BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
A National Broadband Plan For Our Future	)	GN Docket No. 09-51

REPLY COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc., ("Cox"), by its attorneys, hereby submits its reply comments in response to the Federal Communication Commission's ("FCC" or "Commission") notice of proposed rulemaking in above-captioned proceeding.[1]

I. Introduction

Cox appreciates the opportunity to comment on the Commission's efforts to reform the federal Universal Service Fund ("USF") contribution system. As a long-time provider of assessable services, Cox is impacted directly by the unsustainable rise of the contribution factor and the Commission's recent orders focusing high-cost subsidies from the USF on the deployment of broadband services, which heighten the need to revise the manner by which the Commission funds the universal service program. Given the potential of contribution reform to undermine the Commission's goals of spurring broadband adoption, however, Cox supports those commenters urging the Commission to proceed carefully before expanding the contribution base to include broadband services. At a minimum, the Commission should avoid capacity-based or tiered assessments on residential broadband Internet access services.

Cox fully endorses the numerous commenters that urge the Commission to address near-term, achievable reforms in the administration of the current USF contribution methodology

[1] Universal Service Contribution Methodology, *Further Notice of Proposed Rulemaking*, WC Docket 06-122 *et al.*, 27 FCC Rcd 5357 (2012) ("*Further Notice*").

while it carefully considers how to expand the contribution base and revise the contribution methodology. Pending these more fundamental reforms, Cox believes it is reasonable to continue the use of the current revenue-based contribution methodology, subject to revised administration procedures as described below.

II. Although the Contribution System Must Be Reformed, the Commission Should Proceed Cautiously to Avoid Undermining Broadband Adoption

The contribution system must be reformed. The factor has exceeded 17% in recent quarters principally as a result of a declining contribution base, though there has also been growth in the budgets of the supported programs.[2] This is an unsustainable tax on the consumers of currently assessable services who ultimately pay the price for the USF program. Cox thus agrees that the base must be broadened, but it must be done carefully so as to avoid unintended consequences.

A. The Commission Should Carefully Assess the Potential Effects of Expanding the Contribution Base to Broadband Internet Access Services

Cox supports the comments of NCTA, Verizon and others stating that particular care must be taken before expanding the base to include broadband services.[3] Numerous commenters have identified important issues that the Commission must carefully consider before taking such

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[2] *See, e.g.*, *Further Notice*, 27 FCC Rcd at 5432, n. 347 (second quarter 2012 contribution factor of 17.4 percent). Notably, even with the Commission's recent recommitment to managing the distribution on high-cost and low-income subsidies in a responsible fashion (*see* Connect America Fund et al., *Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 17663, 17710-12 (2011) (establishing for the first time a budget for the high cost component of the USF); Lifeline and Link Up Reform and Modernization Order et al., *Report and Order and Further Notice of Proposed Rulemaking*, 27 FCC Rcd 6656, 6734-85 (2012) (implementing reforms of Lifeline and Link Up programs to eliminate waste, fraud, and abuse)), the contribution factor will likely continue to grow given the long-term and ongoing decline in the contribution base.

[3] *See, e.g.*, Comments of the National Cable and Telecommunications Association, WC Docket No. 06-122, *et al.*, at 4-5 (filed July 9, 2012) ("NCTA Comments"); Comments of Verizon, WC Docket No. 06-122, *et al.*, at 41-43 (filed July 9, 2012) ("Verizon Comments") (identifying difficult issues that the Commission should carefully study before extending USF assessments to broadband services). *See also* Comments of Time Warner Cable, Inc., WC Docket No. 06-122, *et al.*, at 9-11 (filed July 9, 2012) ("Time Warner Comments") (arguing that it would be premature to assess broadband Internet access services).

a step. At a minimum, there is substantial support for avoiding any form of capacity-based or tiered approach for assessing residential broadband Internet access services.[4] Cox agrees with Comcast and others that a contribution system that uses speed or capacity tiers for residential broadband service would "put downward pressure on demand among consumers for higher-speed services" and "would reduce providers' incentives to deploy and upgrade broadband facilities."[5] Similarly, any other contribution mechanism the Commission considers should be carefully evaluated to ensure that there is no negative effect on residential consumer incentives to take advantage of improved broadband options. For example, simply including residential broadband in the current revenue-based system would have the same consequences as a capacity-based or tiered approach, potentially lowering consumer adoption of higher-speed (and thereby higher revenue) services and eroding incentives to deploy faster, more efficient networks.

