

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

In the Matter of)	
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
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
)	
)	
)	

**REPLY OF
THE STATE OF HAWAII**

The State of Hawaii (the “State”),¹ by its attorneys and pursuant to Section 1.415 of the Commission’s rules, 47 C.F.R. § 1.415, hereby replies to the comments that were filed in response to the Public Notice that was released by the Federal Communications Commission (“Commission”) on July 25, 2006 requesting comment on the Missoula Plan for intercarrier compensation reform.² The State limits its reply comments solely to the comments that were filed by Core Communications, Inc. (“Core”) in this proceeding.³

¹ These Comments are submitted by the State of Hawaii acting through its Department of Commerce and Consumer Affairs.

² See Public Notice, “*Comment Sought on Missoula Intercarrier Compensation Reform Plan*,” CC Docket No. 01-92, DA 06-1510 (July 25, 2006); *see also Developing a Unified Intercarrier Compensation Regime*, Order, Docket No. 01-92, DA 06-2577 (Dec. 22, 2006) (extending the deadline for reply comments until February 1, 2007).

³ *See Comments of Core Communications, Inc.*, WC Docket Nos. 01-92, 06-100 (Oct. 25, 2006) (“*Core Comments*”).

Core's comments engage in a sweeping attack on the Missoula Plan.⁴ Late in Core's comments, however, Core reveals that its assault on the Missoula Plan may be a pretext to promote its own regulatory wish list – forbearance from Sections 251(g) and 254(g) of the Communications Act.⁵ Obviously, Core's attacks on Sections 251(g) and 254(g) are not responsive to the Commission's July 25, 2006 public notice. The State, however, addresses Core's comments herein to the extent that they address the rate integration and geographic averaging requirements of Section 254(g) of the Communications Act.⁶

I. FORBEARANCE FROM SECTION 254(g) IS NOT PERMITTED UNDER THE COMMISSION'S FORBEARANCE AUTHORITY AND IS INCONSISTENT WITH THE COMMISSION'S STATED PRINCIPLES FOR INTERCARRIER COMPENSATION REFORM

As the State explained in its June 5, 2006 opposition in WC Docket No. 06-100, Core's petition for forbearance does not satisfy any of the statutory requirements for forbearance from Section 254(g) of the Communications Act.⁷ The rate integration and geographic averaging requirements of Section 254(g) remain necessary:

⁴ See *id.* at 1-11.

⁵ See *id.* at 12-13.

⁶ The State did not address Core's forbearance request to the extent that it addressed Section 251(g) of the Communications Act, either in this filing or in the State's June 5, 2006 opposition to Core's forbearance petition. See *Opposition of the State of Hawaii*, WC Docket No. 06-100 at 1 n.1 (June 5, 2006) ("*Opposition of Hawaii*"). Core claimed in its reply comments in that proceeding that the State's decision to refrain from addressing Section 251(g) was "interesting." *Reply Comments of Core Communications, Inc.*, WC Docket No. 06-100, at 18, n.58 (June 26, 2006). Core appears to misconstrue the State's silence as support.

⁷ See *Opposition of Hawaii* at 4-10.

- (1) to ensure that the 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;
- (2) for the protection of consumers; and
- (3) to benefit the public interest.⁸

Rather than address these facts either in WC Docket 06-100 or WC Docket 01-92, Core perpetrates a novel argument that forbearance from Sections 254(g) and 251(g) “could achieve a unified, cost-based intercarrier compensation regime.”⁹ Core makes no attempt to justify its sweeping claim. Furthermore, Core is disingenuous in arguing that forbearance from Section 254(g) is consistent with the principles that the Commission established for intercarrier compensation reform.¹⁰

As Core acknowledges at the beginning of its comments, the Commission’s stated principles for intercarrier compensation reform include “preservation of universal service” and “consistency with the Commission’s legal authority.”¹¹

Section 254(g) is a critical and independent component of the universal service infrastructure for telecommunications. Section 254(g) ensures that residents in rural, remote and high cost areas throughout the United States – not just in Hawaii and Alaska – have access to long distance telecommunications services at rates that are reasonable and affordable. Congress codified rate integration and geographic averaging in the same section of the Act that addresses

⁸ 47 U.S.C. § 160(a).

