

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

In the Matter of	)	
	)	
Petition of Core Communications, Inc.	)	
for Forbearance Under 47 U.S.C. §	)	
160(c) from Rate Regulation Pursuant	)	WC Docket No. 06-100
to § 251(g) and for Forbearance from	)	
the Rate Averaging and Integration	)	
Regulation Pursuant to § 254(g)	)	

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***AT&T's REPLY COMMENTS***

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**AT&T's REPLY COMMENTS**

AT&T Inc. ("AT&T") submits these Reply Comments pursuant to the Public Notice (DA 06-989) released in this proceeding on May 5, 2006, concerning the forbearance petition filed by Core Communications, Inc. ("Core") on April 27, 2006. The comments filed in this proceeding demonstrate near unanimous opposition to Core's request that the Commission forbear from § 251(g) of the Act. As the comments demonstrate, simply pulling the rug out from under access charges is not an appropriate means of reforming the current system of intercarrier compensation. The Commission must continue to focus on comprehensive reform that considers and addresses all of the interrelationships among and between intercarrier compensation, universal service, and interconnection.

With respect to the other component of Core's petition, none of the comments offers any principled basis for continued imposition of rate integration and rate averaging. Rate integration and rate averaging serve only to insulate the unreasonably high access charges of certain carriers and to perpetuate continued imposition of implicit subsidies. Moreover, the market for long distance services is indisputably competitive, thus eliminating any rational basis for continued application of rate integration and rate averaging. Accordingly, forbearance from the rate

integration and rate averaging requirements of the Act and the Commission's rules is appropriate.<sup>1</sup>

**I. THERE IS NO BASIS FOR THE COMMISSION TO GRANT FORBEARANCE FROM SECTION 251(g) OF THE ACT DISSOCIATED FROM COMPREHENSIVE INTERCARRIER COMPENSATION REFORM**

There is widespread agreement that the current system of intercarrier compensation urgently needs reform.<sup>2</sup> There also is near universal agreement, however, that such reform must be comprehensive, and that merely eliminating access charges will not serve consumers, carriers, or the public interest generally.<sup>3</sup> The highly interrelated nature of (all forms of) intercarrier

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<sup>1</sup> Such forbearance may be conditioned by special accommodations for Alaska, Hawaii and insular areas if the record demonstrates sufficient need for such accommodations.

<sup>2</sup> See, e.g., *Qwest Comments* at 4 (“[T]he existing regulatory structure governing intercarrier compensation is in desperate need of a massive overhaul[.]”); *Sprint Nextel Comments* at 2 (“[T]he existing agglomeration of intercarrier compensation mechanisms is irreparably dysfunctional[.]”); *Western Telecommunications Alliance Comments* at 2 (“[R]evision and rationalization of the existing intercarrier compensation [system] is necessary[.]”).

<sup>3</sup> See, e.g., *Embarq Comments* at 3 (“These issues are complex, inter-related, and of vital importance to carriers and customers alike. . . . Core proposes an end-run to the process via the filing of a forbearance petition.”); *ICORE Comments* at 4-5 (“These issues are already being addressed in the FCC’s Unified Intercarrier Compensation proceeding and should not be short-circuited by Core’s selfish attempt to salvage its business plan at the expense of true facility-based incumbent and competitive LECs.”); *Independent Telephone and Telecommunications Alliance Comments* at 8 (“But forbearance from section 251(g) of the Act and related rules is not a rational method for achieving this goal, particularly where forbearance would more likely cause regulatory chaos rather than achieve systematic reform.”); *Pennsylvania Telephone Association Comments* at 9 (“These are complex and financially important issues that require serious study and responsible solution, not the overly simplistic, self-serving knee-jerk reaction Core urges upon the Commission.”); *Qwest Comments* at 7 (“[T]here are numerous issues that must be resolved as part of adoption of a fair and lawful regulatory structure, including preservation of universal service, rate levels, multiple carrier issues, and jurisdictional issues, in addition to the vital confiscation issue addressed above. Simply eliminating the entire access charge structure without replacing it with something would clearly be arbitrary and capricious.”); *Verizon Comments* at 9 (“[A]s the Commission has recognized, there are a host of important issues that must be considered in any rational intercarrier compensation reform proposal.”); *Western Telecommunications Alliance Comments* at 2 (“[T]he issues, options and impacts of intercarrier compensation reform are difficult and complex, and will be much more effectively considered and addressed by a notice and comment rulemaking that permits all interested parties to provide their input.”).

