

Before the
Federal Communications Commission
Washington, DC 20554

In the matter of)
)
AT&T Petition to Launch a Proceeding) GN Docket No. 12-353
Concerning the TDM-to-IP Transition)
)
Petition of the National Telecommunications)
Cooperative Association for a Rulemaking to)
Promote and Sustain the Ongoing TDM-to-IP)
Evolution)

COMMENTS OF COX COMMUNICATIONS, INC.

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SUMMARY

As one of the pioneers of competitive interconnected voice service, Cox supports the Commission's efforts to facilitate the transition to Internet Protocol ("IP") enabled networks and interconnection. This transition offers the opportunity to review both carrier to carrier interconnection and retail voice regulations and determine whether such regulations require adjustment in a competitive marketplace. Nonetheless, the Commission must remain vigilant in protecting competition; because the ILEC networks are foundational to all interconnection for voice services, incumbents are well positioned to exploit this industry-wide transition by unilaterally imposing network changes in an anti-competitive manner.

The Commission specifically should reject AT&T's attempt to impose its preferred regime, which would eliminate the ability of competitive LECs to rely on the mandates of Sections 251 and 252 of the Communications Act to obtain interconnection. AT&T would limit voice traffic exchange for IP-based services to "best efforts," threatening the reliability of voice services provided to consumers. The Commission should not, however, abandon the interconnection requirements of Sections 251 and 252, which are technology neutral. Instead, it should adapt them to account for the evolution of the network and ensure that effective interconnection remains available regardless of network technology. The Commission also should use this proceeding as an opportunity to consider more broadly the appropriate regulatory regime for retail services on a going forward basis, and to address retail regulations that no longer are needed, such as equal access, elements of the slamming rules, retail service quality requirements and retail price regulation.

The Commission should not endorse a trial on the specific terms proposed by AT&T. While the Commission may wish to conduct trials or experiments to better inform its decisions

on IP interconnection, those efforts will be viable only if they address the needs of all market participants, rather than the desires of certain incumbent LECs. Trials must address issues such as 911 routing and ensuring accurate billing and also should include both direct and indirect interconnection. These issues are important even when interconnection points are untethered from wire centers and other traditional geographical boundaries. To this end, all providers should have the opportunity to be involved in the design and conduct of any trial. Any trials also should be overseen by a task force of interested providers, not just by incumbent LECs, and open to any interested service provider.

Finally, the Commission should not provide any subsidies for providers shifting to IP interconnection. There is no need for subsidies, as even NTCA notes that rural carriers have invested significantly in IP technology without any artificial incentives. Further, adopting new incentives would, in effect, turn back the clock by reinstating intercarrier compensation and high cost universal service policies the Commission abandoned in the *USF/ICC Transformation Order*, with no real benefit to the public interest. Indeed, so long as the Commission permits the shift to IP interconnection to occur according to sound network planning and economic incentives, the shift will impose no burdens on rural carriers, so there is no reason to provide them with any special relief.

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COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc. (“Cox”), by its attorneys, hereby submits its comments in the above-referenced proceeding.¹ This proceeding concerns two petitions, one filed by AT&T and one filed by the National Telephone Cooperative Association (“NTCA”), that request that the Commission begin to consider rules to govern the transition from traditional network interconnection using time division multiplexing (“TDM”) technology to interconnection based on Internet Protocol (“IP”) technology.² As described below, Cox strongly supports taking steps to facilitate the transition to IP-based interconnection but urges the Commission to recognize that IP interconnection should be implemented in a way that ensures continuity of service and respects the requirements and principles of the Communications Act.

I. Introduction

Cox entered the voice service marketplace in 1997 and has competed vigorously against incumbents in its footprint under the regulatory regime developed in the wake of the

¹ See Public Notice, *Pleading Cycle Established on AT&T and NTCA Petitions*, GN Docket No. 12-353, DA 12-1999 (rel. Dec. 14, 2012) (the “Public Notice”).

² Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, AT&T, Inc. (filed Nov. 7, 2012) (the “AT&T Petition”); Petition of the National Telecommunications Cooperative Association for a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution (filed Nov. 19, 2012) (the “NTCA Petition”).

