Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of Core Communications, Inc. for	)	
Forbearance from Sections 251(g) and 254(g)	)	WC Docket No. 06-100
of the Communications Act and Implementing	)	
Rules	)	

COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (USTelecom)[1] submits that Core Communications, Inc.'s Petition for Forbearance[2] should be dismissed because Core has not shown that forbearance is appropriate pursuant to the requirements of section 10 of the Communications Act.[3] In fact, the Core Forbearance Petition is thin and it does not make sense, even by its own terms. It would not lead to meaningful intercarrier compensation reform, and it fails to meet each of the three prongs of the statutory test for forbearance. In particular, Core has not shown, and the Commission should not find, that if the Core Forbearance Petition were to be granted: (1) rates would be just and reasonable and not unreasonably discriminatory; (2) consumers would be protected; and (3) forbearance is in the public interest. In sum, the Core Forbearance Petition is devoid of legal, factual, and even logical support; consequently, it should be dismissed out of hand.

[1] USTelecom is the nation's leading trade association representing communications service providers and suppliers for the telecom industry. USTelecom's carrier members provide a full array of voice, data, and video services across a wide range of communications platforms.

[2] Core Communications Inc., Petition, *Petition of Core Communications, Inc. for Forbearance from Sections 251(g) and 254(g) of the Communications Act and Implementing Rules*, WC Docket No. 06-100, filed April 27, 2006 (Core Forbearance Petition).

[3] 47 U.S.C. § 160.

I. INTERCARRIER COMPENSATION REFORM IS NEEDED URGENTLY, BUT IT IS NOT ACHEIVABLE THROUGH CORE'S FORBEARANCE PETITION

The Commission is actively considering intercarrier compensation reform (CC Docket No. 01-92), and the telecommunications industry has invested many hours of thought and discussion on the subject. USTelecom strongly supports these efforts and, indeed, USTelecom has filed substantial comments on the subject and proposed solutions to some issues, such as phantom traffic. USTelecom does not support, however, an effort to achieve intercarrier compensation reform through the Core Forbearance Petition.

Core operates primarily in the Mid-Atlantic states, and describes its focus as "bridging the gap between Carriers/Internet Service Providers (ISPs) and their end users."[4] It offers "a suite of wholesale services, including VoIP Networking, Fax to Email, Managed Modems and Bandwidth Solutions … [that] enable our customers to provide Internet connectivity and enhanced services to their customers without investing in expensive data and telecom networking equipment." Core has been active before the Commission and in the courts, with a particular emphasis on issues regarding the applicability of reciprocal compensation arrangements to dial-up calls placed to Internet Service Providers (ISPs).[5] While this is may be a significant issue, and one that has been the subject of recent litigation,[6] it is only one of many important intercarrier compensation issues.

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[4] Core (dba coretel), "our company," http://www.coretel.net/ourcompany.htm.

[5] *See, e.g.*, Core Communications filings in: *Petition for Forbearance from Application of the ISP Remand Order*, WC Docket 03-171; *Intercarrier Compensation Reform*, CC Docket 01-92; *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68; and *Implementation of the Local Competition Provisions of the 1996 Act*, CC Docket No. 96-98.

[6] *See, e.g.*, *Global NAPs, Inc. v. Verizon New England, Inc.*, 444 F.3d 59 (affirming Massachusetts DTE determination that access charges are owed on interLATA calls to virtual NXXs, which appear local to the end user making the call).