compensation, universal service, and interconnection requires a comprehensive approach. The Commission has been considering such comprehensive reform in its *Developing a Unified Intercarrier Compensation Regime* proceeding (CC Docket No. 01-92) since 1992, and AT&T urges the Commission to promptly resolve all of the issues raised in that proceeding. The Commission may even need to use its forbearance authority in order to resolve one or more of those issues. It should not, however, use forbearance in this instance while ignoring the broader need for comprehensive reform. Accordingly, the Commission should deny Core's request for forbearance from § 251(g).<sup>4</sup>

## **II. THERE IS NO BASIS FOR CONTINUED IMPOSITION OF RATE AVERAGING OR RATE INTEGRATION REQUIREMENTS**

Consistent with fundamental tenets of basic economic theory, the Commission consistently has held that competition, not regulation, best protects consumers. Some carriers allege in their comments in this proceeding that the long distance market is insufficiently competitive to protect some consumers from unreasonably high prices for long distance services.<sup>5</sup> As indicated by AT&T and others in their comments,<sup>6</sup> that is flatly inconsistent with

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<sup>4</sup> In its comments, Verizon asserts that § 251(b)(5) applies only to "intraexchange calls." *Verizon Comments* at 8. That is plainly incorrect. By its terms, § 251(b)(5) gives the Commission jurisdiction over compensation issues pertaining to the transport and termination of all telecommunications traffic, including exchange access traffic. *See, e.g., Developing a Unified Intercarrier Compensation Regime, Reply Comments of the Intercarrier Compensation Forum*, CC Docket No. 01-92 at 45-52 (July 20, 2005). The Commission need not address that issue in this proceeding in order to deny Core's petition for forbearance from § 251(g).

<sup>5</sup> *See, e.g., ICORE Comments* at 8; *Independent Telephone and Telecommunications Alliance Comments* at 10.

<sup>6</sup> *See AT&T Comments* at 5-7; *see also Pennsylvania Telephone Association Comments* at 21 ("There is a surfeit of real competition in Pennsylvania that is energetic and expanding exponentially. New Technologies have enabled various providers—many of which are not traditional wireline telecommunications providers—to offer services using their existing platforms."); *Sprint Nextel Comments* at 6 ("There can be no dispute that the interexchange

established fact as well as Commission precedent. The plain fact is that the long distance market is robustly competitive. That competition, and the economic discipline it imposes on consumer prices, eliminates any justification for continued imposition of rate averaging and rate integration.

The Commission has repeatedly held that the long distance market is structurally competitive,<sup>7</sup> a conclusion that is now unassailable. There are numerous established long distance providers with national fiber networks, including Verizon-MCI, Sprint Nextel, Qwest, Global Crossing, and Level 3. Further, entry barriers are “low.”<sup>8</sup> Any carrier without its own long distance network can obtain bulk long distance capacity at extremely competitive rates.<sup>9</sup> This includes not only “resellers” that provide presubscribed wireline long distance services, but also carriers that offer “transaction services, such as prepaid calling cards and dial around

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market is fully competitive, with multiple intermodal service providers offering a broad array of service plans.”)

<sup>7</sup> See, e.g., *Unbundled Access to Network Elements, Order on Remand*, 20 FCC Rcd. 2533, WC Docket No. 04-313 ¶ 36 n.107 (rel. Feb. 4, 2005) (citing previous orders) (“*Triennial Review Remand Order*”).

<sup>8</sup> *Application of 360° Communications Company, Transferor, and ALLTEL Corporation, Transferee, for Consent to Transfer Control of 360° Communications Company and Affiliates, Memorandum Opinion and Order*, 14 FCC Rcd. 2005 ¶ 26 (rel. Dec. 30, 1998); *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, 13 FCC Rcd. 18025, CC Docket No. 97-211, ¶¶ 36, 65 (rel. Sept. 14, 1998).