⁹ *Core Comments* at 12.

¹⁰ *See id.*

¹¹ *Id.* at 2-3.

explicit forms of universal service (Section 254(e)) because Congress realized that competition, by bringing rates closer to cost, could make rate disparities between geographic regions worse, rather than better. The very purpose of geographic rate averaging and rate integration is to promote universal service by, if necessary, covering a portion of the high costs of providing long distance telephone services in rural, remote and other high-cost areas with revenues from low-cost areas.

Late last year, the Senate evidenced its continued support for the public interest goals of rate integration and geographic averaging by including provisions in HR 5252, as reported to the full Senate, that strengthened and reaffirmed the Section 254(g) requirements by making them applicable “to any services within the jurisdiction of the Commission that can be used as effective substitutes for interexchange telecommunications services, including any such substitute classified as an information service that uses telecommunications.”¹²

Therefore, Core cannot claim that forbearance from Section 254(g) would be consistent with the Commission’s stated principle that any intercarrier compensation reform must preserve universal service.

Forbearance from Section 254(g) is also inconsistent with the Commission’s legal authority. First, as noted above, none of the factual predicates for forbearance, which are detailed in Section 10(a) of the Communications Act, exist for Section 254(g).¹³ Second, as the State explained in its opposition to Core’s forbearance petition, it is unclear whether the factual predicates could ever exist to permit forbearance from the rate integration provision of Section 254(g).¹⁴

¹² *Communications Act of 2006*, H.R. 5252, 109th Cong., § 214 (2006).

¹³ *See* 47 U.S.C. § 160(a).

¹⁴ *See Opposition of Hawaii* at 10-11.

The Commission's rate integration policy is based on Section 202(a), which forbids common carriers from engaging in unreasonable discrimination.¹⁵ Section 10(a) forbids the Commission from forbearing from regulations that are necessary to prevent unreasonable discrimination.¹⁶ The Commission has long understood non-integrated rates to violate the Section 202(a) prohibition against unreasonable discrimination. It therefore follows that the Commission cannot forbear from the rate integration requirement without condoning the use of rate methodologies that discriminate based on location, in clear violation of the Act's Section 202(a) requirement.

II. SECTION 254(g) REMAINS NECESSARY TO PROTECT CONSUMERS IN RURAL, REMOTE AND OTHER HIGH COST AREAS

Core presents two reasons why it claims the rate integration and geographic averaging requirements of Section 254(g) are no longer necessary. First, Core argues in its WC Docket No. 01-92 comments that long distance is no longer "a stand-alone industry segment" and "in an age of 'all-distance' services provided via multiple technical modes (e.g., wireless, wireline, VoIP)" rate integration and geographic averaging are no longer appropriate.¹⁷

All-distance services, by their nature, average the costs of providing long distance services to high cost and low cost areas (in that the same monthly or per minute rate is charged regardless of where a customer calls). Therefore, as long as all-distance services do not exclude

¹⁵ See, e.g., *Policy and Rules Concerning the Interstate Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as Amended; Petitions for Forbearance*, Memorandum Opinion and Order, 14 FCC Rcd 391, 398, 400 & 407 (1998) (noting that the rate integration policy codified in section 254(g) has its origins in Section 202(a) and its requirement that rates not be unreasonably discriminatory).

¹⁶ 47 U.S.C. § 160(a).

¹⁷ *Core Comments* at 13.

certain sections of the country, such services are inherently in compliance with the Commission's rate integration and geographic averaging requirements. The fact that some of these services (although certainly not all) comply with the Commission's rules, however, does not justify elimination of the rules. Indeed, the widespread application of long distance rates that are distance rate integrated and geographically averaged is a tribute to the Congressional policy and the Commission's implementation of that policy.