The Commission must consider more than the impact on a single carrier or class of carriers when it considers intercarrier compensation rules. Instead, the Commission must make rules that are consistent with the public interest generally. In this regard, the Commission focused on industry-wide benefits when it presented a strong case in its *Further Notice of Proposed Rule Making* for reforming the system of rules and regulations that currently governs intercarrier compensation.[7] USTelecom agreed, writing:

> There is agreement that arbitrage and competitive distortions produced by the current intercarrier compensation regimes' disparate treatment of traffic are causing inefficiency and harming the public interest. Network owners are seeing increasing threats to their opportunity to recoup their investments as traffic is routed to avoid lawful charges established for cost recovery. The unpredictability and risk associated with arbitrage and competitive distortion, therefore, are harming network investment and innovation. In addition, as rural networks are even more dependent on intercarrier compensation than are networks in more densely-populated areas, the current problems are threatening universal service. Finally, this government-managed competition is thwarting the development of truly competitive markets.[8]

Therefore, the Commission is evaluating whether to "replace the existing patchwork of intercarrier compensation rules with a unified approach …."[9]

The Commission has established its goals for this intercarrier compensation reform process: (1) encourage investment in telecommunications networks and the development of efficient competition; (2) preserve universal service; (3) achieve competitive and technological

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[7] *Intercarrier Compensation Reform*, CC Docket 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, 4693-4700 ¶¶ 15-28 (Mar 3, 2005) (*Intercarrier Comp. FNPRM*).

[8] USTelecom Reply Comments, at 6-7, *Developing a Unified Intercarrier Compensation Regime*, CC Docket 01-92 (July 20, 2005).

[9] *Intercarrier Comp. FNPRM*, 20 FCC Rcd at 4687 ¶ 3.

neutrality; and (4) minimize regulatory intervention and enforcement.[10] Granting the Core Forbearance Petition, however, would thwart intercarrier compensation reform rather than achieve it as Core claims, and it would violate each of the Commission's goals for intercarrier compensation reform. Rather than encourage investment, it would create massive uncertainty and risk, which harms investment. It would do nothing to preserve universal service while undermining critical revenue streams in high-cost areas. Instead of creating technological and competitive neutrality, it would simply grant new regulatory advantages to some providers, such as Core. Finally, it would not minimize regulatory intervention and enforcement but, rather, increase intercarrier disputes and regulatory activity in many aspects of telecommunications.

In any event, there is no reason to think that the forbearance Core requests would have any of the effects Core claims. Core simply asserts, without analysis, that all traffic on the public switched telephone network (PSTN) would be covered by a requirement that local exchange carriers enter into reciprocal compensation agreements. Not only would this constitute a complete end run around the intercarrier compensation reform process, it simply assumes away many of the issues being addressed in that process. In this way, Core's Petition is ill-considered and should be rejected. For example, Core does not address the wide range of state and federal rules that might be impacted or need to be changed. Nor does Core explain how its proposed change to traffic arrangements would work in practice, which is something that seems likely to be rather complex given the wide variety of providers and traffic and all of the new agreements that would have to be negotiated.

[10] *Intercarrier Comp. FNPRM*, 20 FCC Rcd at 4701-02 ¶¶ 31-33.

II. CORE HAS NOT SHOWN, AND THE COMMISSION SHOULD NOT FIND, THAT RATES WOULD BE JUST AND REASONABLE AND NOT UNREASONABLY DISCRIMINATORY IF CORE'S PETITION WERE GRANTED.

The Commission must make an affirmative finding on each part of a three-part test before it may forbear from section 251(g) of the Communications Act. First, the Commission must find that (1) enforcement of such regulation or statutory provision is not necessary to ensure that charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory."[11] The Core Forbearance Petition provides no support for such a determination, and the Commission should not conclude that consumers would be protected if the Commission were to forbear at this time.

The Commission's intercarrier compensation proceeding recognizes that intercarrier compensation reform must include a commitment to universal service. Specifically, any reform must include opportunities for carriers to recover their network costs, either directly from end users or from competitively neutral funding mechanisms. Core's petition would deny these revenue opportunities while slashing current revenues. The thrust of Core's petition is that carriers should face dramatic reductions in their intercarrier compensation revenues, including those that indisputably embody substantial implicit subsidies, with no adequate opportunity to make up for all the lost compensation from other sources. Such a result would not only violate the Commission's legal obligations to ensure carriers an opportunity to recover their costs, but threaten the long run integrity of the universal service system. In the absence of such opportunities, carriers saddled with high, un-recovered costs would have one of two options: either withdraw service from higher cost areas or, where carrier-of-last-resort obligations

[11] 47 U.S.C. § 160(a)(1).

preclude that option, raise rates in those areas to the extent permitted by state public utility commissions—recognizing that those rate increases may not be high enough and service may suffer as costs are cut. Either result would disserve consumers in high cost and rural areas and would not produce just and reasonable rates.

