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

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	WC Docket No. 01-92
	)	
Petition of Core Communications, Inc. for Forbearance under 47 U.S.C. § 160(c) from Rate Regulation Pursuant to § 251(g) and For Forbearance from the Rate Averaging and Integration Regulation Pursuant to § 254(g)	)	WC Docket No. 06-100

COMMENTS OF CORE COMMUNICATIONS, INC.

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Core Communications, Inc. ("Core") respectfully submits these comments, pursuant to the Federal Communications Commission's ("FCC or Commission") *Public Notice* released on July 25, 2006 (DA 06-1510), as modified by the Commission's August 29, 2006 Order,[1] in the above-referenced dockets.

I. INTRODUCTION AND SUMMARY

In its *Notice* the Commission seeks comments on the "Missoula Plan," a proposed intercarrier compensation plan filed on July 24, 2006 by the National Association of Regulatory Utility Commissioners' ("NARUC's") Task Force on Intercarrier Compensation. Importantly, although the Task Force has NARUC in its name, NARUC has not endorsed the Plan. The Missoula Plan is not a sincere attempt at obtaining the Commission's stated reform goals. In fact, it is nothing more than a grab-bag of regulatory s subsidies and protections put together by

[1] *Developing a Unified Intercarrier Compensation Regime*, Order, CC Docket No. 01-92, DA 06-1730 (2006)(extending deadline for comments on the Missoula Plan to October 25, 2006).

and for the rural LEC community. The Commission should recognize the Plan as antithetical to its stated goals, and refocus its attention to fair and meaningful reform, as embodied in the Commission's stated objectives.

II. THE FCC'S STATED PRINCIPLES FOR INTERCARRIER COMPENSATION REFORM ARE CLEAR AND FORTHRIGHT

In the Further Notice of Proposed Rulemaking ("*FNPRM*")[2] in this proceeding, the FCC articulated several principled objectives for a unified intercarrier compensation system. These objectives are as follows:

- *Economic Efficiency*

  "[A]ny new approach should encourage efficient use of, and investment in, telecommunications networks, and the development of competition."[3]

- *Universal Service*

  "Preservation of universal service is another priority under the Act and we recognize that fulfillment of this mandate must be a consideration in the development of any intercarrier compensation regime."[4]

- *Competitive/Technological Neutrality*

  "[W]e favor an approach that provides regulatory certainty where possible and limits both the need for regulatory intervention and arbitrage concerns arising from regulatory distinctions unrelated to cost differences. Similar types of traffic should be subject to similar rules. Similar types of functions should be subject to similar cost recovery mechanisms. We are interested in not only similar rates for similar functions, but also in a regime that would apply these rates in a uniform manner for all traffic."[5]

- *Consistency with Network Interconnection Rules*

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[2] *Id.*, ¶31.

[3] Further Notice of Proposed Rulemaking, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, 20 FCC Rcd. 4855 (2005) ("*FNPRM*").

[4] *Id.*, ¶32.

[5] *Id.*, ¶33.

"[A]ny proposal for reform of compensation mechanisms should address the impact of such changes on network interconnection rules."[6]

- *Consistency with the Commission's Legal Authority*
  "[A]ny reform proposal should explain the Commission's legal authority to adopt it."[7]

Like many companies, Core fully supports these goals, and submits that the Commission should take no action inconsistent with these goals. Unfortunately, far from satisfying the Commission's principles, the Missoula Plan violates each and ever one of them.

Tellingly, the Missoula Plan supporters make no effort to demonstrate that it furthers the Commission's intercarrier compensation reform goals. From and intercarrier compensation reform perspective, Missoula amounts merely to rearranging the deck chairs on the Titanic. The other aspects of the Plan that change the interconnection and universal service rules, plainly exist to harm facilities-based interconnecting carriers and to ensure an increasing flow of government subsidies to rural LECs. The Commission should stick tight to its principles, and reject the Missoula Plan as falling far short of existing policy objectives.

III. THE MISSOULA PLAN MAKES NO ATTEMPT TO FOLLOW THE FCC'S PRINCIPLES FOR INTERCARRIER COMPENSATION

The *FNPRM* was released in February, 2005. The Missoula Plan was filed with the Commission in July of 2006. One would expect that the plan would follow the principles for reform as set forth in the *FNPRM*. Nothing could be further from the truth. Rather than follow those principles or even attempt to achieve the Commission's objectives, the Missoula Plan pursues a brand new vision for intercarrier compensation and indeed for the entire telecommunications industry. The primary features of this vision are (1) maintaining and increasing rural LEC revenue streams; and (2) driving up competitors' costs of interconnection.

