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May 18,2007

VIA ELECTRONIC FILING

Marlene M. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of *Ex Parte* Meeting on behalf of Core Communications, Inc. in CC Docket No. 01-92 and WC Docket No. 06-100

Dear Ms. Dortch:

I hereby submit this notice of an *exparte* meeting held yesterday between Core Communications, Inc. ("Core") and Al Lewis, Jay Atkinson, Victoria Goldberg, and Deena Shetler of the Wireline Competition Bureau's Pricing Division. Bret Mingo, Chris Van de Verg, Megan Hall, and I attended the meeting on behalf of Core. During the meeting, we discussed Core's pending forbearance petition related to rate regulation pursuant to sections 251(g) and 254(g) of the Communications Act of 1934, as amended. During the meeting, I distributed the attached documents, which served as the basis for discussion.

Sincerely,

Michael B. Hazzard/emc

Michael B. Hazzard

Counselfor Core Communications, Inc.

Attachments

cc: Al Lewis (via electronic mail)
Jay Atkinson (via electronic mail)
Victoria Goldberg (via electronic mail)
Deena Shetler (via electronic mail)

ATTACHMENTS

The Commission Has Concluded That 251(g) Is a Limitation On 251(b)(5)

Forbearance From Section 251(g) <u>Rate Regulation</u>
Would Leave 251(b)(5) <u>Rate Regulation</u>

Section 251(g) "is merely a continuation of the equal access and nondiscrimination requirements and nondiscrimination provisions of the [AT&T] Consent Degree until superseded by subsequent regulations of the Commission. *Deployment of Wireline Services Offering Advanced Telecommunications Capability,* 15 FCC Rcd 385,407, ¶ 47 (1999).

"[W]e conclude that Congress, through section 251(g), expressly limited the reach of section 251(b)(5) to exclude ISP-bound traffic." *ISP Remand Order* at ¶ 3 (footnote omitted).

"Unless subject to further limitation, section 251(b)(5) would require reciprocal compensation for transport and termination of *all* telecommunications traffic, -- *i.e.*, whenever a local exchange carrier exchanges telecommunications traffic with another carrier. Farther down in section 251, however, Congress explicitly exempts certain telecommunications services from the reciprocal compensation obligations." *ISP Remand Order* at ¶ 32.

"We conclude that a reasonable reading of the statute is that Congress intended to exclude the traffic listed in subsection (g) from the reciprocal compensation requirements of subsection (b)(5). Thus, the statute does not mandate reciprocal compensation for 'exchange access, information access, and exchange services for such access' provided to IXCs and information service providers. Because **we interpret subsection (g) as a carve-out provision,** the focus of our inquiry is on the universe of traffic that falls within subsection (g) and *not* the universe of traffic that falls within subsection (b)(5). *ISP Remand Order* at ¶ 32 (emphasis added)(footnote omitted).

"Central to our modified analysis is the recognition that 251(g) is properly viewed as a limitation on the scope of section 251(b)(5). . ." *ISP Remand Order* at ¶ 35.

All of the services specified in section 251(g) have one thing in common: they are all access services or services associated with access. Before Congress enacted the 1996 Act, LECs provided access services to IXCs and to information service providers in order to connect calls that travel to points - both interstate and intrastate - beyond the local exchange. In turn, both the Commission and the states had in place access regimes applicable to this traffic, which they have continued to modify over time. *ISP Remand Order* at ¶ 37.

"By its express terms, of course, section 251(g) permits the Commission to supersede pre-Act requirements for interstate access services." *ISP Remand Order* at ¶ 40.

"[S]ection 251(g) serves as a limitation on the scope of 'telecommunications' embraced by section 251(b)(5). . . ." *ISP Remand Order* at ¶ 40.

The Court's Support The FCC's Construction Of Section 251(g) As A Limit On 251(b)(5) Until Superseded

In *World Com v. FCC,* 288 F.3d 429,432 (DC Cir. 2002), the court noted that "[o]n its face, § 251(g) appears simply to provide for the 'continued enforcement' of certain pre-Act regulatory 'interconnection restrictions and obligations,' including the ones contained in the consent decree that broke up the Bell System, until they are explicitly superseded by Commission action implementing the Act." The basis for the court's remand to the FCC was not whether 251(g) served as a temporary limit on 251(b)(5), but whether ISP-bound traffic could properly be categorized as 251(g) "information access" traffic. *See id.* at 433.