Telecommunications Act of 1996 (the “1996 Act”), and particularly as a result of the interconnection rights conferred by Sections 251 and 252³ – accruing direct experience in negotiations and arbitrations over the terms and conditions of interconnection, number portability and other elements of local telephone competition. Cox launched voice services with TDM technology but has evolved its own network to provide IP-based voice services to many of its customers. Like all facilities-based competitors, Cox has always faced the challenge of conforming its own network architecture to the legacy incumbent network, which was designed in a different time in light of different technology. While that network has evolved gradually since it was built over 100 years ago, its architecture continues to limit competitors’ interconnection options. Confronting these challenges was made possible by the interconnection regime established by the 1996 Act, which guaranteed interconnection rights to competitors and made it possible for local competition to thrive.

Under the pro-competitive framework of the 1996 Act, Cox has become a successful provider of voice services, competing with incumbents and new entrants alike. Today, Cox is the seventh largest provider of voice services in the United States, with more than 2.6 million residential customers and more than 275,000 commercial customers. Cox’s customers have come to rely on its services and to appreciate the value that those services provide, regardless of whether they are offered via TDM or voice over IP. Indeed, in most respects Cox does not distinguish between the technologies used to support its retail voice services, and customers expect the same experience regardless of the technology used to serve them. As the voice services industry evolves from TDM to IP, Cox has every incentive to ensure a smooth transition

³ See, e.g., Comments of Cox Communications, Inc., CC Docket No. 96-98 (May 16, 1996); Reply Comments of Cox Communications, Inc., CC Docket No. 96-98 (May 30, 1996).

in order to protect its business plans and its consumers from potentially harmful disruption and instability.

To that end, Cox believes that Commission involvement will be necessary to facilitate this ongoing transition, particularly as ILECs seek to retire their TDM architecture through which competitors interconnect under the current regulatory regime. Because the ILEC network is foundational to all interconnection for voice services, it is imperative that the Commission prevent incumbents from taking advantage of this industry-wide transition to unilaterally impose network change and stifle the level of competition that exists today. Specifically, this transition requires the Commission to re-affirm interconnection rights and adapt the current rules to the specific requirements of IP interconnection within the framework of Sections 251 and 252. Taking these steps would provide regulatory certainty for competitors and would set rules under which all members of industry would have the flexibility to transition their networks as normal economic incentives dictate.

The Commission should consider appropriate, voluntary trials that account for the interests of *all* stakeholders within the framework of Sections 251 and 252. The Commission, however, must resist AT&T's suggestion that incumbents should unilaterally dictate the locations and terms of the trials.⁴ Any trial necessarily will affect all other carriers offering service to and from the area covered by such a trial – not just the ILEC. All stakeholders should be consulted in developing, executing, and analyzing a trial on transitioning to IP interconnections. This is the best way to ensure that any such trial results in authentically representative scenarios that address real-world challenges.

The Commission should also take this opportunity to consider the appropriate regulatory parameters for retail services as providers progress from TDM-based to voice over IP services.

⁴ AT&T Petition at 20.

Competition and service offerings have evolved since the 1996 Act, and as such, the Commission should evaluate the relevance of some of its retail regulations.

Finally, the Commission need not and should not create special financial incentives for incumbent LECs to shift to IP interconnection, as doing so would create market distortions and be inconsistent with the Commission's long-term universal service and intercarrier compensation goals. Network evolution provides its own incentives through more efficient and less costly interconnection. No further subsidies, implicit or explicit are needed. Carriers merely need the flexibility to evolve their networks when sound planning supports such changes.

II. The Commission Should Approach the Transition of Interconnected Voice Service to an IP Platform and the "Sunset" of the PSTN with Caution.

As both AT&T and NTCA recognize, the full transition of interconnected voice services to an IP platform will take many years.⁵ In fact, this transition began with the introduction of commercial voice over IP services in the 1990s.⁶ While voice over IP services originated as competitive services, today they are offered by competitive providers and incumbent LECs alike. IP technology has been the dominant technology in the provision of toll services and carrier transport services for years, and increasingly forms the core platform of many carriers' telecommunications networks.⁷ While the transition at hand is important, it is by no means the first technological transition that the telecommunications industry has experienced, and history demonstrates that network technology transitions, made at a pace chosen by individual companies based on their own plans and needs and customer desires, are the most successful and least disruptive ones.

