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VIA ELECTRONIC FILING

Marlene R. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: ***Ex Parte***, Intercarrier Compensation for ISP-Bound Traffic (CC Docket Nos. 99-68, 96-98); and Core Communications, Inc. Petition for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Remand Order (WC Docket No. 03-171)

Dear Ms. Dortch:

For the reasons stated below, Pac-West Telecomm, Inc. requests that the Commission clarify in its recently adopted decision concerning the Petition for Forbearance filed by Core Communications, Inc.¹ that the *ISP Remand Order*² did not establish a growth cap for 2004.

In the *ISP Remand Order*, the Commission established a growth cap applicable to ISP-bound traffic for the years 2001, 2002, and 2003. Specifically, the Commission stated:

In addition to the rate caps, we will impose a cap on total ISP-bound minutes for which a LEC may receive this compensation. For the year 2001, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to, on an annualized basis, the number of ISP-bound minutes for which that LEC was entitled to compensation under that agreement during the first quarter of 2001, plus a ten percent growth factor. For 2002, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to the minutes for which it was entitled to compensation under that agreement in 2001, plus another ten percent growth factor. In 2003, a LEC may receive compensation, pursuant to a

¹ FCC Grants Partial Forbearance from ISP Remand Order, Press Release, WC Docket No. 03-171, October 8, 2004.

² *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001), *remanded*, WorldCom v. FCC, 288 F. 3d 429 (D.C. Cir 2002), *cert denied*, 538 U.S. 1012 (2003) (“*ISP Remand Order*”)

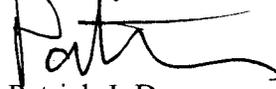
particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to the 2002 ceiling applicable to that agreement.³

The Commission did not establish a growth cap on ISP-bound traffic for 2004 and subsequent years in this passage or anywhere else in the *ISP Remand Order* or elsewhere. Thus, on its face, the *ISP Remand Order* does not establish a growth cap on compensation for ISP-bound traffic for 2004.

The Commission's intention in the *ISP Remand Order* not to impose a growth cap on ISP-bound traffic for 2004 and beyond is particularly self-evident when the language establishing the growth caps for earlier years is contrasted with the language in the same paragraph establishing the rate caps for all years. With respect to rate caps, the Commission unequivocally stated in the *ISP Remand Order* that the \$0.0007 rate cap for ISP-Bound Traffic starts "in the twenty-fifth month, and continue[s] through the thirty-sixth month or until further [FCC] action (whichever is later)."⁴ Obviously, the Commission knows how to impose a cap for subsequent years when it desires to do so (as it clearly did for the rate cap in the same paragraph). The Commission did not, however, state that the growth cap would remain in place until further Commission action. Therefore, under the plain meaning of the *ISP Remand Order*, the Commission did not impose a growth cap on ISP-bound traffic for the year 2004 or thereafter.

Accordingly, in its order granting in part the petition for forbearance filed by Core Communications, the Commission should clarify that the *ISP Remand Order* did not establish a growth cap after 2003 and that none is applicable in 2004 or thereafter.

Sincerely,



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³ *ISP Remand Order*, ¶ 78.

⁴ *Id.*