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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Implementation of the Local Competition Provisions of the Telecommunications Act of 1966	)	CC Docket No. 96-98
Intercarrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68

OPPOSITION OF
CORE COMMUNICATIONS, INC.,
e.spire COMMUNICATIONS, INC., and KMC TELECOM, INC.,

Core Communications, Inc., e.spire Communications, Inc., and KMC Telecom, Inc., ("Joint Commenters"), through counsel and in accordance with the Commission's June 29, 2001 Public Notice,[1] hereby submit their response to the Commission's April 27, 2001, *Remand Order* in the above-captioned proceedings.[2]

I. INTRODUCTION AND SUMMARY

The Joint Commenters are competitive local exchange carriers ("CLECs") that provide a wide array of competitive voice and data telecommunications services to consumers throughout the United States. In this response, the Joint Commenters address two issues. First, the Commission should reject any Petition for Reconsideration filed to the extent that it seeks to establish separate intercarrier compensation rates for ISP-bound traffic and non-ISP-bound

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1 Petition for Reconsideration and Clarification of Action in Rulemaking Proceedings, Public Notice, Report No. 2490 (June 29, 2001).

2 *Implementation of Local Compensation Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, FCC 01-131, CC Docket 99-98 and 99-68 (rel. April 27, 2001) (*Remand Order*).

traffic.[3] The record in this proceeding demonstrates that no cost justification exists for establishing separate rates for ISP-bound traffic and non-ISP-bound traffic,[4] and as such, the Commission properly required that rates for terminating these functionally identical calls should be identical.

Second, the Commission should grant in its entirety the Petition for Reconsideration filed by Wireless World, LLC. As demonstrated in the Wireless World Petition, the Commission's "new market" rule should not apply to carriers that requested interconnection with an incumbent local exchange carrier ("ILEC") as of the effective date of the *Remand Order*. In addition, the Commission should suspend the "growth cap" provision of the *Remand Order* for at least one year.

II. THE COMMISSION SHOULD REJECT EFFORTS TO ESTABLISH DIFFERENT INTERCARRIER COMPENSATION RATES FOR ISP-BOUND AND NON-ISP-BOUND TRAFFIC

Several petitions seek reconsideration of the Commission's "mirroring rule," which requires LECs to exchange ISP-bound traffic and non-ISP-bound traffic at the same rate.[5] The Commission should reject this request for reconsideration, and take no action that would result in separate intercarrier compensation rates for ISP-bound and non-ISP-bound traffic.

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3 *See generally,* Choctaw Telephone Company; Electra Telephone Company; Haxtun Telephone Company; MoKan Dial Telephone Company; Park Region Mutual Telephone Company; South Dakota Independent Telephone Coalition; Tatum Telephone Company and Walnut Hill Telephone, Inc. (Proceedings 96-98 and 99-68) Petition for Reconsideration at. 2; ("*Choctaw Petition*"); Independent Alliance on Inter-Carrier Compensation (Proceedings 96-98 and 99-68) Petition for Reconsideration and/or Clarification at 2; ("*Independent Alliance Petition*"); National Telephone Cooperative Association (Proceedings 96-98 and 99-68) Petition for Reconsideration at 1-2 ("*NCTA Petition*").

4 *Remand Order* at ¶¶ 90-92.

5 *See, e.g.*, *NCTA Petition* at 6-7; *Independent Alliance Petition* at 7-10; *Choctaw Petition* at 6-8.