Although the current contribution mechanism is not sustainable, Cox believes it should be retained during the interim period while the Commission assesses broadening the contribution base and revising the contribution methodology. Carriers have established systems to report and collect on revenues from presently assessable services. More importantly, because consumers bear the brunt of the contribution obligation today (and will in the future), the Commission should take the time necessary to design a contribution methodology that will advance its goals for reforming the federal USF program while minimizing disruption on consumers and providers.

B. Service Providers Should Retain Flexibility in Allocating Revenues Among Bundled Services

A number of commenters have cogently argued that providers should retain flexibility in allocating revenues among bundles of assessable and non-assessable services. Specifically, the Commission should not adopt the proposal to require a provider to either treat all revenues from

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[4] Comments of Comcast Corporation, WC Docket No. 06-122, *et al.*, at 20-21 (filed July 9, 2012) ("Comcast Comments"); Comments of the American Cable Association, WC Docket No. 06-122, *et al.*, at 9-10 (filed July 9, 2012) ("ACA Comments").

[5] Comcast Comments at 20-21.

bundled offerings as assessable or allocate revenue based on the prices the provider charges for stand-alone offerings of equivalent services.[6] Such a rule change would be unnecessary,[7] administratively burdensome,[8] and ultimately unfair. It would either impose a contribution obligation on clearly non-assessable services typically included in bundled offerings, such as multichannel video services, or require providers to develop stand-alone offerings solely for regulatory purposes. [9]

Equally troubling is the Commission's suggestion that all discounts must be allocated to non-assessable services in a bundle. As noted by NCTA, "[t]here is no basis whatsoever to assume that the entire discount in a triple-pay bundle, for example, is attributable to the broadband and multichannel video components of the service package and none of it is attributable to the voice service."[10] Creating such highly prescriptive rules regarding the application of discounts within the bundle also will affect carriers' ability to efficiently comply with other assessment obligations affecting bundled services such as determining franchising fees owed. In the absence of compelling evidence that providers are abusing the allocation of revenues in bundled offerings to avoid USF obligations, especially in the context of residential bundled offerings, the Commission should retain the current flexible approach.

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[6] *Further Notice*, 27 FCC Rcd at 5402, ¶ 106. *See also id.* at 5405, ¶ 117. *See, e.g.*, NCTA Comments at 8 (the Commission should "preserve the flexibility of providers to allocate the revenues attributable to a bundled offering in a reasonable manner").

[7] *See* ACA Comments at 7 (noting that NPRM provides no evidence that residential bundles are problematic); Verizon Comments at 22-23 (noting that providers do not have unbridled discretion to allocate revenues because GAAP accounting rules provide guidance on how to allocate bundled offerings for revenue recognition purposes).

[8] *See, e.g.*, ACA Comments at 7; Comments of AT&T, WC Docket No. 06-122, *et al.*, at 26-27 (filed July 9, 2012) ("AT&T Comments").

[9] *See, e.g.*, ACA Comments at 8-9; Comcast Comments at 10-11 (assessing all bundled revenues would "deter providers from offering bundles that include a mixture of assessable and non-assessable services"); Comments of Vonage Holdings Corp., WC Docket No. 06-122, *et al.*, at 4 (filed July 9, 2012) (the Commission's proposals could "potentially force providers like Vonage to offer services on a stand-alone basis regardless of actual consumer demand").

[10] NCTA Comments at 9. *See also* Comcast Comments at 13 (attributing all discounts to non-assessable services would add to carriers' administrative burden).

III. The Commission Quickly Should Adopt Administrative Reforms

There is overwhelming support in the record for the prompt adoption of administrative reforms that will enhance the transparency, efficiency, and fairness of the current system. The Commission can and should address these reforms now while it considers more fundamental changes to the contribution system. Cox joins commenters in supporting the following changes proposed in the *Further Notice*:

- Annually issue a public notice seeking comment on proposed revisions to the Telecommunications Reporting Worksheet and accompanying instructions;
- Revise the contribution factor annually;
- If a quarterly contribution adjustment is retained, account for prior period adjustments over two quarters as a way to reduce fluctuations in the contribution factor; and
- Adopt a symmetrical time period for upward and downward revisions of prior year contribution levels.