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6 *Id.*, ¶34.
7 *Id.*, ¶35.

Here is how the Plan stacks up against the Commission's stated objectives for intercarrier compensation reform.

A. The Plan Promotes Regulatory Gamesmanship Over Economic Efficiency

The Plan presents a shell game in which incumbent LECs surrender dollars from one basket only to win back those dollars (and more) in different baskets. The Plan would lower some switched access rates, resulting in reduced incumbent LEC access revenue. But under the Plan, every access revenue dollar is replaced by a new dollar funded courtesy one of several new sources. First, incumbent LECs may increase their subscriber line charges ("SLCs") up to $10 in most cases.[8] Second, incumbent LECs may apply for further revenue replacement through a new "Restructure Mechanism" that looks and feels like a new non-portable Universal Service Fund, if they can show that SLC increases will not make up for access revenue losses.[9] Third, incumbent LECs may seek additional funding from the existing Universal Service Fund – funding that is not contingent on replacing lost access revenue.[10]

One would expect that a Plan to substantially reduce access charges would (1) clearly benefit the consumers who ultimately pay the incumbent LECs' per-minute access charges; and (2) entail some level of potential revenue sacrifice from the incumbent LEC community. But consumer advocates who have examined the Plan consistently reject the Plan supporters' claims of any clear-cut consumer benefit.[11] And, far from sacrificing <u>any</u> revenue, the Plan opens numerous new opportunities to game new regulatory structures, including (1)

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[8] Missoula Plan, Executive Summary, pp. 6-7.

[9] *Id*., 12-13.

[10] *Id*., 13 and note 12 (proposing $425 million in new USF funding).

[11] As an example, attached hereto at Tab A is a presentation given by the Pennsylvania Office of Consumer Advocate at Missoula Plan Workshop held by the Pennsylvania Public Utility Commission on September 11, 2006.

selective access charge reductions;[12] (2) the Restructure Mechanism funding process; and (3) changes in High Cost Loop Fund portion of the Universal Service Fund ("USF") programs. Overall, the Plan encourages incumbent LECs to continue their longstanding practice to game regulatory systems in order to increase revenues, rather than competing with new entrants on the basis of lower costs and new technologies.

B. The Plan Exacerbates Existing Problems with the Universal Service System

Most would acknowledge that the USF today is rife with opportunities for waste and abuse, and probably fails to advance its stated goal of universal telephone service. Thomas Hazlett, an economist and a professor who follows trends in the telecommunications industry recently published a study[13] ("Hazlett Study") analyzing the USF programs. The Hazlett Study notes that the USF has increased from less than $4 billion in 1998 to over $7 billion currently.[14] The part of the fund that goes primarily to rural LECs – the High Cost Loop Fund ("HCLF") – has increased from $1.7 billion in 1998 to $3.7 billion in 2005.[15] The study tracks USF contributions from their ultimate source (consumers) through the USF process and on to its final destination, rural LECs. The study concludes as follows:

> The "universal service" regime ostensibly extends local phone service to consumers who could not otherwise afford it. To achieve this goal, some $7 billion annually is raised – up from less than $4 billion in 1998 – by taxing telecommunications users. Yet, benefits are largely distributed to shareholders of rural telephone companies, not consumers, and fail – on net – to extend network access. Rather, the incentives created by these subsidies encourage widespread inefficiency and block adoption of advanced technologies – such as wireless, satellite, and Internet-based

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[12] Under the Plan, some carriers will receive lower access rates than others. Mid-sized rural LECs ("Track 2") may actually choose among access reduction schemes, based on the carrier's business plan and revenue strategy. Missoula Plan Executive Summary, at 4-5.

[13] The study, entitled "'Universal Service' Telephone Subsidies: What Does $7 Billion Buy?" ("Hazlett Study") is attached hereto at Tab B.

[14] *Id.*, Executive Summary, 1.

[15] *Id*.

> services – that could provide superior voice and data links at a fraction of the cost of traditional fixed-line networks. Ironically, subsidy payments are rising even as fixed-line phone subscribership falls, and as the emergence of competitive wireless and broadband networks make traditional universal service concepts obsolete. Unless policies are reformed to reflect current market realities, tax increases will continue to undermine the very goals "universal service" is said to advance.[16]

In light of this study, it is an open question whether the massive USF subsidies flowing to rural LEC has <u>any correlation whatsoever</u> to investment in rural telecommunications infrastructure, or indeed universal service.