In *Competitive Telecom. Ass'n v. FCC,* 117 F.3d 1068, 1072-1073 (8th Cir. 1997), the court found that "it is clear from the Act that Congress did not intend all access charges to move to cost-based pricing, at least not immediately. The Act plainly preserves certain rate regimes already in place. Under § 251(g), a LEC shall provide exchange access, information access, and exchange services for such access to [IXCs] and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations *(including receipt of compensation*) that apply to such carrier on the date immediately preceding February 8, 1996 [date of enactment] under any court order, consent decree, or *regulation, order, or policy of the [FCC],* until such restrictions and obligations are explicitly superseded by regulations prescribed by the [FCC] after February 8, 1996. *Id.* § 251(g)(emphasis added). In other words, the LECs will continue to provide exchange access to IXCs for long-distance service, and continue to receive payment, under the pre-Act regulations and rates. This section leaves the door open for the promulgation of new rates at some future date, but any possible new exchange access rates for interstate calls will not carry the same deadline or the same cost-based restrictions as will those for interconnection and unbundled network elements specifically mentioned in § 252(d)(1)."

Core Communications, Inc.

Ex Parte

WC 06-100 and 01-92

May 17, 2007

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Rate Unification Is The Commission's Stated Goal

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Background & Caveats

- Core filed its petition on April 27, 2006
- Section 10's one-year statutory deadline lapsed on April 27,2007 without a Commission order extending the deadline or explaining why such an extension is "necessary"; accordingly, Core's view is that its petition was "deemed granted" at the expiration of the one-year deadline
- WCB issued an order on "delegated authority" extending the deadline; Core has filed an application for review, which is pending
- Core preserves and does not waive or otherwise modify its view that the statutory deadline has lapsed
- Past Commission precedent (*e.g., Fones4All*) suggests that Commission will issue an order addressing Core's petition, and if so, the Commission should grant Core's request
- Section 10 requires the Commission to take reviewable action (*e.g.*, release an order resolving the petition) prior to the expiration of the statutory deadline to avoid operation of the congressional remedy
- To the extent the Commission takes another view, it should say so; this case presents the fourth or fifth opportunity for the Commission pass on this issue

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Core's Forbearance Request

- Core seeks Commission forbearance from:
  - "**<u>rate regulation</u>** preserved by section 251(g)" (petition at 1, emphasis added)
  - "rate averaging and integration required by section 254(g)" *(id.)*
- Deregulatory, easy to administer, and fair
- Fully consistent with 11 years of Commission decisions and stated intercarrier compensation reform goals
- The same cannot be said for "Missoula" or other intercarrier compensation reform efforts, including "Phantom Traffic"
- Solves "Iowa Problem'' by allowing pass-through of access charges

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Arbitrary, Outdate Regulation Persists

- Arbitrary regulation has perpetuated wildly different rates for the identical functionality – traffic termination, the cost of which does not vary by traffic type or geography
- FCC consistently has found that termination costs are same for all traffic
  - 1996 Local Competition Order
    - "[T]ransport and termination of traffic … involves the same network functions [and] the rates … for transport and termination of local traffic and … long distance traffic should converge")
  - 2001 ISP Remand Order
    - **A** "[local exchange carrier generally will incur the same costs when delivering a call to a local end user as it does delivering a call to an ISP"
    - The "record developed in response to the Intercarrier Compensation NPRM … 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 and ISP"
- Rate averaging/integration perpetuates outdated intercarrier comp regulations (*e.g.*, Iowa)