Public Notice of Worksheet Revisions. As a number of commenters point out, purported administrative revisions to the USF contribution form and instructions are often substantive and apply retroactively without sufficient notice.[11] Cox supports providing an opportunity for public comment on proposed revisions sufficiently in advance of their taking effect. As noted by CTIA, "establishing formal procedures for notice and comment would help

[11] *See*, *e.g.*, AT&T Comments at 41-42; Comments of CenturyLink, WC Docket No. 06-122, *et al.*, at 7 (filed July 9, 2012) ("CenturyLink Comments"); Comcast Comments at 30; Comments of CTIA-The Wireless Association®, WC Docket No. 06-122, *et al.*, at 13-16 (filed July 9, 2012) ("CTIA Comments") (noting that the current process can make it "impossible for even diligent filers to report accurately"); Comments of T-Mobile USA, Inc., WC Docket No. 06-122, *et al.*, at 9-11 (filed July 9, 2012) ("T-Mobile Comments") (noting that the Commission implemented a notice and comment procedure before publishing the E-rate eligible service list); Comments of the United States Telecom Association, WC Docket No. 06-122, *et al.*, at 9-10 (filed July 9, 2012) ("USTA Comments"); Verizon Comments at 6-9 (arguing that the Commission has made substantive changes, such as reseller certification requirements, without adherence the public notice and comment requirements of the Administrative Procedure Act); Comments of XO Communications Services, LLC, WC Docket No. 06-122, *et al.*, at 39-42 (filed July 9, 2012) (" XO Comments") at 39-42 (supporting public comment on proposed revisions but urging the Commission not to convert worksheet instructions in binding rules).

ensure that the USF reporting and contribution process is more transparent, equitable, and efficient."[12]

Annual Revision of the Contribution Factor. A broad cross section of the industry supports annual, rather than quarterly, revisions of the contribution factor.[13] Quarterly revisions have led to excessive volatility, increased administrative costs and heightened customer confusion. As comments note, the Commission has used annual adjustments for other programs, such as TRS and NANPA, resulting in more stable contribution factors.[14]

Prior Period Adjustments. Cox agrees with those commenters that support extending prior period adjustment accounting to two quarters in the event that the quarterly contribution factor is retained.[15] As Level 3 explains, extending the adjustment accounting period will help to reduce the volatility in the contribution factor.[16] The staff analysis set forth in the *Further Notice* confirms that this approach generally would lead to less dramatic fluctuations in the contribution factor from quarter to quarter.[17]

Symmetrical Revenue Revision Deadlines. The Commission should establish symmetrical deadlines for revisions to previously-submitted Form 499-A filings.[18] As parties from various segments of the industry have explained, carriers that discover inaccuracies in their filings should have the same opportunity to supplement filed reports regardless of whether the

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12 CTIA Comments at 15.

13 *See, e.g.*, CenturyLink Comments at 8; CTIA Comments 17; T-Mobile Comments at 11; Verizon Comments at 11; XO Comments at 11-12, 42; *see also* Comments of the California Public Utilities Commission and the People of the State of California, WC Docket No. 06-122, *et al.*, at 15 (filed July 9, 2012) ("CPUC Comments") (recommending either semi-annual or annual revisions to the contribution factor).

14 *See, e.g.*, CTIA Comments at 18; Verizon Comments at 11.

15 *See, e.g.*, CPUC Comments at 15; Comments of Level 3 Communications, LLC, WC Docket No. 06-122, *et al.*, at 23 (filed July 9, 2012) ("Level 3 Comments"); Comments of United States Cellular Corporation, WC Docket No. 06-122, *et al.*, at 44-45 (filed July 9, 2012) ("US Cellular Comments").

16 Level 3 Comments at 23.

17 *Further Notice*, Chart 8, 27 FCC Rcd at 5481, ¶ 357; *see also* US Cellular Comments at 45.