Moreover, Core's petition fails to recognize that changes to one aspect of intercarrier compensation are expected to cause substantial changes to other forms of intercarrier compensation, universal service support, interconnection arrangements, and end user rates. Core does not begin to address these impacts, much less show that rates would remain just and reasonable after such changes. Nor does Core address anywhere in its Petition how these rates changes will affect other (often regulated) rates for local and long distance telecommunications services, which also must remain just and reasonable. Therefore, the Core Forbearance Petition fails to meet the requirements of section 10(a)(1).

III. CORE HAS NOT SHOWN, AND THE COMMISSION SHOULD NOT FIND, THAT CONSUMERS WOULD BE PROTECTED IF CORE'S PETITION WERE GRANTED

The Commission must determine that "enforcement of such regulation or provision is not necessary for the protection of consumers"[12] before it can forbear from section 251(g) of the Communications Act. The Core Forbearance Petition provides no support for such a determination, and the Commission should not conclude that consumers would be protected if the Commission were to forbear at this time.

Core argues that the current intercarrier compensation regimes harm consumers by imposing varying rates on other carriers for similar services and, thereby, creating implicit subsidies. Accordingly, Core argues that the consumers will benefit from the forbearance it

[12] 47 U.S.C. § 160(a)(2).

requests, which it claims will "even the playing field among telecommunications providers, and … allow consumers to make service and technology choices based on the real economics of an offering."[13]

Nowhere in its filing does Core explain how replacing access charges with reciprocal compensation in the absence of broader intercarrier compensation reform would "even the playing field." It seems equally probable that such a decision could confer substantial advantages on some competitors at the expense of others without any consideration of "the real economics of an offering." Nor does Core demonstrate that local and long distance consumers would be protected if forbearance were granted. This omission is particularly harmful to the Core Forbearance Petition because there would be so many changes, and often very big changes, in the economics of telecommunications offerings if reciprocal compensation were to substitute for access that it is hard to imagine that consumers could be protected absent fuller Commission consideration of, and mitigation of, those impacts. In sum, Core utterly ignores the impact of its proposal on most consumers.

IV. CORE HAS NOT SHOWN, AND THE COMMISISON SHOULD NOT FIND, THAT FORBEARANCE IS IN THE PUBLIC INTEREST IF CORE'S PETITION WERE GRANTED

Finally, the Commission cannot forbear from section 251(g) of the Communications Act unless it finds that "forbearance from applying such provision or regulation is consistent with the public interest."[14] The Core Forbearance Petition provides no support for such a determination, and the Commission should not conclude that forbearance at this time is consistent with the public interest.

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[13] Core Forbearance Petition, at 18-21.

[14] 47 U.S.C. § 160(a)(3).

Core claims that the public interest test is met because, in Core's opinion, forbearance will eliminate regulatory arbitrage, facilitate intercarrier compensation reform, and promote competition.[15] Core fails, however, to provide any real evidence that forbearance from section 251(g) would serve the public interest. There is, in fact, good reason to believe that, to the contrary, such action would thwart broader intercarrier compensation reform, undermine universal service, threaten local rates, and produce chaos. It could even produce new forms of regulatory arbitrage. Consequently, the Core forbearance petition is not consistent with the public interest.

V. CONCLUSION

The Core Forbearance Petition is ill-considered, unsupported, and contrary to all three prongs of the statutory test for forbearance. It should be dismissed.

Respectfully submitted,

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June 5, 2006

[15] Core Forbearance Petition, at 19-21.