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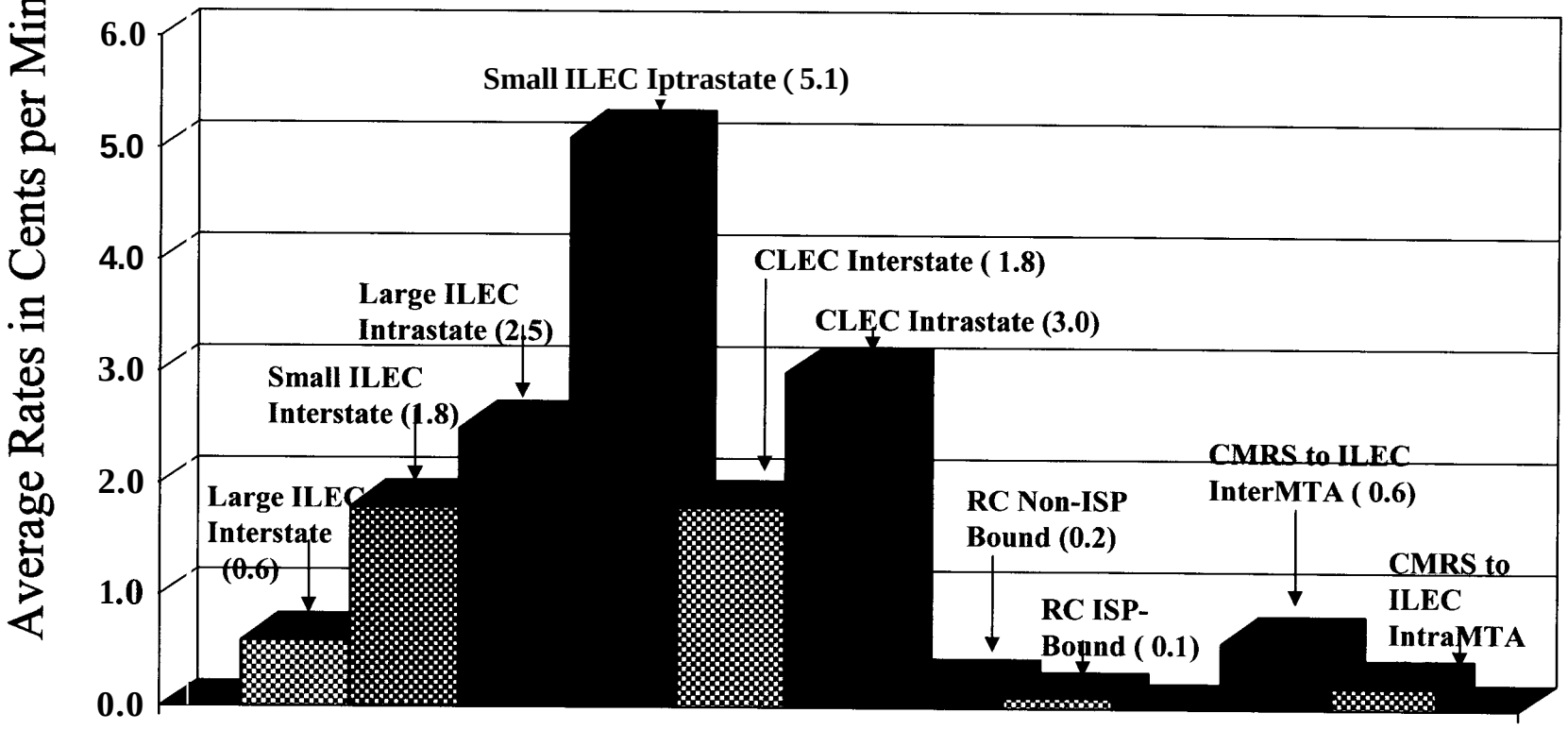
Intercarrier Compensation Rates



High (¢/min):	1.5	8.9	9.9	34.9	6.8	35.9	0.3	0.1	8.9	0.3
Low (¢/min):	0.5	0.3	0.4	0.7	0.2	0.4	0.0	0.0	0.2	0.0

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Rate Disparities Create Regulatory Arbitrage

- No question that cost of termination does not vary by geography/jurisdiction
- Yet rates are materially different based on notions of geography/jurisdiction
- All carriers naturally want to “buy low” and “sell high”
- Existing regulatory categories make this possible for some
- Unification is the Commission’s stated goal

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The FCC's Stated Unification Principles

- In its original unification NPRM from April 2001, the FCC indicated it would unify rates using bill and keep

- In its February 2005 FNPRM, the FCC abandoned bill and keep, and announced the following unification principles:
  - Encourage efficient use of and investment in telecommunications networks
  - Preserve universal service support
  - Create a technologically and competitively neutral system
  - Require minimal regulatory intervention and enforcement

- Core's petition is the **ONLY** plan that satisfies these principles

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Core's Forbearance Request

- Core's petition seeks industry-wide forbearance from:
  - 251(g) **<u>rate regulation</u>**
    - preserves antiquated, non-cost based access charge system
    - a primary source of disparate rates for identical functionality
  - 254(g) rate averaging and integration
    - precludes cost recovery (including access charge flow-through)
    - creates implicit subsidies
    - the **primary source of trouble the Iowa cases** ($0.13 per minute???); carriers can't flow termination costs through
- Both provisions limit 251(b)(5), which by its terms applies to all telecommunications