18 *See, e.g.*, AT&T Comments at 46-49; CenturyLink Comments at 8; CTIA Comments at 20-22; USTA Comments at 10-11; Comments of Verizon at 12-15; XO Comments at 12-14.

revision would increase or decrease their contribution obligation.[19] The Bureau's establishment of asymmetrical deadlines is widely regarded as inequitable and beyond the scope of the Bureau's delegated authority.[20] A unified deadline for revisions to Form 499-A filings would be fair and appropriate.

Separate Reporting of VoIP and TDM Revenues. In the *Further Notice*, the Commission requested comment on ways to "reduce costs associated with administering the contribution system."[21] Cox proposes one such reform: elimination of the requirement that providers separately report TDM-based voice and VoIP revenues in all instances. Like other providers, Cox is in the process of transitioning from circuit switched voice services to managed VoIP technology. While it undertakes this transition, Cox customers receive voice services using both technologies. To comply with current reporting requirements, Cox must separate TDM and VoIP revenues in order to populate the Commission's Form 499, even though the revenues associated with both technologies are subject to the same contribution factor percentage. Because Cox uses traffic studies to segregate interstate and intrastate services for both TDM and VoIP services, the requirement also to separately report VoIP and TDM revenues imposes an additional administrative cost. Cox thus respectfully requests that the Commission revise the reporting requirements to permit providers to report all voice revenues on a single line so long as the same methodology is used to separate intrastate and interstate traffic for both TDM and VoIP services.

IV. End User Recovery Rules

Cox fully concurs with numerous comments that additional regulation of USF pass-through on customer bills is unnecessary.[22] The Commission's proposal to identify the portion

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19 *See, e.g.*, CenturyLink Comments at 8; USTA Comments at 10-11.

20 *See, e.g.*, AT&T Comments at 46-49; CTIA Comments at 21-22.

21 *Further Notice*, 27 FCC Rcd at 5477, ¶342.

22 *See, e.g.*, AT&T Comments at 49-50 (noting that requiring contributors to list the contribution factor and identify specific charges included in the USF line-item "would be extraordinarily disruptive to carriers' billing systems and would require a long lead time to implement").

of the bill that is subject to assessment would cause customer confusion. Consumers can be informed of their contribution to the USF through the existing bill line item that carriers are permitted to include, and should be allowed to continue to include, subject to the reasonable requirement that the pass-through amount not exceed the carrier's contribution requirement. Cox would thus oppose any rule that bars a provider from including a USF line item on the customer bill. As NCTA explains, barring a USF line item would reduce transparency by "obscur[ing], from the customer's standpoint, the nature of the contribution burden that each end user bears" while providing no countervailing benefit.[23]

There is no sound basis in the record for adopting additional regulation. For example, NASUCA, which supports additional regulation of USF billing, provides no explanation of or justification for its contention that the USF line item limits consumers' ability to compare competing services.[24] To the contrary, the USF line item allows consumers to understand and compare the costs of the services they receive, as well as the nature of the contribution burden that the user bears.

The Commission also should not require providers to include the anticipated USF pass-through amounts in their advertised prices. Commenters have cogently explained the drawbacks of these proposals.[25] As ACA and AT&T note, such an obligation could result in advertised prices that vary wildly each quarter based on changing contribution factors and the administrative costs and consumer confusion stemming from such fluctuations.[26]

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23 NCTA Comments at 6 (quoting *Further Notice*, 27 FCC Rcd at ¶391).

24 Comments of the National Association of State Utility Consumer Advocates on the USF Contribution Mechanism Further Notice of Proposed Rulemaking, WC Docket No. 06-122, *et al.*, at 22 (filed July 9, 2012).

25 *See, e.g.*, AT&T Comments at 50-51 (pointing out burden of potentially frequent revisions to advertised price and resulting customer confusion).

26 *See, e.g.*, ACA Comments at 11-13; AT&T Comments at 50-51.

V. CONCLUSION

For the reasons stated herein, Cox respectfully urges the Commission to proceed cautiously in expanding the USF contribution base to include broadband services, preserve flexibility in allocating bundled revenues, and act promptly to revise certain administrative procedures.

Respectfully submitted,

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