⁵ AT&T Petition at 3-4; NTCA Petition at 2-3.

⁶ See IP-Enabled Services, *Notice of Proposed Rulemaking*, 19 FCC Rcd 4863, 4873-4 (2004) (describing early commercial voice over IP services).

⁷ See, e.g., Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges, *Order*, 19 FCC Rcd 7457 (2004).

The Commission's role should not be to set a hard and fast schedule for the transition but instead to reinforce interconnection rights and accommodate existing interconnection rules that will allow all carriers to negotiate terms for IP interconnection efficiently when they are ready to do so. As Cox noted in its comments on the Commission's further notice of proposed rulemaking in the *Universal Service-Intercarrier Compensation Transformation Order*, a forced implementation schedule for an end-to-end IP platform would prevent competitive carriers (and others) from exercising their reasonable economic judgment, which would be detrimental to both those providers and the customers they serve.⁸ To that end, any Commission determinations concerning the transition to an IP-based platform for interconnected voice communication should adhere to three principles:

Avoid Harm to Existing Competition. The first goal of both federal and state regulators should be to ensure that any transition regime does not damage existing competition. Today, the market for interconnected voice services has significant competitors that are providing cost-effective and innovative services to their customers, due to the pro-competitive regulatory framework instituted by the 1996 Act, which includes rights to interconnect with ILEC networks. As such, the Commission should reject AT&T's self-serving proposal to rely on a broadband or Internet interconnection model conveniently outside of the interconnection obligations of the Act.

Facilitate the Transition, but Do Not Mandate. As discussed above, the benefits of IP interconnection have driven and are driving carriers toward implementation, so no mandate is necessary. AT&T's argument for mandated action because "ubiquitous deployment of IP

⁸ Reply Comments of Cox Communications, Inc., WC Docket No. 10-90 *et al.* (Mar. 30, 2012) at 15 ("Cox USF-ICC Further Notice Reply Comments").

facilities and services is not inevitable”⁹ amounts to a false alarm. A mandated timetable for transitioning to IP would harm competition by requiring additional investment to shift to IP beyond what carriers would choose to pursue in the prudent course of business planning. Nor should the Commission mandate the use of certain platforms (notably, TDM) or infrastructure (such as twisted copper pairs) for the provision of retail voice service. Rather than mandating specific actions or technologies, regulators should intervene only when market participants fail to cooperate to deliver interconnected services.

Seek Answers Rather than Assume Results. The Commission should be very careful in the design and evaluation of any trials or experiments in IP interconnection. While a trial may rely on incumbent LECs and their facilities, the Commission must recognize that incumbent LECs are only one segment of the larger PSTN ecosystem, which includes competitive wireline carriers, wireless providers and a range of incumbent LECs with differing characteristics, and all such stakeholders will be impacted by a shift to IP in ILEC network architecture. The Commission should not permit a few trials run by a limited number of incumbent LECs to set the basic terms for IP interconnection.

III. The Transition to IP Interconnection Provides the Commission with an Opportunity to Review the Regulatory Framework for Both Retail and Wholesale Voice Services.

As both AT&T and NTCA suggest, the technological transition to IP interconnection highlights changes that are taking place in the marketplace. The Commission should take this opportunity to consider how the combined technological and marketplace changes affect the appropriate regulatory regime for interconnected voice services. As described below, there is significant justification to revise regulations that affect retail and long distance service, but no basis to modify basic intercarrier interconnection obligations.

⁹ AT&T Petition at 4.