<sup>9</sup> See *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, 2005 WL 3099626, WC Docket No. 05-65 ¶ 103 n.314 (“AT&T’s significance is diminished further by the ability of other competitors to provide such service, given continued competition and excess capacity for wholesale interexchange services.”)(“*SBC/AT&T Merger Order*”).

services.”<sup>10</sup> The Commission reported last year that “[m]ore than 1,000 companies now offer wireline long distance service.”<sup>11</sup>

In addition to traditional wireline carriers, intermodal competitors also now compete in the market for long distance services. The Commission thus recently found that AT&T “faces competition from a variety of providers of retail mass market services. These competitors include not only wireline competitive LECs and long distance services providers but also . . . facilities-based and over-the-top VoIP providers, and wireless carriers.”<sup>12</sup> New entrants are revolutionizing the structure of the market, because their service platforms can be used to offer not only local, long distance and all-distance calling, but also features and functionalities beyond those offered by traditional wireline services.

Wireless services in particular compete directly against wireline long distance services and, indeed, have transformed the long-distance market. In the *SBC-AT&T Merger Order*, the Commission expressly found the “long distance services” market “include[s]” “mobile long distance services.”<sup>13</sup> The Commission further found that “consumers are increasingly using their mobile wireless services for long distance calls” and “a consumer who subscribes to both a

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<sup>10</sup> *Id.* ¶ 91; *see also id.* ¶ 93; *id.* ¶ 103 n.314 (“In addition, we also note that the record indicates that IDT is a leading provider of prepaid calling card services, and that other carriers and resellers operate in this market.”).

<sup>11</sup> Wireline Competition Bureau, Industry Analysis and Technology Division, Federal Communications Commission, *Trends in Telephone Service* at 9-1 (June 21, 2005).

<sup>12</sup> *SBC-AT&T Merger Order* ¶ 100; *see also id.* ¶ 104 (“As noted, we find that intermodal competitors, including facilities-based VoIP and mobile wireless providers, are likely to capture an increasing share of mass market local and long distance services.”); *id.* ¶ 150 (“In addition, the evidence shows that this industry segment faces increasing pressure from the migration of minutes to packet-switched voice services . . . and other technological substitutions.”).

<sup>13</sup> *Id.* ¶ 91.

mobile wireless service and a wireline long distance service will allocate minutes between these services in an optimal manner.”<sup>14</sup>

Recent market evidence suggests that wireless service is now the *dominant* means by which consumers make long distance calls. The Yankee Group has estimated that “wireless personal calling . . . exceeded that of wireline” in 2005.<sup>15</sup> It further estimated that in households using wireless, “60% of long distance calls . . . are now displaced by wireless.”<sup>16</sup> And it has predicted these trends may accelerate in light of “technological innovation [that] is making it likely that cellular networks will be extended into the home using local-area wireless technologies.”<sup>17</sup>

Cable companies are also major providers of mass market long distance services through their all-distance offerings. Cable companies have nearly ubiquitous network facilities and established mass market customer relationships. With the development of VoIP technologies, cable companies nationwide have added all-distance voice services to the broadband and video programming services they already offer. Cable-based VoIP telephone services offer the same local and long distance voice calling capabilities as traditional wireline services as well as novel enhanced features. For these reasons, the Commission has found both that cable-based VoIP services are “reasonably interchangeable” with traditional wireline services and that they are in the “relevant services market.”<sup>18</sup>

These cable competitors are winning mass market customers rapidly. Already, analysts estimate, cable companies have won approximately 5.5 million telephony customers (including

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<sup>14</sup> *Id.* ¶ 93.

<sup>15</sup> Yankee Group Report, *Personal Wireless Calling Surpasses Wireline Calling: A Wireless Substitution Update*, at 9 (Aug. 2005) (“Yankee Group Report”).

<sup>16</sup> *Id.* at 5.

<sup>17</sup> *Id.* at 10.