Rather than acknowledge or address existing issues with the USF, the Plan would actually double down on current the universal service policy. As noted above, the Plan would create an estimated $1.5 billion "Restructure Mechanism" fund which would operate much like the current USF system, entailing tax payments by consumers nationwide for collection by carriers and ultimately recoupment by rural LECs. Amazingly, the Plan also calls for further increases in funding for the <u>existing</u> USF and HCLF. Again, these funding increases are not even tied to expected access revenue losses under the Plan. Nevertheless, the HCLF proposals may be the truest reflection of the Plan supporters' vision for USF: subsidy upon subsidy upon subsidy for the rural LECs.

C. The Plan Completely Abandons Competitive Neutrality

The Plan includes numerous provisions that lopsidedly favor incumbent LECs (especially rural LECs) over their competitors, CLECs, cable companies, and wireless carriers. Most glaring and appalling is the Plan's overt failure to achieve a unified compensation system. Instead of addressing the Commission's objective to achieve "not only similar rates for similar functions, but also [] a regime that would apply these rates in a uniform manner for all traffic,"[17]

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16 *Id.*, Cover Page.

17 *Id.*, ¶33.

the Plan offers a hodge-podge of rates that reflect nothing more than internal politicking between Plan supporters.[18] The result is a rate structure in which rural LECs are compensated at rates exponentially higher than the rates at which competitors and even RBOCs are compensated. A simple comparison of the current rate structure and the Plan's proposed rate structure demonstrates that vast rate disparities remain under the Plan.[19]

In light of the Plan's bizarre rate scheme, it should be noted that the FCC has repeatedly found no cost differences across different carriers, different traffic types, or different jurisdictions, with respect to the basic function for which intercarrier compensation is paid – the origination or termination of traffic.[20] Indeed, the Commission has found that the current patchwork of jurisdictional classifications "require[s] carriers to treat identical uses of the network differently, even though such disparate treatment usually has no economic or technical basis."[21] Yet, the Plan maintains historical rate structures that are based on the identity of the carrier, the direction of traffic, and the type of traffic. Under the Plan, mid-sized rural LECs ("Track 2") receive higher rates than RBOCs and all competitors ("Track 1"); and small rural

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[18] The Plan's complicated rate structure is described on pages 3-6 of the Plan's Executive Summary.

[19] *See* Tab C.

[20] *See FNPRM*, ¶15-17 ("Existing compensation regimes… are based on jurisdictional and regulatory distinctions that are not tied to economic or technical differences between services."); *and see*, Order on Remand, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd. 9151, 9194 (2001)("*ISP Remand Order*")("[T]he record developed in response to the Intercarrier Compensation NPRM and the Public Notice 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."); *and see*, First Report & Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd. 15,499, ¶1033 (1996) ("[T]ransport and termination of traffic, whether it originates locally or from a distant exchange, involves the same network functions… [t]he rates that local carriers impose for the transport and termination of local traffic and for the transport and termination of long distance traffic should converge.").

[21] *Id.*, 15.

LECs ("Track 3") receive higher rates than mid-sized rural LECs. Under the Plan, carriers generally receive higher rates for IXC traffic than local or "non-access" traffic. Also, carriers generally receive higher rates for originating IXC traffic than for terminating IXC or other traffic. Of course, neither the Plan nor the Plan supporters can offer any cost or other valid policy explanation for maintaining this welter of disparate rates for the same function. Accordingly, the Plan makes a mockery of the Commission's objective of a unified intercarrier compensation regime.

In addition to its discriminatory rate structures, the Plan proposes a sweeping new "Edge" architecture for facilities-based interconnection. The Edge rules essentially reverse current applicable law, which affords competitors the flexibility to designate points of interconnection on the incumbent LECs' network, thereby enabling efficient market entry and new network designs.[22] Instead, under the Plan, incumbent LECs may reject existing interconnection arrangements (built up over ten-plus years of competition) and demand that competitors establish multiple new interconnection points in order to mirror incumbent LEC networks.[23] In addition to the Edge architecture, the Plan creates new rules for interconnection transport. These rules – including the "Out-of-Balance" rule, the "Modified Rural Transport" rule, and the "Full Rural Transport" rule – require competitors to pay for some or all of the transport to bring incumbent LEC traffic to competitors' switches.[24] These new rules reverse the Commission's longstanding transport rules, under which each carrier – incumbent and

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[22] *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, 17 FCC Rcd. 27039, ¶ 52 (2002) ("*Virginia Arbitration Order*") ("Under the Commission's rules, competitive LECs may request interconnection at any technically feasible point. This includes the right to request a single point of interconnection in a LATA.").

