office of General Counsel.

At this meeting, we argued that any ICC reform undertaken with respect to terminating access charges should clearly address the rights of competitive local exchange carriers ("CLECs") that provide (a) wholesale telecommunications services to facilities-based interconnected VoIP providers, or (b) interconnected VoIP services directly to end users. We noted that today's ICC regime is increasingly plagued by resource-draining disputes regarding the rights of such CLECs to collect terminating access charges. For example, even apart from disputes about the applicability of access charges to so-called "VoIP traffic," some interexchange carriers contend that these CLECs do not provide certain functions (on the theory that those functions are instead provided by the CLEC's affiliated interconnected VoIP provider) and thus cannot collect terminating access charges at the level imposed by incumbent LECs. As a result, we explained that any so-called "reforms" that merely address terminating access rates (without

addressing these CLECs' *right* to impose such rates) would only perpetuate—and quite possibly exacerbate—such disputes.[1]

Rather, to accomplish genuine reform that brings certainty and predictability to the ICC regime, the Commission should define "terminating access" in a functionally neutral manner that includes either the termination of calls directly to retail customers or the delivery of traffic to facilities-based interconnected VoIP providers that in turn transmit calls to retail customers. To that end, we endorsed the specific rule language submitted by Comcast on September 22, 2011.[2] In addition, to ensure that those rules can be implemented effectively and to minimize disputes, we suggested adding language to clarify that a carrier subject to Section 51.701 of the Commission's rules may provide services pursuant to any interconnection agreement, interstate tariff, intrastate tariff, price or other mechanism authorized by law, provided that no carrier should be required to file or maintain a tariff or to amend an existing tariff if it is not otherwise required to do so. In other words, during any transition period established by the Commission, carriers will continue to impose charges pursuant to existing mechanisms in place today (be they interconnection agreements, tariffs, etc.) notwithstanding any changes in the applicable rates established by the Commission.

We further explained that, when the Commission restricted CLECs from collecting terminating access insofar as they provided wholesale service to CMRS carriers, it did so because the Commission had specifically carved CMRS traffic out of the access charge regime. In contrast, IP-originated and IP-terminated traffic is not subject to any such carve-out. Nor is there any concern that multiple CLECs could impose terminating access charges in connection with a single telephone call. We explained that VoIP providers rely on a single CLEC to interconnect with any given incumbent LEC. However, to address the possibility that separate entities somehow could impose distinct charges, as a further safeguard we would support extension of the rule that prevents the imposition of aggregate access charges that exceed the applicable ILEC rate to apply to access involving VoIP providers.

We also argued that the Commission should reject the ABC Plan's call for deregulating tandem transit services. We explained that such services are governed by Section 251(c) of the Act as a form of interconnection, as several state commissions and courts have held, and there often are no competitive alternatives to relying on an incumbent LEC's facilities to transmit traffic to rural LECs via indirect interconnection arrangements. Authorizing incumbent LECs to

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1 As Cox noted during the meeting, Verizon has argued that Cox does not provide all of the elements of access in response to Cox's complaint against Verizon for failure to pay access charges in California. *See* Answer of Verizon California, Inc., *et al.*, Cox California Telcom, LLC v. Verizon California, Inc., *et al.*, C.11-05-012 (filed June 27, 2011) at 3-4 (claiming that Cox "has not provided the access service described in its state (or federal) tariffs" because Cox does not provide "a single integrated end-to-end path from the end user's premises to the Complainant's end office switch to the customer's (i.e. IXC's or LEC's) facilities").

2 Letter from Mary McManus, Comcast Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, *et al.* (filed Sept. 22, 2011).

charge inflated rates for transit would harm consumers and unreasonably disadvantage competitive voice providers. We also noted that the discussion on pages 13 to 15 of Cox's August 24 comments in this proceeding provided more information on this issue.

Finally, we reiterated that, although TWC and Cox strongly believe that IP-originated and IP-terminated traffic on the PSTN should be treated no differently from any other telecommunications traffic, both companies are willing to support reforms that subject so-called "VoIP traffic" to interstate access rates during a transitional period (even if such traffic is jurisdictionally intrastate), if the Commission can develop a reliable means of identifying such traffic. By the same token, we explained that our willingness to compromise on the treatment of so-called "VoIP traffic" has a significant impact on the revenues of companies like TWC and Cox and any failure to deliver clear, certain, and enforceable rules would undermine the rationale for that compromise. We explained that any methodology that permits interexchange carriers to have a role in determining the percentage of IP-originated traffic would create incentives for those carriers to inflate the percentage of such traffic and that mechanisms that depend on signalling information would require significant development work that would burden only VoIP providers and that would be subject to manipulation in the same way that signalling is used to manipulate jurisdictional information of phantom traffic. We urged the Commission to consider only mechanisms that rely on data that can be verified externally or that is part of already-required reports filed at the Commission. We noted that we continue to have serious concerns about proposals in the record for distinguishing IP-originated traffic from TDM-originated traffic, but reiterated our willingness to work cooperatively with the Commission toward development of an appropriate methodology to determine the percentage of IP-originated traffic.

Please contact the undersigned if you have any questions regarding these issues.

Sincerely,

/s/ Matthew A. Brill

Matthew A. Brill
Counsel for Time Warner Cable

cc: Zac Katz
Sharon Gillett
Rebekah Goodheart
Patrick Halley
Michael Steffen