WOMBLE
CARLYLE
SANDRIDGE
& RICE
A PROFESSIONAL LIMITED
LIABILITY COMPANY

Seventh Floor
1401 Eye Street, N.W.
Washington, DC 20005

Telephone: (202) 467-6900
Fax: (202) 467-6910
Web site: www.wcsr.com

Michael B. Hazzard
Direct Dial: (202) 857-4540
Direct Fax: (202) 261-0035
E-mail: mhazzard@wcsr.com

June 26, 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 *ex parte* meetings held separately on June 22, 2007 between Core Communications, Inc. ("Core") and the following legal advisors: Aaron Goldberg, Legal Advisor to Commissioner Taylor Tate and Scott Bergmann, Legal Advisor for Wireline Issues to Commissioner Adelstein. Chris Van de Verg, Bret Mingo, 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. The attached document, which served as the basis for discussion, was distributed during the meeting.

Sincerely,

Michael B. Hazzard
Counsel for Core Communications, Inc.

Attachment

cc: Aaron Goldberg (via electronic mail)
Scott Bergmann (via electronic mail)

Core Communications, Inc.

Ex Parte

WC 06-100 and 01-92

June 22, 2007

Rate Unification Is The Commission's Stated Goal

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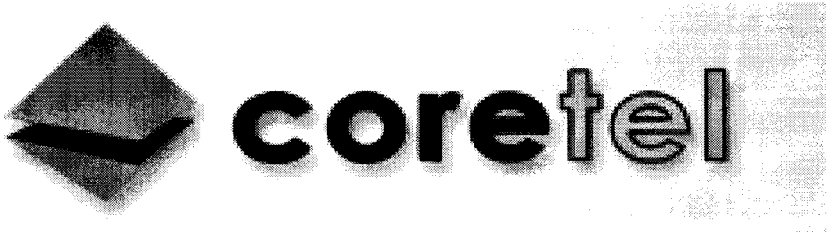
Background & Caveats

- 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 <u>requires</u> 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



Intercarrier Compensation 101

- Intercarrier compensation refers to payments among carriers for traffic exchange
- 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"

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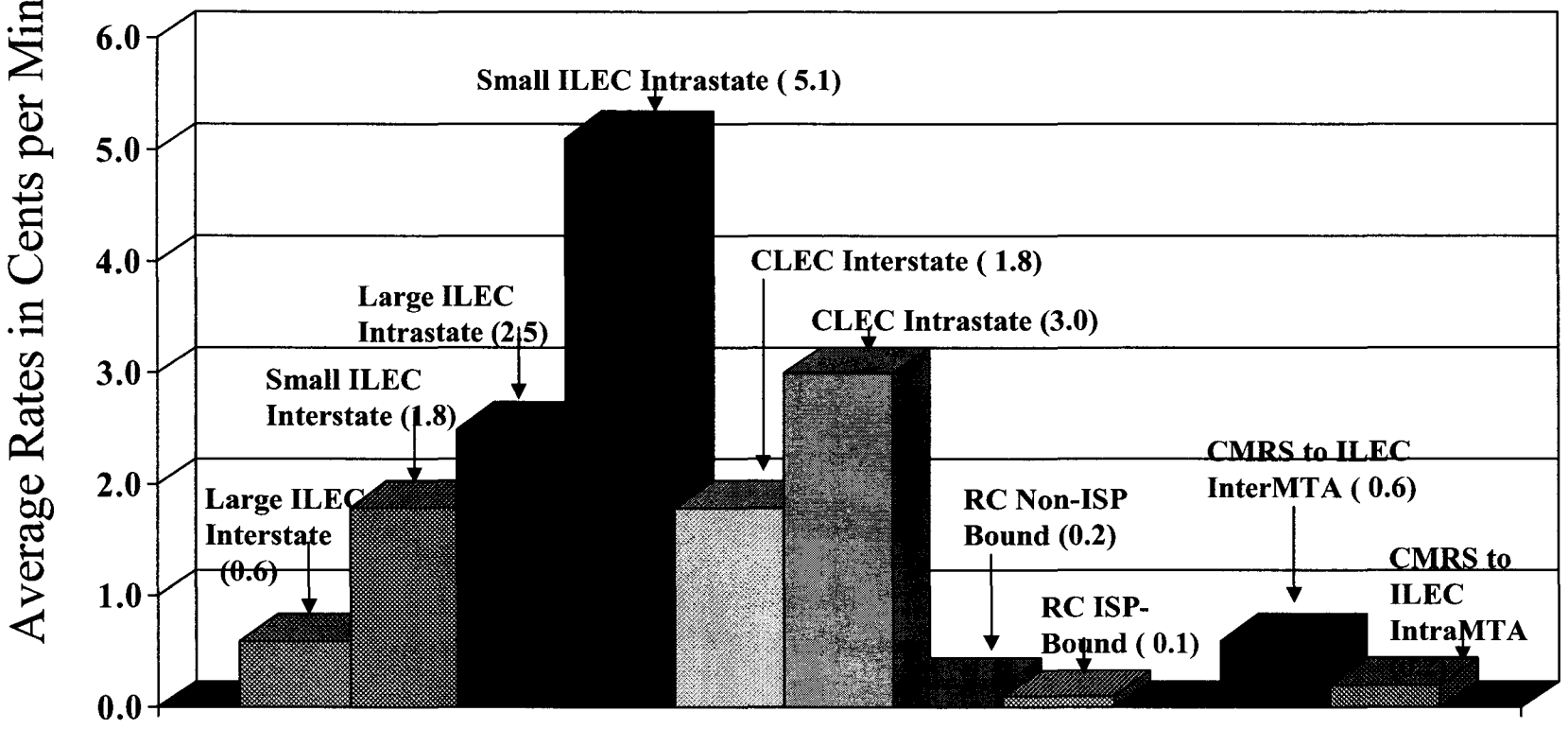
Intercarrier Compensation Rates



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 best remedy

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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

- Need for "comprehensive" rather than "piecemeal" reform emphasized

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But Application Must Be Neutral Too

- Incremental FCC action since 1996 has greatly harmed CLEC cost recovery
- *CLEC Access Charge Order* (regulating and capping CLEC access charges)
- *ISP Remand Order* (radically reducing CLEC compensation for local traffic termination; *WorldCom* remand still pending)
- *T-Mobile Order* (limiting CLEC leverage to negotiate termination agreements; no 252 remedies; no leverage)

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Core's Forbearance Request

- Core's petition seeks industry-wide forbearance from:
  - 251(g) **rate regulation**
    - 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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Forbearance Is Appropriate To Limit Regulatory Arbitrage

- Commission forbearance from sections 251(g) and 254(g) would clear out the regulatory underbrush
- Section 251(b)(5) 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, and similar "phantom traffic" issues)
  - can take into account state and regional differences
  - simple to administer

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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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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 to consumers, even in instances where they claim carriers are not abiding by rate averaging/integration requirement

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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Other Considerations

- Intercarrier comp reform has been on-going for over six years with no movement
- *WorldCom* remand to FCC over five years ago
- Forbearance "deemed granted" issues persist

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