A. Certain Regulations Relating to Retail Services No Longer Are Necessary to Serve the Public Interest.

AT&T and NTCA correctly identify some types of retail service regulation that warrant scrutiny and modification or complete elimination. As AT&T notes, in a competitive environment, some of the regulations that are intended to protect consumers against monopolies are unnecessary given consumers' access to competitive alternatives, and in other cases evolution of the telecommunications market has made some regulation unnecessary.¹⁰

For instance, and as AT&T suggests, in a market where customers purchase bundled "any distance" offerings, and where it is rare for customers to purchase local and long distance service separately, it is not apparent that equal access rules remain necessary.¹¹ In practice, customers still retain a choice of long distance providers; they just make those choices by choosing their local voice service providers, and equal access has become irrelevant. For the same reasons, Cox recommends that the Commission review the purpose and underpinning of its anti-slamming regulations, which also are a vestige of the time when standalone long distance providers switched customers without permission.¹² The current rules require separate authorization to switch providers for each type of service (*e.g.*, local, intrastate and interstate long distance). In a competitive market where consumers choose their long distance providers along with their local service providers as a package, independent verification for each type of service is unnecessary and confusing to many customers.

Similarly, in an environment where customers can choose their carriers freely, it is not clear that quality of service regulations for retail services are necessary or appropriate. Service quality, in practice, has now become one of the ways in which service providers compete, along

¹⁰ See generally AT&T Petition at 13-20. Cox does not support all of AT&T's proposals.

¹¹ *Id.* at 18.

¹² 47 C.F.R. § 64.1100 *et seq.*

with price and features. Service quality mandates do not affect the incentives that service providers have to compete for customers based on quality, and therefore are unnecessary.

Finally, the regulation of retail consumer prices for voice service is unnecessary in a competitive market. In particular, requirements such as geographic averaging of interstate long distance rates across a company's footprint not only are unnecessary to protect consumers but administratively wasteful.¹³ It is rare in the current competitive market where service pricing increasingly is based on a single, advertised national (or footprint-wide) rate to find distance-sensitive charges based on geography. Indeed, the price of voice services has been declining for years as consumers' choices have expanded. In that context, retail price regulation is unnecessary.

In evaluating retail regulations, the Commission should base its analysis generally on the approach suggested by NTCA.¹⁴ NTCA's approach is methodical, systematic and targeted, and designed to ensure that the Commission acts to eliminate unnecessary regulations. In implementing that approach, the Commission should focus on retaining only the minimum retail regulation that is necessary. It also should adopt competitively neutral and technology neutral regulations, so that some providers are not subject to more retail regulation than others offering the same services.

To that end, in any proceeding on retail regulation, the Commission should seek focused comments from the industry. Those comments should identify regulations in two categories: (1) Regulations that should be eliminated given their limited value or complete inapplicability to voice services today; and (2) Regulations that should be retained with modifications to further the statutory cornerstones of protecting consumers and ensuring universal service. In both cases,

¹³ 47 C.F.R. § 64.1900.

¹⁴ NTCA Petition at 11.

the recommendations should be based on the understanding that a regulation pertaining to retail voice services should be eliminated or retained as to both TDM and IP platforms, with no special treatment for any technology.

As NTCA suggests, there should be a firm but reasonable deadline for this process, so that a comprehensive, granular review can be completed in a timely fashion and so that the regulatory framework can be refreshed appropriately as the industry transitions to all-IP networks. While that transition will take some time, it will be facilitated by creating a regulatory environment that matches the retail market that providers face and that avoids creating any unwarranted opportunities for arbitrage by creating advantages for providers that maintain a legacy TDM platform.

B. There Should Be No Change to Basic Interconnection Obligations, But the Rules Should Be Adapted to Account for the Evolution of the Network.

The AT&T and NTCA petitions take different approaches to the nature of basic interconnection obligations in an IP-based environment. AT&T suggests elimination of basic requirements that affect the ability of competitors to operate efficiently in the interconnected voice market, while NTCA recognizes that basic interconnection obligations are central to the efficient operation of that market.¹⁵ The Commission should adopt NTCA's approach.

NTCA points out that "all interconnection for the exchange of traffic [remains] subject to sections 251 and 252 [of the] the Communications Act of 1934...regardless of the technology used to achieve such interconnection."¹⁶ NTCA is correct: Nothing in the statute distinguishes interconnection services based on the technologies used to provide them. Put another way, regardless of the technology and physical platform that two providers of voice services bring to

¹⁵ Compare AT&T Petition at 20-21 (ending TDM interconnection and eliminating most interconnection requirements) with NTCA Petition at 14 (maintaining obligations under Sections 251 and 252).