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Core's Petitioner Is Proper

- Present application of 251(g) and 254(g) rate regulation harms Core
  - Asymmetry of 251(g) and 251(b)(5) rate regulations puts Core in the position where it is forced to collect low termination rates but pay high rates
  - 254(g) limits the ability of Core to deploy new services, as it prevents Core from recovering costs that result from immensely varying termination charges ($0.0007 - $0.13) for the **EXACT SAME FUNCTION**
  - Grant of Core's petition would eliminate these harms by unifying intercarrier compensation regimes and allowing reasonable cost recovery
- Commission **must** address forbearance petitions on the merits, even if request relates to regulations that "may or may not" apply to the telecommunications carrier or telecommunications service at issue. *AT&T v. FCC*, 452 F.3d 830,834 (DC Cir. 2006)
- Industry-wide application of a forbearance grant is permissible. *Petition of Core Communication, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Remand Order*, Order, 19 FCC Rcd 20179 (2004), aff'd, *In re: Core Communications, Inc.*, 455 F.3d 267 (DC Cir. 2006)

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Forbearance Is Appropriate

- Commission forbearance from section 251(g) rate regulation and section 254(g) rate averaging/integration would clear out the regulatory underbrush
- Section 251(b)(5)'s **rate** system would apply to all telecommunications unencumbered
  - consistent with Commission's stated principles
  - eliminate the current kluge of rate categories
  - eliminate costs associated with maintaining the existing system (*e.g.*, trunking, billing, call rating, "phantom traffic" issues)
  - maintain important state commission role (252(d) pricing)
  - simple to administer (rates exist)
- No affect on **non-rate** aspects of 251(g)

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Forbearance Is Appropriate

- Filings of Alaska and Hawaii demonstrate forbearance from 254(g) is appropriate (*see ex parte* Apr 9, 2007)
  - They recognize that 254(g) as enforced creates implicit subsidies
  - Their claims that carriers are not abiding by rate integration requirements cut in favor of forbearance, not against it
  - If they had an issue, then a harmed carrier (or consumer) should file a complaint, but no one has done so

- The rates cited by Alaska and Hawaii are low by any standard, and demonstrate the competitive rates are available consumers, even in instances where they claim carriers are not abiding by rate averaging/integration requirement

251(g) – Sprint-Nextel Comments

- The only wireless carrier to file comments
  - "There can be no dispute that the existing agglomeration of intercarrier compensation mechanisms is irreparably dysfunctional, causing severe competitive distortions, generating hundreds of millions of dollars of billing disputes, … resulting in uneconomic pricing and investment decisions." Sprint Nextel Comments at 2.
  - "Sprint Nextel emphatically supports Core's call for reform" and "endorses Core's recommendation that the Commission replace [the] irrational mix of intercarrier compensation schemes with a unified system based on Section 251(b)(5) reciprocal compensation arrangements." *Id.*
  - "… **Forbearance now seems to be the only tool available** to break the logjam and achieve broad, much-needed reform." *Id.*, 3. (emphasis added)
- All of these comments are true now more than ever

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254(g) – Broad Support

- Broad and diverse support for 254(g) forbearance
  - "The continued mandatory enforcement of rate averaging and integration rules … skews economic signals by preventing cost-based pricing and perpetuating competitive imbalances." Sprint Nextel Comments at **6.**
  - "The market, rather than legislative or regulatory mandates, best ensures that rural long distance customers are not charged unreasonable, unjust, or unreasonably discriminatory rates." AT&T Comments at 5.
  - "In [certain] situations, forbearance is warranted because the rigid enforcement of the rate averaging and rate integration rules discriminates against nationwide long-distance carriers, undermines competition in urban markets, and ultimately disserves both consumers and the public interest." Verizon Comments at 16.

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The Commission Should Grant Core's Request

- Six years of filings in CC 01-92 and the Commission's own findings demonstrate that unifying intercarrier compensation rates and enabling network cost recovery through forbearance is appropriate
- Enforcement of 251(g) and 254(g) **rate** regulation is not necessary to:
  - Ensure that carriers or a carrier's service is just and reasonable, 10(a)(1)
  - Protect consumers, 10(a)(2)
  - Serve the public interest, 10(a)(3)
- Forbearance similarly would promote competition, 10(b)

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