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

Re: 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; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Lifeline and Link-Up, WC Docket No. 03-109

Dear Ms. Dortch:

As described previously by the National Cable & Telecommunications Association (NCTA), issues regarding intercarrier compensation for traffic that originates or terminates on a Voice over Internet Protocol (VoIP) network have been a major concern for the cable industry.[1] Many incumbent providers are unwilling to interconnect and exchange traffic in IP format, yet also are unwilling to pay the applicable access charges when the traffic is exchanged in traditional Time Division Multiplex (TDM) format, with the cable operator bearing the additional cost of converting the TDM traffic to IP.[2] As the amount of IP-originated and IP-terminated voice traffic continues to increase, it is critical that the Commission take steps in this proceeding to provide real clarity as to the compensation rights and obligations of all carriers that terminate telecommunications traffic, regardless of what technology is used to reach end users, particularly during any transition period to a new regime.[3]

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1 *See, e.g.*, Comments of the National Cable & Telecommunications Association, WC Docket No. 10-90, at 17 (filed Aug. 24, 2011) (NCTA 2011 PN Comments) ("[T]he net effect of the current intercarrier compensation regime is that cable operators generally bear costs that other carriers do not, yet collect less when terminating traffic."); Comments of the National Cable & Telecommunications Association, WC Docket No. 11-115, at 3 (Aug. 8, 2011) (NCTA PacWest Comments).

2 NCTA 2011 PN Comments at 17-18; NCTA PacWest Comments at 3.

3 For convenience, we refer to IP-originated and IP-terminated voice traffic collectively as "IP-based traffic" in this letter, although it bears emphasis that such traffic, when delivered in TDM format by an interexchange carrier to a competitive local exchange carrier for termination, is no different from any other TDM voice traffic exchanged on the public switched telephone network.

1. VOIP TRAFFIC EXCHANGED IN TDM FORMAT SHOULD CONTINUE TO BE SUBJECT TO APPLICABLE ACCESS CHARGES DURING ANY TRANSITION TO A LOW, UNIFIED TERMINATION RATE

The recent comments in this proceeding demonstrate a wide range of views about how to address prospectively the appropriate rate treatment of VoIP traffic that is exchanged in TDM format. Many parties, including many NCTA members,[4] take the position that there currently are no distinctions between TDM-based voice traffic and IP-based voice traffic with respect to the applicability of access charges and that any transition regime should preserve the similar treatment of these two technologies.[5] Although there are also parties that argue that IP-based voice traffic has never been subject to the access charge rules and should not be subject to those rules going forward, even on a transitional basis,[6] many state commissions and courts that have addressed the issue disagree.[7]

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[4] *See, e.g.,* Comments of Charter Communications, WC Docket No. 10-90, at 3 (filed Aug. 24, 2011) ("Charter understands that the Commission may consider [disparate treatment of VoIP and TDM] a compromise between LECs that have urged the application of full tariffed rates to VoIP traffic and IXCs that have sought to exempt such traffic from access charges entirely. However, such a compromise solution would both introduce inequities and invite unscrupulous carriers to game the system . . . ."); *see also* Comments of Cox Communications, WC Docket No. 10-90, at 5 (filed Aug. 24, 2011); Comments of Bright House Networks, WC Docket No. 10-90 (filed Aug. 24, 2011).

[5] *See, e.g.,* Comments of Cbeyond, Inc. *et al.*, WC Docket No. 10-90, at 13-14 (Aug. 24, 2011); Comments of COMPTEL, WC Docket No. 10-90, at 22-24 (Aug. 24, 2011); Comments of Consolidated Communications, WC Docket No. 10-90, at 22-23 (Aug. 24, 2011); Comments of Level 3 Communications, LLC, WC Docket No. 10-90, at 15 (Aug. 24, 2011); Comments of Pac-West Telecomm, Inc., WC Docket No. 10-90, at 6-10 (Aug. 24, 2011); Comments of the Rural Independent Competitive Alliance, WC Docket No. 10-90, at 25 (Aug. 24, 2011).

[6] *See, e.g.*, Letter from Charles McKee, Sprint, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (July 29, 2011) (Sprint *Ex Parte* Letter); Letter from Ad Hoc Telecommunications Users Committee *et al.*, to Chairman Julius Genachowski and Commissioners Copps, McDowell, and Clyburn, Federal Communications Commission, WC Docket No. 10-90 (Aug. 18, 2011) (Tech/Users *Ex Parte* Letter); Letter from Richard S. Whitt, Google, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (Sept. 21, 2011) (Google *Ex Parte* Letter).