¹⁶ NTCA Petition at 14.

the point where traffic is exchanged, that exchange remains subject to the basic obligations under Sections 251 and 252. Cox and others have affirmed this point repeatedly before the Commission.¹⁷

However, it may be necessary to update the Commission's rules implementing the specific arrangements for interconnection under Sections 251 and 252 to ensure that IP interconnection can be accomplished efficiently and economically. Certain elements of interconnected voice service that are important to interconnection, such as telephone numbering and the locations and numbers of points of interconnection, are likely to be very different in an IP environment of the future than they are today. For example, the current TDM network relies heavily on the geographic indicators of wire centers to provide elements such as E911 connectivity to Public Service Answering Points ("PSAPs"). When these geographically-based issues are resolved, it will be possible to exchange traffic at fewer points of interconnection, reducing the burden of interconnection on all parties. The Commission should ensure that the regulatory framework accounts for the efficiencies of IP interconnection as different networks deploy IP on different timetables.

Cox also urges the Commission to consult with the States as it reviews its interconnection regulations. The States have played a crucial role in the development and implementation of interconnection rules since the 1996 Act and have acquired significant practical expertise that is invaluable. Further, since the 1996 Act gives the States a central role in implementing interconnection rules, they will continue to be the primary locus of interconnection activity for the foreseeable future. Indeed, as a new wave of interconnection arbitrations and disputes follow the adoption of new rules, State regulators will be the first entities to address the inevitable

¹⁷ See Cox USF-ICC Further Notice Reply Comments at 9-10 (citing multiple commenters).

questions that will emerge. Their guidance will be important in crafting rules to avoid these kinds of disputes in the first instance.

IV. Any “Experiment” on the Transition to IP Technologies Will Provide Useful Information Only If Designed Properly.

In its petition, AT&T proposes an “experiment” in IP interconnection to be conducted as part of the Commission’s rulemaking process. Cox does not oppose the idea of trials to identify what AT&T describes as “the network modifications that will be necessary to transition from the legacy TDM network to IP technologies and the services carriers will offer in place of legacy wireline services.”¹⁸ These are important goals, and it is appropriate to engage in trials to determine the best way to meet them. However, AT&T’s proposed experiments are simultaneously too limited in some respects and too far-reaching in others, and the Commission should adopt a different approach to any trials.

Design of the Trials

First, while AT&T asks the Commission to seek proposals from incumbent LECs “for specific wire centers to use as part of this experiment,” the Commission should understand the limited utility of any trials based on the existing legacy architecture centering around ILEC wire centers and tandems. Wire centers are associated with the ILECs’ traditional TDM networks and may become irrelevant to future IP-enabled services. Instead, it is entirely possible (even likely) that IP-based interconnection, when fully implemented, will involve a much smaller number of points of interconnection that are unrelated to wire centers or any other element of current PSTN geography. Unfortunately, any trials conducted in the near future likely will have to be based on legacy ILEC wire centers, but any trial must ensure proper call routing in general, E911 routing specifically, and accurate billing. Also, a key element of any trial must be how to address *all*

¹⁸ AT&T Petition at 20.

network needs in a future where there will be many fewer points of interconnection between carriers than required by legacy ILEC networks today.

Second, the Commission should recognize that the current network of networks for interconnected voice over IP services is made up of a variety of providers and technologies, and incumbent LECs are not the only providers that will be affected by the transition. Any proposal should not assume that trials will be driven solely by the incumbent LECs. Thus, the selection process for trial locations must be open to all providers affected by the ongoing technology transformation.