[23] *See* Plan, 41-48.

[24] *See id*., 31-34.

competitor – bears the financial responsibility to transport its own originating traffic to the switch of the other carrier.[25] A detailed analysis of the Plan's Edge architecture and associated new transport rules is attached hereto at Tab D.

D. The Plan Would Fundamentally Remake Network Interconnection Rules

The Plan permits either party to an existing interconnection arrangement to demand a transition to an Edge-based architecture.[26] In practice, this means that an incumbent LEC may require a competitor to abandon its existing single point of interconnection ("POI")-per-LATA with the incumbent LEC network, and create new interconnections at multiple incumbent LEC-designated "Edges." Under the Plan, the RBOCs may require their competitors to interconnect at every tandem in a LATA.[27] Meanwhile, rural LECs may require competitors to interconnect at every end office in a LATA, as well as additional points such as a "POP," a "Trunking Media Gateway."[28] This will entail new costs as well as the physical rearrangement of interconnection facilities. A typical competitor with a single POI a LATA could suddenly be faced with the prospect of forced interconnection at 2-3 additional tandem Edges with the RBOC as well numerous rural LEC end offices, POPs and Trunking Media Gateways. Neither the Plan nor the Plan's supporters offer any justification for this unprecedented expansion in competitors' interconnection costs. Nor does the Plan explain why wholesale changes to the Commission's

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[25] *See Virginia Arbitration Order*, ¶67 and n.187 ("[A]ll LECs are obligated to bear the cost of delivering traffic originating on their networks to interconnecting LECs' networks for termination…. This precept stems from rules 51.703(b) and 51.709(b), which on the one hand preclude all LECs from charging other carriers for local traffic that the LEC originates, 47 CFR § 51.703(b), and on the other hand permit carriers providing transmission facilities between two networks to recover from the interconnecting carrier "only the costs of the proportion of that trunk capacity used by [the] interconnecting carrier to send traffic that will terminate on the providing carrier's network."

[26] Plan, 32-33.

[27] *Id*., 45-46.

[28] *Id*.

well-settled interconnection regime are necessary some ten years after passage of the Act and enactment of the Commission's interconnection rules.

E. No Part of the Plan is Consistent with the Act

The Plan presents numerous legal issues surrounding the Commission's legal authority to implement its provisions. Foremost is the lack of clarity regarding the Commission's authority to juggle access and reciprocal compensation rates as set forth in the Plan. Although the FCC unquestionably has authority over the reciprocal compensation regime, that authority is by no means boundless. Section 251(b)(5) of the Act requires incumbent LECs "to establish reciprocal compensation arrangements for the transport and termination of telecommunications,"[29] and section 252(b)(5) gives state commissions (not the Commission) authority to set the actual rate for reciprocal compensation.[30] State commissions must set rates that provide for the "mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier."[31] In addition, state commissions must "determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls."[32] The Plan would set a nationwide reciprocal compensation rate of $0.0005 for Track 1 carriers,[33] allow Track 2 carriers to charge much higher reciprocal compensation rates,[34] and

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[29] 47 U.S.C. §251(b)(5).

[30] *Id.*, §252(d)(2)(A). In certain circumstances, the Commission has preempted the ability of state commissions to determine intercarrier compensation rates, such as in the context of traffic termination agreements between wireless providers and CLECs. *See T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, Declaratory Ruling and Report and Order, 20 FCC Rcd. 4855 (2005) ("*T-Mobile*"). Under *T-Mobile*, the Commission may prescribe rates if parties otherwise cannot agree on a just and reasonable compensation rate for traffic exchanged between wireless carriers and CLECs.

[31] 47 U.S.C. 252(d)(2)(A).

[32] *Id*.

[33] Plan, at 8.

[34] *Id*., at 13.

permits Track 3 carriers to charge reciprocal compensation rates equivalent to their interstate access rates.