Second, Core argued in its petition for forbearance that Section 254(g) is no longer necessary because the interstate, interexchange business is "notoriously" and "fiercely competitive."¹⁸ Competition, however, even when it is notorious and fierce, can only bring prices closer to cost. Effective competition can never bring prices below cost for a sustained period.¹⁹

Section 254(g), however, like all forms of Universal Service, is intended to move prices below cost in high cost areas in order to make telecommunications services equally affordable to all consumers.²⁰ This is something that could never be accomplished by competition, no matter how vibrant. Congress recognized this fact when it codified the rate integration and geographic

¹⁸ *Petition for Forbearance Core Communications, Inc.*, WC Docket No. 06-100 at 20 (April 27, 2006) ("*Core Petition*").

¹⁹ Fierce competition can move prices below cost momentarily during a brief price war. If prices remain below cost for an extended period, however, it generally results from predatory pricing (which is an indicator that true competition does not exist) and is appropriately prohibited.

²⁰ This highlights the basic difference between most regulation, which is intended to simulate competitive conditions, and Universal Service, which is intended to achieve public interest goals that competition cannot provide.

averaging requirements in 1996, at a time when the long distance industry was at least as competitive as it is today.²¹

Finally, Core persists in misidentifying the intended and actual beneficiaries of the rate integration and geographic averaging requirements. Core claimed in its petition for forbearance that rate integration and geographic averaging create “implicit subsidies for rural carriers and rural consumers.”²² This is only half correct. The benefits of Section 254(g) inure only to rural consumers and not to rural carriers. Specifically, Section 254(g) requires interexchange carriers (“IXCs”) to charge rural consumers the same low rates that they charge urban consumers, forcing IXCs to spread the cost of high access charges in rural areas to all of their customers.

Core appears to claim that, if Section 254(g) did not exist, rural local exchange carriers (“LECs”) would be forced to reduce the access charges they collect from IXCs.²³ No justification exists for such a conclusion. If Section 254(g) did not exist, rural LECs would be under reduced pressure to lower their access charges since IXCs would be free to pass the higher rates on to rural consumers. The idea that rural consumers would recognize that the higher interexchange rates were the fault of their LEC, and not the fault of the IXC that is imposing the higher rates on them, seems illusory. Instead, the only result that would be achieved by

²¹ Prior to the enactment of the 1996 Act, the Commission had already determined that all IXCs were non-dominant in the domestic market. In October 1995, the Commission declared AT&T non-dominant because it found that “most major segments of the interexchange market are subject to substantial competition today, and the vast majority of interexchange services and transactions are subject to substantial competition.” *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd 3271, 3288 (1995).

²² *Core Petition* at 20.

²³ *See id.*

eliminating Section 254(g) is the imposition of disproportionately higher rates on rural customers, the very outcome that Congress intended to prevent.

As the Commission acknowledged “geographic rate averaging benefits rural areas by providing access to a nationwide telecommunications network at rates that do not reflect the disproportionate burdens that may be associated with recovery of common line costs in rural areas” and “ensures that rural customers will share in lower prices resulting from nationwide interexchange competition.”²⁴ In addition, the Commission’s rate integration policy of “integrating ‘offshore points’ such as Hawaii and Alaska into the mainland’s interstate interexchange rate structure brings the benefits of growing competition to the entire nation.”²⁵

The Commission has repeatedly reaffirmed the public interest benefits of the Section 254(g) requirements. The Commission should do so again in this proceeding. In fact, it is imperative for the Commission to affirmatively deny Core’s petition for forbearance before it may be deemed granted by operation of law in April 2007. Only in this way can the Commission continue to fulfill Congress’ long standing goal of ensuring that all Americans, even

²⁴ *Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, 4724 (2005) (citing *See Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Report and Order, 11 FCC Rcd 9564, 9567 (1996) (“*Geographic Rate Averaging Order*”).

²⁵ *Id.* (citing *Geographic Rate Averaging Order* at 9588).

those in rural, remote and other high cost areas, have access to affordable and effective long distance telecommunications services.

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