Further, because any trial will affect all providers, not just incumbent LECs, it is critical to ensure that all providers are involved in the design and operation of the trials, no matter which provider is running the trial or where it is located. This is significant because all providers need to be sure that their calls will be completed, whether they are in the same local area as the trial or are across the country, a point the Commission has recognized in the past.¹⁹

Moreover, the involvement of all providers is particularly important to avoid adopting solutions that do not work for some providers or that create unnecessary burdens on some providers for the convenience of others. In this regard, it may be instructive for the Commission to consider how initial trials of number portability were conducted in the mid-1990s, as those trials provided valuable information that informed the Commission's decisions.²⁰

Next, any trial should include both direct and indirect interconnection. Indirect interconnection will continue to be important for full connectivity between carriers, particularly during the period when some providers interconnect via IP and others interconnect via TDM.

¹⁹ See Establishing Just and Reasonable Rates for Local Exchange Carriers, *Declaratory Ruling and Order*, 22 FCC Rcd 11629, 11631 (2007) (describing Commission cases prohibiting call blocking by any carriers to ensure completion of interstate calls).

²⁰ See Telephone Number Portability, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352, 8362-6 (1996).

Even where competitive providers interconnect directly, indirect interconnection provides capacity for overflow situations and for cases when direct interconnection fails, increasing the overall reliability of the network. Consequently, indirect interconnection should continue to be part of the interconnection regime in an IP-based environment.

Finally, interconnection trials should be concerned solely with interconnected voice services and should not involve broadband services. Interconnected voice services, particularly those that are managed to provide specified quality of service, are distinct from and have different requirements than standard broadband services.²¹ Among other needs, interconnected voice services have regulatory requirements that are not applicable to broadband services, including the requirements to provide CALEA reporting, ensure reliable access to 911, enable number portability, and provide connectivity and resiliency during disaster-related outages; obligations that are neither expected nor required of broadband.²² Internet connectivity uses a “best efforts” model that is not suitable for managed voice services, in which quality of service is a basic prerequisite for providing these other critical elements, as well as the primary appeal for consumers.

Conduct of the Trials

The AT&T model for interconnection trials assumes that they will be developed and run by incumbent LECs.²³ This model is designed to address the needs of incumbent LECs to the exclusion of the needs of other providers. The Commission should require that any trials be significantly more inclusive and permit all providers to participate in the design, operation and evaluation of the results of any trial.

²¹ See generally Cox USF-ICC Further Notice Reply Comments at 13-14.

²² *Id.* at 5-7 (discussing ILEC-controlled inputs).

²³ AT&T Petition at 20.

The starting point for this process should be the creation of a task force to oversee any trials or experiments, with representation from all interested service providers. The task force should, among other things, select the locations for any trials so that the trials will be representative of the interconnection requirements and specific operational challenges that face providers moving to IP interconnection. The task force also should make use of the December 2012 recommendations of the Technology Advisory Council on IP interconnection, with a special focus on the open IP issues identified by the working group and on issues that were identified as requiring cross-industry collaboration.²⁴

For similar reasons, any experiment or trial should be open to any and all providers on a voluntary basis. While AT&T appears to envision converting specific wire centers to IP-only interconnection, and forcing local providers to comply (presumably on a permanent basis), that model assumes that the first approach adopted will end up being the final approach and would deprive providers of the opportunity to make their own choices about when it is appropriate to shift to IP interconnection. A voluntary trial also would be preferable because it would truly serve as a test bed for whether the ILECs' proposed terms actually present efficient, technically reasonable and cost-effective ways to interconnect, creating appropriate incentives to develop the best solutions.

V. There Should Be No Additional Subsidies for Providers Shifting to IP Interconnection.

The NTCA Petition provides useful guidance to the Commission on the appropriate approach to adapting retail regulation to an IP environment. However, the NTCA approach to the transition itself, which would create unnecessary subsidies for a limited group of incumbent

²⁴ See Recommendations of the Technological Advisory Council (December 2012), at <http://transition.fcc.gov/bureaus/oet/tac/tacdocs/meeting121012/TAC12-10-12FinalPresentation.pdf>.