[7] *See Central Telephone Co. of Virginia v. Sprint Communications Co. of Virginia, Inc.*, 759 F. Supp. 2d 789 (E.D. Va. 2011) (court found that Sprint was required to pay access charges for VoIP traffic); *Sprint Communications Company, L.P. v. Iowa Telecommunications Services, Inc.*, Docket No. FCU-2010-0001, Order (Ia. Util. Bd., Feb. 4, 2011) (Iowa Utilities Board found that intrastate access charges apply to VoIP traffic); *Southwestern Bell Telephone Company d/b/a AT&T Missouri for Compulsory Arbitration of Unresolved Issues for an Interconnection Agreement with Global Crossing Local Services, Inc. and Global Crossing Telemanagement, Inc.*, File No. IO-2011-0057, Decision, 2010 Mo. PUC LEXIS 1186 (Mo. P.U.C., Dec. 15, 2010) (Missouri Commission found that "interconnected voice over Internet protocol traffic that is not within one local exchange is subject to access charges as is any other switched traffic, regardless of format"); *Petition of Southwestern Bell Telephone Company d/b/a AT&T Kansas for Compulsory Arbitration of Unresolved Issues with Global Crossing Local Services, Inc. and Global Crossing Telemanagement, Inc. for an Interconnection Agreement Pursuant to Sections 251 and 252 of the Federal Telecommunications Act of 1996*, Docket No. 10-SWBT-419-ARB, Order Adopting Arbitrator's Determination of Unresolved Interconnection Agreement Issues Between AT&T and Global Crossing, 2010 Kan. PUC LEXIS 731 (K.C.C., Aug. 13, 2010) (stating that access charges apply to non-local VoIP traffic); *Palmerton Telephone Company v. Global NAPs South, Inc. et al.*,

As NCTA has explained previously, when cable operators have invested in TDM-based equipment for the purpose of exchanging voice traffic with TDM-based carriers, access charges should be paid under existing law.[8] On a prospective basis, we have encouraged the Commission to follow two key principles in this regard: (1) differences in compensation treatment between TDM and IP technology, if any, should be kept to a minimum, both in duration and scope; and (2) to the extent such differences are adopted, the rules should provide for symmetrical treatment of traffic originated by VoIP providers and traffic terminated by VoIP providers.[9]

The Commission should reject arguments that IP-based voice traffic should immediately be subject to bill and keep or to a low compensation rate that will not be applied to TDM-based voice traffic for five years or more. To the extent that voice traffic is exchanged in TDM format between two carriers, as typically is the case, there is no basis for these arguments.

When an interexchange carrier delivers voice traffic in TDM format to a local exchange carrier (LEC) for termination, access charges apply pursuant to section 69.5(b) of the Commission's rules. Consequently, as part of the transition to a unified compensation regime, applying access charges to TDM-exchanged traffic, regardless of whether VoIP is used to serve the end user customer, does not "expand[] legacy rate regulation" as some suggest, nor is it "contrary to federal policy to keep information services unfettered by regulation."[10] These same parties also predict "a devastating effect" if VoIP traffic is subject to access charges even for a brief transitional period.[11] Like the other arguments by these parties, this position does not reflect the perspective of VoIP providers that have deployed their own facilities to offer service. For facilities-based VoIP providers that have been forced to incur the additional expense of converting TDM traffic to IP format and vice versa to exchange traffic on the public switched

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Docket C-2009-2093336, Opinion and Order, 2010 Pa. PUC LEXIS 245 (Pa. P.U.C. March 16, 2010) (finding that VoIP traffic is subject to the same intercarrier compensation as other traffic); *Hollis Telephone, Inc. Kearsage Telephone Co., Merrimack County Tel. Co., and Wilton Telephone Co.*, DT 08-028; Order No. 25,043, Order Addressing Petition for Authority to Block the Termination of Traffic from Global NAPs Inc., 277 P.U.R.4th 318 (N.H. P.U.C. 2009) (finding that access charges apply to VoIP traffic); *Request for Expedited Declaratory Ruling as to the Applicability of the Intrastate Access Tariffs of Blue Ridge Telephone Company et. al. to the Traffic Delivered to Them by Global NAPs, Inc.*, Docket No. 21905, Order Adopting in Part and Modifying in Part the Hearing Officer's Initial Decision, 2009 Ga. PUC LEXIS 161 (Ga. P.U.C., July 29, 2009) (finding that intrastate access charges applied to VoIP traffic).