None of this ratemaking is consistent with section 252(d)(2)'s explicit cost standards. The Plan supporters make absolutely no showing of any economic model to explain the cost basis for any of the Plan's rates. Nor can they demonstrate that the rates they propose are based on "a reasonable approximation of the additional costs of terminating such calls." Finally, they do not and can not explain why section 252(d)(2)'s cost standards can be read to generate one rate for Track 1 carriers, another rate for Price Cap Track 2 carriers, another rate for Rate-of-Return Track 2 carriers, and yet another range of rates for Track 3 carriers. Indeed the Plan's rates do not reflect costs at all. Instead, they reflect nothing more than a bargain between various Plan supporters.

The Plan's rate scheme is only the most glaring example of the Plan's legal failings. There is no legal justification for the Restructure Mechanism, and indeed this mechanism can be viewed as a disguised form of universal service funding that is not consistent with existing Commission precedent and the Act's provisions governing universal service. Similarly, the Plan's Edge architecture has no foundation in the Act and is contrary to the Commission's longstanding "single POI per LATA" rule. Additionally, the Plan's Out-of-Balance, Modified Rural Transport, and Full Rural Transport rules defy years of longstanding Commission precedent on transport pricing, and are facially unjust and unreasonable because they discriminate openly against certain carriers (namely, competitors) in favor of other carriers (rural LECs).

IV. THE FCC'S PRINCIPLES FOR INTERCARRIER COMPENSATION CAN BE IMPLEMENTED SIMPLY AND FAIRLY THROUGH FORBEARANCE FROM SECTIONS 251(g) AND 254(g) OF THE ACT

The Missoula Plan does not provide an acceptable framework for intercarrier compensation reform. Despite the years of politicking among its supporters and other groups, and the sincere efforts of regulators at the state and federal level, the Plan simply fails to advance any of the objectives identified by the Commission in this proceeding. Rather than continue an exhaustive analysis and commentary on the Plan (which has already dominated the intercarrier compensation discussion since at least July), the Commission should make a clean break with the Plan and move on to consideration of more attractive options. One such option would be to create a unified intercarrier compensation regime based on the well-settled and readily available TELRIC rates for reciprocal compensation as developed over the last ten years by state commissions under sections 251(b)(5) and 252(d)(2) of the Act.

As set forth in Core's forbearance petition filed on April 27, 2006, (WC Docket No. 06-100), the Commission could achieve a unified, cost-based intercarrier compensation regime by granting Core's request to forbear from further application of sections 251(g) and 254(g) of the Act.[35] As Core stated in its petition:

> Grant of this forbearance petition will subject all telecommunications carriers to section 251(b)(5) of the Act, 47 U.S.C. § 251(b)(5), for rate setting purposes. In so doing, the Commission will clear away much of the statutory and regulatory underbrush that has established and furthered regulatory arbitrage by incumbent LECs and will encourage increased competition in all areas of the nation, including rural areas.[36]

Although forbearance involves substantial analysis, and is not a tool to be used without careful consideration, the fact is that it is probably the only practical and legally defensible means to

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[35] *See generally*, WC Docket No. 06-100, Petition for Forbearance of Core Communications, Inc. (filed on April 27, 2006).

[36] *Id.*, 1.

achieve the Commission's longstanding and desirable goal of a unified intercarrier compensation regime. No one has put a better option on the table in the five years since the Commission convened this proceeding.

The benefits of a cost-based, unified intercarrier compensation regime, promulgated under sections 251(b)(5) and 252(d)(2) are clear and convincing. By eliminating 251(g) and 254(g), the Commission would supersede the antiquated access charge and rate integration regimes preserved by the 1996 Act at a time when long distance was a stand-alone industry segment. That is no longer is the case, and eliminating outdated and, quite frankly, harmful provisions such as 251(g) and 254(g) through forbearance is entirely appropriate. In other contexts, *e.g.*, *T-Mobile*, the Commission has used its powers to interpret section 251(b)(5) in a manner that brings non-local exchange providers within the ambit of section 251(b)(5), and the Commission similarly could do so in the name of intercarrier compensation reform. Similarly, in an age of "all-distance" services provided via multiple technological modes (*e.g.*, wireless, wireline, VoIP), eliminating outdated statutory provisions that promote and actually codify regulatory arbitrage should be high on the Commission's agenda.

Accordingly, the Commission should stand by its principles and adopt and intercarrier compensation reform plan, such as that offered by Core's forbearance petition, that unifies intercarrier compensation rates and encourages facilities-based competition.

V. CONCLUSION

Consistent with the comments set forth herein, the Commission should reject the Missoula Plan and focus on achieving intercarrier compensation reform consistent with the Commission's stated unification objectives.

Respectfully submitted,

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