The record demonstrates that carriers incur identical costs in terminating ISP-bound traffic and non-ISP-bound traffic. As the Commission determined in the *Remand Order*, the record in this proceeding "fail[ed] to establish any inherent differences between the costs on any one network of delivering a voice call to a local end-user and a data call to an ISP."[6] Nor does the record demonstrate that CLECs and ILECs incur different costs in delivering traffic that would justify disparate treatment of ISP-bound traffic and local voice traffic under section 251(b)(5).[7] As such, the Commission determined there is "no reason ... to distinguish voice and ISP traffic with respect to intercarrier compensation."[8]

In addition, sound public policy and fundamental fairness require that rates for ISP-bound and non-ISP-bound traffic be symmetrical. Indeed, "[i]t would be unwise as a policy matter, and patently unfair, to allow incumbent LECs to benefit from reduced intercarrier compensation rates for ISP-bound traffic, with respect to which they are net payors, while permitting them to exchange traffic at state reciprocal compensation rates ... when the traffic imbalance is reversed."[9] For all of these reasons, the Commission expressly rejected "any action that results in the establishment of separate intercarrier compensation rates, terms, and conditions for local voice and ISP-bound traffic." The petitioners seeking reconsideration of the mirroring rule have provided no evidence to refute the rationale used by the Commission in creating that rule, and thus, the Commission should reject those efforts.

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6 *Remand Order* at 90.

7 *Id.* at ¶ 92.

8 *Id.* at¶ 94.

9 *Id.* at ¶ 89.

III. THE COMMISSION SHOULD GRANT WIRELESS WORLD'S PETITION IN ITS ENTIRETY

In its petition, Wireless World requests that the Commission: (a) clarify and confirm that the "new market bar" on reciprocal compensation for ISP-bound traffic does not apply to carriers that requested interconnection with an ILEC as of April 27, 2001; and (b) clarify that the "new market bar" applies only in cases where the ILEC has elected the Commission's optional rate cap regime for all traffic.[10] For the reasons set forth below, the Commission should grant the Wireless World petition.

A. The Commission Should Clarify That The "New Market" Rule Does Not Apply To Carriers That Requested Interconnection In Jurisdictions As Of April 27, 2001

In the *Remand Order*, the Commission determined that "in cases where carriers are not exchanging traffic pursuant to interconnection agreements prior to adoption of this Order ... carriers shall exchange traffic on a bill and keep basis."[11] The FCC should clarify its bright-line holding that carriers not exchanging traffic pursuant to an interconnection agreement by the effective date of the *Remand Order* must exchange ISP-traffic under the bill-and keep regime.[12] In making this determination, the Commission assumed that "carriers entering new markets to serve ISPs have not acted in reliance on reciprocal compensation revenues and thus have no need of a transition during which to make adjustments to their prior business plans."[13] As demonstrated by the Wireless World petition, this critical Commission assumption is factually

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10 *Wireless World Petition* at 3.

11 *Remand Order* at 81.

12 *Id.*

13 *Id.*

incorrect. To remedy this error, the Commission should clarify that the "new market" rule does not apply to carriers that requested interconnection in jurisdictions as of April 27, 2001.

As demonstrated by Wireless World, long lead times are necessary in establishing physical interconnection with an ILEC. Prior to establishing interconnection, CLECs also engage in substantial and costly preparatory work, including "preparation of a business plan, arranging financing, identifying where to local facilities, leasing space and opening sales offices, and selecting and buying equipment."[14] In addition, CLECs must obtain licenses to provide service and negotiate interconnection agreements with ILECs. All of these activities involve material financial expenditures and must be completed prior to even submitting an interconnection request to an ILEC.

Spending the time and resources necessary to be in a position to request interconnection is only the first step. CLECs must then go through the excessively arduous task of actually physically interconnecting. From the date of a CLEC's request, it often takes an ILEC OVER AN ENTIRE YEAR to actually provide interconnection to enable a CLEC to "exchange traffic." For example, in a publicly-filed response to a recent interrogatory, Verizon demonstrated that it takes nine to 15 months from a CLEC's request date for Verizon to provide interconnection that permits "traffic exchange."[15] Verizon's interrogatory response reveals what it believes to be reasonable interconnection provisioning intervals:[16]

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14 *Wireless World Petition* at 4.

15 *Core Communications, Inc. v. Verizon Maryland, Inc.*, Defendant Verizon Maryland, Inc.'s Answers to Complainant Core Communications, Inc.'s Interrogatories, File No. EB-01-MD-007 (June 25, 2001), attached hereto at Tab A.