<sup>18</sup> *SBC-AT&T Merger Order* ¶ 87.

cable companies' switched telephony offerings).<sup>19</sup> In 2005 alone, cable VoIP providers added "1.7 million new VoIP subscribers for an annualized growth rate of 301%, ending the year with 2.3 million [VoIP] subscribers."<sup>20</sup> And cable companies are still in the process of expanding their VoIP footprints, so as more communities gain access to this service, cable subscription rates will dramatically increase.<sup>21</sup> Indeed, analysts predict that the "cable VoIP subscriber base [will] grow *even faster* in 2006" than in 2005 and that cable companies will "end 2006 with 5.9M VoIP subscribers"<sup>22</sup> in addition to their existing base of approximately 3 million circuit-switched telephony subscribers.<sup>23</sup> The evidence so far bears that out. Comcast just announced that it added 211,000 new VoIP subscribers in the first quarter of 2006. Cable VoIP subscribers are expected "to exceed 18% penetration of homes passed" within four years<sup>24</sup> with about 22 million telephone subscribers by that time.<sup>25</sup> It is no wonder, then, that in the *SBC-AT&T Merger Order*, the Commission found that "there is documentary evidence that SBC [now AT&T] views cable-

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<sup>19</sup> *Id.* at 9.

<sup>20</sup> Bernstein Research Call, *Quarterly VoIP Monitor: VoIP Gathering Momentum, Expecting 20M Cable VoIP Subs by 2010*, at 1 (Jan. 17, 2006).

<sup>21</sup> *Id.* at 8. Comcast, which had been the most conservative of the major cable MSOs in deploying VoIP, has a goal of "2M phone customers by end of '06." Jim Barthold, *Comcast Targets Phone in 2006*, Telecommunications Online (Jan. 10, 2006) ("Comcast's network now passes about 16 million homes 'that we're ready to market and close to 20 million that are now ready but not yet marketed,'" quoting Brian Roberts); *see also* UBS, *Wireline Telecom Play Book* (Jan. 3, 2006), at 3 ("We believe [AT&T] has the most exposure to Comcast with roughly 30% of its service territory also served by the cable MSO").

<sup>22</sup> Bernstein Research Call, *Quarterly VoIP Monitor: VoIP Gathering Momentum, Expecting 20M Cable VoIP Subs by 2010* (Jan. 17, 2006), at 1; *see also* UBS, *Wireline Telecom Play Book* (Jan. 3, 2006), at 3 (predicting even greater increases in cable subscribership).

<sup>23</sup> Bernstein Research Call, *Quarterly VoIP Monitor: VoIP Gathering Momentum, Expecting 20M Cable VoIP Subs by 2010* (Jan. 17, 2006), at 9.

<sup>24</sup> *Id.* at 1.

<sup>25</sup> *Id.* at 8; *see also* "NCTA: Cable Confident of Its Competitive Position," Telephony Online, April 10, 2006 (quoting Time Warner CEO Richard Parsons saying "We are seeing a real uptick in subscriber acquisitions," and "telcos are way off the pace").

based VoIP as its primary competitive threat in mass market, and considers the prospect of consumer substitution to cable-based VoIP when devising its strategies and service offers.”<sup>26</sup>

Moreover, VoIP has enabled new competition not just from “facilities-based” providers, but also “over the top” providers such as Vonage, Skype, SunRocket, and 8 x 8. Skype offers all-distance VoIP services at no charge, and makes its money through advertising.<sup>27</sup> Other VoIP providers are offering high-quality telephone services at prices below what traditional long distance carriers offer.<sup>28</sup> Further, these services provide a host of additional features not available with POTS. With the explosion of broadband penetration, market penetration by VoIP providers is expected to increase.<sup>29</sup> Moreover, consumers increasingly view over-the-top VoIP services as a substitute for traditional telephony, including long distance. One noted analyst estimates “that U.S. VoIP subscriber base grew by 2.8 million subscribers in 2005, or 254%, to more than 4 million subscribers,” of which 1.7 million are customers of over-the-top VoIP providers.<sup>30</sup> Vonage alone boasts 1 million customers and 1.5 million subscriber lines.<sup>31</sup> Analysts expect over-the-top VoIP carriers to gain 4 million customers by 2008.<sup>32</sup> These trends are accelerating as well. Computer-based services like Skype, which offer local and long

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<sup>26</sup> *SBC-AT&T Merger Order* ¶ 87.

<sup>27</sup> Skype was recently acquired by eBay. See Press Release, “eBay to acquire Skype,” [http://www.skype.com/company/news/2005/skype\\_ebay.html](http://www.skype.com/company/news/2005/skype_ebay.html) (Sept. 10, 2005).