LECs, is simply an attempt to turn back the clock to the old high-cost regime and should be rejected.²⁵

Simply put, there is no need for subsidies. The transition to IP interconnection and IP-based networks already is occurring and will continue to occur at its own pace. NTCA acknowledges as much in its own petition, noting that “more than half” of all small rural carriers “had plans to deploy softswitches by the end of 2011” and claiming that “[r]ural carriers have thus led the IP revolution to date.”²⁶ These decisions have been driven, as they should be, by normal business incentives, such as capital and expense considerations and the ability to offer new and innovative services that customers want. Given that normal business incentives already have resulted in so much progress, there is no apparent reason to provide any additional incentives to any providers, whether they are small rural carriers, large incumbents or relatively new competitors. It is much more efficient, both as a matter of use of limited resources and as a matter of economics, to allow market incentives to operate in the normal fashion.

Further, NTCA’s specific proposal to support conversions to IP by offering them “incentives” by allowing them to “recover through rates . . . the costs of exchanging traffic” is merely an attempt to go back to the discredited intercarrier compensation system that the Commission determined should be eliminated more than a year ago.²⁷ The flaws in the old system were well-established, as it created incentives for arbitrage and litigation, and reinstating even a portion of that system runs the risk of creating the same problems.²⁸ Equally important, NTCA does not establish any reason that it would be preferable to have carriers implement IP-

²⁵ NTCA Petition at 13-15.

²⁶ *Id.* at 3.

²⁷ Connect America Fund, *Report and Order and Further Notice of Proposed Rulemaking*, 27 FCC Rcd 17663, 17669 (noting that the intercarrier compensation system was “outdated, designed for an era of separate long-distance companies and high per-minute charges, and established long before competition emerged among telephone companies, cable companies, and wireless providers for bundles of local and long distance phone service and other services”).

²⁸ *See id.*

based interconnection any faster than it would be implemented in light of normal market incentives. In fact, it is preferable for service providers to incur the costs of IP interconnection when they find it to be economically rational to do so, rather than before the cost-benefit analysis supports the change.

Similarly, there is no reason to look to high cost support as a means to provide incentives to advance the evolution from TDM to IP. First, the Commission determined more than a year ago that high cost support should be used going forward to support the deployment of broadband infrastructure and services.²⁹ Requiring the Connect America Fund to subsidize technology used to provide managed voice services would represent an unnecessary return to outdated policies. Second, the high cost mechanism already is far from competitively neutral, with essentially all Phase I funding going to incumbent LECs, with all high cost support being withdrawn from competitive LECs, and with relatively little opportunity for competitors to obtain funding even in Phase II.³⁰ Creating yet another subsidy for incumbent LECs would tilt the playing field further, with no concomitant benefit to consumers.

Moreover, given that the technological evolution to IP-based interconnection affects all service providers and their customers, providing subsidies for only a subset of those providers would not be sound public policy, particularly if the Commission adopts the approach suggested by Cox and permits the transition to an IP network to continue to evolve naturally. In that case, there would be no new burden imposed on any provider, and no reason to think that any provider would act before it was economically rational to do so. Even if a shift to IP interconnection were mandated, however, the burdens would be spread across the entire industry, and there would be

²⁹ *See id.* at 17668 (“The universal service challenge of our time is to ensure that all Americans are serviced by networks that support high-speed Internet access – in addition to basic voice service – where they live, work, and travel.”).

³⁰ *Id.* at 17725-71.

no reason to favor some providers over others. Providers would, as always, be able to recover their costs from their customers, and giving subsidies to some providers would simply create unwarranted marketplace advantages for those providers.

Finally, AT&T's suggestion that it currently is disadvantaged in the marketplace should be rejected completely.³¹ Leaving aside that there is no evidence that critical interconnection regulations impose any meaningful burden on AT&T and other incumbents, these carriers still maintain the advantages of incumbency, including access to universal service subsidies that no longer are available to competitive providers like Cox. Indeed, even when Cox and other competitive LECs were eligible for such funding, the amounts they received were orders of magnitude lower than the billions made available to incumbent LECs, and the incumbent LECs still receive those funds in Phase I of the Connect America Fund.

³¹ *See, e.g.*, AT&T Petition at 5 (claiming disadvantage because of regulatory obligations).

VI. Conclusion.

For all of these reasons, the Commission should act in this proceeding in accordance with these comments.

Respectfully submitted,

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