16 To remove any doubt, the Joint Commenters expressly disagree with Verizon's view that such interconnection performance intervals are consistent with Verizon's statutory interconnection obligations. Unfortunately, at present, the ILECs performance is what it is.

Interconnection Request Date	Interconnection Completion Date
11/16/99	6/22/00
11/4/99	7/10/00
11/30/99	8/23/00
7/27/99	6/26/00
7/8/99	9/21/00
8/23/99	11/28/00

Clearly, the Commission's assumption that a CLEC only would have a reliance interest in reciprocal compensation to the extent it was exchanging traffic with an ILEC during the first quarter 2001 is flatly incorrect. To remedy this material factual error, the Commission should recognize that CLECs have a reliance interest in reciprocal compensation to the extent they requested interconnection on or before April 27, 2001, as requested in the Wireless World petition.

B. The Commission Should Suspend the "Growth Cap" for One Year

For the reasons described above related to ILEC interconnection provisioning performance, the Commission also should grant Wireless World's petition requesting that the Commission treat carriers that have begun the process of entering a new market by means of interconnection request as existing carriers and must allow such carriers enough time to "ramp up" their operations so that the growth cap would not relegate them to a bill-and-keep regime. To accomplish this, the Commission must suspend the implementation of the "growth cap" for one year to allow carriers to achieve a certain level of traffic exchange for reasonable reciprocal compensation.[17]

As aptly stated by Wireless World, "[i]t would be meaningless for the Commission to allow new entrants to receive reciprocal compensation payments if the

[17] *Id.* at 5.

Commission imposes a growth cap that confines new entrants to nominal or no traffic volumes."[18] Doing so merely would enable the ILECs to benefit from slow rolling CLEC interconnection, which as demonstrated in the attachment hereto, can often take a year or more from request to implementation.

III. CONCLUSION

For the foregoing reasons, the Commission should reject those petitions that attempt to establish separate rates for ISP and non-ISP traffic and grant Wireless World's petition in its entirety.

Respectfully submitted,

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Dated: July 23, 2001

[18] *Id.*

EXHIBIT A

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Core Communications, Inc.,	)	
Complainant,	)	
v.	)	File No. EB-01-MD-007
Verizon Maryland Inc.,	)	
Defendant.	)	

DEFENDANT VERIZON MARYLAND INC.'S ANSWERS TO COMPLAINANT CORE COMMUNICATIONS, INC.'S INTERROGATORIES

The Defendant Verizon Maryland Inc. responds to Complainant Core Communications, Inc.'s Interrogatories as follows:

1. *Verizon is required to state whether it completed the interconnection process with any carrier in LATA 236 from the period of March 1, 2000, through November 15, 2000. If it provided any such interconnection, Verizon is required to state, as to each such carrier (without identifying the carrier): (i) When the carrier first requested the interconnection; (ii) the nature of the interconnection requested (whether entrance facility interconnection or collocation); (iii) the date of all access service requests relating to the request for interconnection and the "DDD" stated on such access service requests; and (iv) the date interconnection was completed.*

ANSWER:

Verizon completed six new interconnections for the exchange of local switched traffic during this time period: 2 entrance facility interconnections, 3 collocation interconnections, and one interconnection in which the carrier used a third party's DS-3 transport facilities to accomplish interconnection. All these interconnection requests

were submitted between three and eight months before Verizon received Core's request. Detailed information about each is shown on the attached chart. Only 3 of these carriers – customers "B," "C," and "D" – requested DS-3 transport, and none of those carriers ordered transport between the Southwest D.C. and Rockville transport hubs. Verizon completed Core's interconnection in less time than it took for Verizon to complete every other interconnection that was done during this time period.