<sup>28</sup> See 10/29/04 SBC Ex Parte, WC Docket No. 02-112, at 3-6; 12/16/03 SBC Ex Parte, WC Docket No. 02-112, at 22-23; see also 2/13/04 Verizon Ex Parte, WC Docket No. 02-112, at 7.

<sup>29</sup> JPMorgan, *Telecom Services/Wireline* (Jan. 13, 2006), at 19 (predicting that “broadband penetration will increase from 31% in 2004 to 63% in 2010”).

<sup>30</sup> Bernstein Research Call, *Quarterly VoIP Monitor: VoIP Gathering Momentum, Expecting 20M Cable VoIP Subs by 2010* (Jan. 17, 2006), at 1, 3.

<sup>31</sup> *Id.* at 3. See Vonage Press Release, March 2, 2006, available at [http://www.vonage.com/media/pdf/pr\\_03\\_01\\_06\\_mil.pdf](http://www.vonage.com/media/pdf/pr_03_01_06_mil.pdf); Vonage Hits One Million Paying Customers, NetworkWorld.Com, Sep. 12, 2005, available at <http://www.networkworld.com/weblogs/convergence/009961.html>.

<sup>32</sup> The Buckingham Research Group, *Competitive Telecom Carriers Industry Primer: Selectivity is Key*, at 10 (Sept. 28, 2005).

distance calling for free have the potential to become much bigger players in the market as a result of recent technological advances. “A number of vendors are working to produce portable handsets that can support the Skype client and connect to the Internet through WiFi connections. Such a device, often called a WiFi phone, would enable a user to access the Skype service without a computer anywhere a WiFi signal could be obtained. This would significantly increase the ease of use and add mobility to the equation, making the service much more attractive to residential customers.”<sup>33</sup> VoIP providers thus will continue to provide another robust source of intermodal competition for long distance services.

Along with traditional wireline long distance carriers, such intermodal competition—much of which had not even developed at the time the Act was passed or the last time the Commission considered the continued operation of rate integration and rate averaging—and the economic discipline such competition imposes on consumer prices, eliminates any justification for continued imposition of rate averaging and rate integration. Competition—not the Act’s or the Commission’s requirements for rate integration and rate averaging—best protects consumers against unreasonable and discriminatory prices for long distance services. Rate integration and rate averaging requirements thus serve no real purpose today other than to “mask” the unreasonably high access charges imposed by some local carriers—as high as 35 cents per minute—<sup>34</sup>and thus “insulate” those carriers from any economic pressure to reduce their access charges.<sup>35</sup>

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<sup>33</sup> UBS, *Skype Hype Becomes Reality* (Sept. 13, 2005), at 5; *see id.* at 4 (“A larger long-term risk to basic wired voice, however, comes from the next phase of Internet-based competitors whose economics could radically change the dynamics of the market. Microsoft, Yahoo, Google and AOL are well-financed Internet companies making a push into the voice market”).

<sup>34</sup> *See* Developing a Unified Intercarrier Compensation Regime, *Comments of the Intercarrier Compensation Forum*, CC Docket No. 01-92, Att. A., Fig. 3 (July 20, 2005).

<sup>35</sup> *Sprint Nextel Comments* at 6.

It is patently false that rate averaging and rate integration have no effect on access charges or implicit subsidies for rural carriers.<sup>36</sup> By forcing long distance carriers to charge uniform national rates, rate integration and rate averaging requirements do not allow long distance carriers to price their services to reflect the disparate costs of serving different areas of the country, the largest component of which is local carrier access charges.<sup>37</sup> That insulation in turn causes a ripple effect of economic distortions. First, it alleviates pressure on those local carriers charging unreasonably high access charges to rebalance their rates for local services. And, by not having to rebalance their rates for local services those carriers are not only able to perpetuate the flow of implicit subsidies but also to insulate themselves from the development of competition for local services. Because rate integration and rate averaging are not necessary to protect consumers or the public interest, and, in fact, serve only to interfere with the economic operation of competitive markets, the Commission should forbear from the rate integration and rate averaging requirements of § 254(g) of the Act and Commission Rules 64.1801 & 64.1900.

Respectfully Submitted,

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<sup>36</sup> *State of Hawaii Comments at 3; Independent Telephone and Telecommunications Alliance Comments at 4, 11.*

<sup>37</sup> *Id.*