[8] Letter from Steven F. Morris, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 01-90 (filed Feb. 1, 2011) (requesting Commission to reiterate that "as between telecommunications carriers, existing compensation rules continue to apply to traffic exchanged in TDM, regardless of the technology used to serve the end user.").

[9] Letter from Steven F. Morris and Jennifer K. McKee, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51 (July 29, 2011) (NCTA July 29 *Ex Parte* Letter).

[10] Google *Ex Parte* Letter at 4.

[11] Tech/Users *Ex Parte* Letter at 9.

telephone network, immediately subjecting IP-based voice traffic to bill-and-keep or $0.0007 would have dramatic consequences. For NCTA member companies, such a change would result in more than $170 million per year in lost intercarrier compensation. Such a loss would reduce the amount of money facilities-based VoIP providers are able to invest in deploying broadband networks, directly contradicting the Commission's goal of increasing broadband deployment. Instead, by establishing a rate for voice traffic termination on IP networks that is lower than the termination rate on TDM networks, this proposal could discourage companies from transitioning their networks to IP technology and impede the ability of facilities-based providers to further deploy broadband.

Moreover, this proposal runs counter to the Commission's goal of reducing arbitrage opportunities. As noted above, to the extent the Commission adopts disparate compensation rules for IP-based voice traffic and TDM-based voice traffic, those differences should be kept to a minimum in scope and duration.[12] Creating a significant disparity in rates for the two types of voice traffic (e.g., intrastate access for TDM and bill-and-keep for VoIP) for as long as five years would perpetuate the very problems the Commission is trying to solve.

2. THE COMMISSION SHOULD MODIFY ITS COMPENSATION RULES TO ENSURE EQUAL TREATMENT OF LECS THAT DELIVER TRAFFIC TO VOIP CUSTOMERS

Providing clarity on these issues will require more than simply adopting a transition schedule for reducing termination rates like the one proposed in the ABC Plan or any similar schedule. Rather, it will also require some changes to the Commission's intercarrier compensation rules to better reflect that VoIP providers' network architectures or corporate structures do not mirror those of the incumbent LECs.

Accordingly, whether the Commission adopts the ABC Plan transition or some other transition plan, it should make clear that both the transition and ultimate rates must be paid in full. Any new rules designed to address VoIP compensation should focus on the service provided by the terminating carrier to the carrier from which it receives the traffic. As NCTA has described, for many cable VoIP providers, the terminating carrier may not be the entity that has the retail relationship with the customer. Specifically, the Commission should make clear that an originating provider is obligated to pay the specified terminating rate, regardless of the technology of the terminating network and regardless of whether the traffic is delivered to the called location by the terminating carrier or a partner company (e.g., when a VoIP provider and a competitive LEC partner to deliver service).

NCTA, therefore, fully supports Comcast, Cox and Time Warner Cable's efforts to develop and propose specific changes to the Commission's competitive LEC access charge and

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[12] NCTA July 29 *Ex Parte* Letter, Attach. at 4-5.

section 251(b)(5) rules to address this issue.[13] Consistent with NCTA's principal objective, Comcast, Cox and Time Warner Cable have proposed changes that are intended to ensure that a terminating carrier is entitled to the full termination rate established by the Commission, whether it serves the end user directly or hands the traffic to the VoIP provider that has the retail relationship with the customer.

* * * *

There is broad support for the end result proposed in the ABC Plan – a unified termination rate of $0.0007 that applies to all traffic exchanged between telecommunications carriers in TDM format, without regard to the format in which it is originated or terminated. During the transition to such a regime, the Commission should minimize the disparate treatment of VoIP and TDM traffic to the greatest extent possible, rather than exacerbating it by adopting a "flash cut" to bill and keep or $0.0007 for VoIP traffic. Moreover, regardless of the transition schedule that is ultimately adopted, the Commission should ensure that providers have certainty regarding the compensation rights and obligations applicable to VoIP traffic and providers and that the Commission's rules do not provide a disincentive or penalty for providers to transition from legacy TDM-based systems to IP technology.

Respectfully submitted,

/s/

Steven F. Morris
Jennifer K. McKee

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[13] Letter from Mary McManus, Comcast Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, (Oct. 5, 2011).