ANSWER 1. 5. 1 (Cont):

Customer	Interconnection First Requested	Type of Interconnection Facility	ASR Number	ASR Sent	DDD	DS-3's Complete	Trunks Complete	Interconnection Complete
A	11/16/99	Collocation				No DS-3's		8-3-00
1.			0008300884	3/21/00	6/8/00		6/22/00	
2.			0014300612	5/30/00	6/9/00		7/31/00	Total Time =
4.			0014399616	5/30/00	6/9/00		8/03/00	8 ½ months
5.			0014400840	5/23/00	6/8/00		7/25/00	(no strike time included)
B	11/14/99	Entrance Facility						9/18/00
1.			0011700629	5/22/00	6/15/00	7/13/00		
2.			0015800899	6/6/00	7/10/00		7/10/00	Total Time =
3.			0018100258	6/27/00	7/27/00		9/18/00	10 months
4.			0015800905	6/6/00	8/21/00		9/01/00	
5.			0016600608	6/14/00	6/23/00		7/31/00	
6.			0016600597	6/14/00	7/24/00		7/24/00	
C	11/30/99	Entrance Facility						9/29/00
1.			0004600174	4/26/00	6/22/00	7/12/00		
2.			0016400097	6/9/00	8/23/00		8/23/00	Total Time =
3.			0016500618	5/31/00	7/28/00		7/28/00	10 months
4.			0016500688	5/31/00	7/28/00		7/28/00	
5.			0016500693	5/31/00	8/23/00		9/1/00	
6.			0017400903	6/22/00	8/23/00		8/23/00	
7.			0016500698	5/31/00	8/23/00		9/1/00	
8.			0016500701	5/31/00	8/23/00		9/1/00	
9.			0016500703	5/31/00	8/23/00		9/1/00	
			0016500719	5/31/00	8/23/00		9/1/00	
10.			0016500727	5/31/00	8/23/00		8/23/00	

11.			0016500818	5/31/00	8/23/00		9/21/00	
12.			0016500753	5/31/00	8/23/00		8/23/00	
13.			0016500811	5/31/00	8/23/00		8/23/00	
14.			0016500756	5/31/00	8/23/00		8/23/00	
15.			0020700403	7/24/00	9/21/00		9/21/00	
16.			0020700426	7/24/00	9/21/00		9/21/00	
17.			0022000042	7/24/00	9/22/00		9/22/00	
18.			0022000406	8/4/00	9/21/00		9/21/00	
19.			0022000063	8/3/00	9/21/00		9/21/00	
20.			0021000463	7/28/00	8/7/00		9/29/00	
D	7/27/99	Collocation						6/26/00
1.			0010200151	4/11/00	5/16/00	5/24/00		
2.			0012200405	4/27/00	5/10/00		6/26/00	Total Time =
3.			0012200327	4/27/00	5/10/00		6/22/00	11 months
4.			0012200439	4/27/00	6/2/00		6/6/00	
5.			0012200450	4.27.00	5/12/00		6/12/00	
6.			0012200458	4/27/00	5/12/00		6/12/00	
7.			0012200455	4/27/00	6/16/00		6/15/00	
8.			0012900149	5/4/00	5/18/00		6/14/00	
E	7/8/99	Collocation				No DS-3's		9/21/00
1.			0009700434	4/6/00	5/25/00		9/21/00	
2.			0014700772	5/26/00	6/27/00		9/15/00	Total Time =
3.			0010800227	4/17/00	7/27/00		9/1/00	14 months
F	8/23/99	3rd Party Transport						11/28/00
1.			0007300600	3/10/00	4/7/00		11/28/00	
2.			0007300524	3/10/00	5/15/00		11/28/00	Total Time =
3.			0011500607	3/10/00	1/15/00		11/28/00	15 months

CERTIFICATE OF SERVICE

I, Charles "Chip" M. Hines III, hereby certify that copies of the foregoing **"Comments of the Competitive Telecommunications Association; CC Docket No. 96-98 and CC Docket No. 99-68"** were delivered on this 23rd day of July, 2001 to those on the following list:

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