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

In the Matter of	)	
	)	
Petition of Core Communications, Inc. for	)	
Forbearance from Sections 251(g) and 254(g)	)	WC Docket No. 06-100
of the Communications Act and Implementing	)	
Rules	)	

Comments of the ICORE Companies

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COMMENTS OF THE ICORE COMPANIES

I. INTRODUCTION AND SUMMARY

The consulting firm of ICORE, Inc. (ICORE), on behalf of a number of small, rural incumbent local exchange carriers (ILECs)[1], offers these comments in the above-captioned proceeding. ICORE provides a variety of consulting, regulatory and network – related services to many of the nation's smallest, most rural ILECs.

In this proceeding, Core Communications, Inc. ("Core") attempts to use Section 160(c) of the Communications Act as a device for changing the rules that govern the compensation local telephone companies receive when interexchange long distance calls originate or terminate on the public switched telephone network. In particular, Core

[1] ILECs participating in this filing include: Barry County Telephone Company (Delton, MI), D&E Communications, Inc., (Ephrata, PA), Dunbarton Telephone Company, (Dunbarton, NH), Hot Springs Telephone Company, (Kalispell, MT), Lexcom Telephone Company, (Lexington, NC), Polar Communications, (Park River, ND), Ronan Telephone Company, (Ronan, MT), Sherwood Mutual Telephone Company, (Sherwood, OH), Sully Telephone Company (Sully, IA), Sycamore Telephone Company, (Sycamore, OH), Van Horne Co-op Telephone Company, (Van Horne, IA), Venus Telephone Company, (Venus, PA), Yelcot Telephone Company, Inc., (Mountain Home, AR), and Yukon-Waltz Telephone Company, (Yukon, PA).

seeks to replace the current access charge regime with a reciprocal compensation scheme which would grant preferential treatment to today's purchasers of switched access service (primarily Interexchange Carriers) to the detriment of Local Exchange Carriers.

Core's April 27, 2006 petition requests forbearance from rate regulation preserved by section 251(g) of the Act and related implementing rules[2]. Specifically, Core requests that the Commission forbear from (i) section 251(g) and its implementing rules "to the extent they apply to or regulate the rate for compensation for switched 'exchange access, information access, and exchange services for such access to interexchange carriers and information service providers' pursuant to state and federal access charge rules" and (ii) any limitation, by [Commission] rules or otherwise, on the scope of section 251(b)(5) that is implied from section 251(g) preserving receipt of switched access charges[3]. In addition, Core asks the Commission to forbear from the rate averaging and integration requirement contained in section 254(g) of the Act and its implementing rules[4].

The ICORE companies believe that Core's petition should be rejected by the Commission. While the rest of the industry is attempting to develop comprehensive intercarrier compensation and universal service reform, Core seeks a solution that would replace cost-based access rates with forward-looking reciprocal compensation rates. This would significantly reduce LEC access charge revenues and create new reciprocal compensation expenses without any consideration of the impact on universal service and the deployment of advanced services, particularly in rural markets. This result would

[2] 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 Rate Averaging and Integration Regulation Pursuant to § 254(g), WC Docket No. 06-100 ("*Core Petition*")
[3] Core Petition at Page 2.
[4] Id at Pages 1-2.

not be in the public interest, and as such fails to satisfy the criteria of 47 U.S.C. Section 160(a)(3).

II. CORE DOES NOT OFFER EITHER SWITCHED ACCESS OR RETAIL TOLL SERVICES

ICORE is well acquainted with Core, having provided expert testimony on behalf of the Pennsylvania Telephone Association ("PTA") in opposition to Core's request to expand their "CLEC" operation into the markets of rural Pennsylvania LECs[5]. ICORE understands that the PTA will be filing comments in this docket opposing Core's Petition for Forbearance. ICORE concurs with the PTA comments, and incorporates by reference those comments which provide detail of Core's operations which are on record and have been subjected to cross examination and accepted under the rules of evidence before the Pennsylvania Public Utility Commission.

Approval of Core's forbearance petition would dramatically reduce ILEC and CLEC switched access rates. It is unfathomable that a CLEC, as Core purports to be, would seek to advance such a seemingly self-destructive end result. The reason is quite simple - Core is not a CLEC as that term is generally used in the industry. If we are to believe the information from the Core website – and we have no reason not to – Core is not engaged in the transmission of basic local and long distance telephone calls. In fact, it does not even sell services to end users directly – instead it sells its services to Internet Service Providers and VoIP providers[6]. Through the use of Virtual NXXs, Core merely

[5] *Application of Core Communications, Inc. for Approval to Offer, Render, Furnish or Supply Telecommunications Services to the Public in the Commonwealth of Pennsylvania*; PA PUC Docket No. A-310922F0002, AmA.
[6] See Core's website at www.coretel.net/service_voip.html and www.coretel.net/service_managed-modem.html.

aggregates ISP traffic in order to obtain reciprocal compensation payments from the originating LEC. This operation is threatening to collapse with the decision of the 1st Circuit Court of Appeals rendered last month which held that this Commission has not preempted state regulation of access charges on virtual NXX traffic bound for an ISP.[7] The application of access charges to virtual NXX traffic would cause a significant portion of Core's revenues to disappear and be replaced by access charge expenses payable to the LEC whose customer originated the call. This would obviously have a drastic negative impact on Core and other virtual NXX-using "CLECs".

III. THE RELIEF REQUESTED BY CORE IS NOT AN APPROPRIATE SUBJECT FOR A FORBEARANCE PETITION.

Core's Petition is not a request to forbear from any regulations that apply to it or any other Managed Modem or VoIP provider. Rather, it is a request to apply intrusive new regulations to the services provided by others – specifically, to slash the regulated rate that local exchange carriers may charge for use of their local networks to originate or terminate long distance traffic to TELRIC-based rates set in state proceedings. That request is not an appropriate subject for a forbearance petition.

Since Core does not provide service to end users, it cannot possibly be a retail toll provider. Nothing in the Act allows Core to petition to "forbear" from regulations that apply not to it but to others, or to impose even more onerous regulations in their place. And from a substantive standpoint, Core's Petition raises a host of interrelated issues, and would result in a number of harmful consequences. These issues are already being

[7] *Global NAPs, Inc. v. Verizon New England, Inc.*, No. 05-2657, Opinion dated April 11, 2006 (U.S. Court of Appeals, 1st Circuit

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.

IV. FORWARD LOOKING ECONOMIC COST (FLEC) METHODOLOGIES ARE DEFICIENT WITH RESPECT TO ILEC COST RECOVERY

Core alleges that the access charge rules preserved under section 251(g) of the Act create regulatory arbitrage by maintaining disparate rates for supposedly identical functionalities. In reaching this conclusion, they allege that incumbent LECs collect above-cost intercarrier compensation rates[8]. However, access rates are based on embedded (real) costs. This begs the question - when exactly did access rates, developed on the basis of embedded costs, become synonymous with "above cost" rates? A unified rate for intercarrier compensation purposes can, and in fact should, be based on a LEC's ***real*** cost of providing for the exchange of traffic. Only the economic gymnastics we call forward-looking cost models can create a scenario where rates based on ***real*** costs can be considered "above cost". Core's solution of placing all telecommunications traffic into Section 251(b)(5) is shortsighted and ignores the well documented failures of forward looking economic cost methodologies to accurately reflect the cost of rural LECs.

Small, rural ILECs, unlike other network providers, have never had the luxury of serving only big business customers, or high volume toll users, or only those entities within a certain distance of their wire center. They have never been allowed to market only discrete, high profit services to specific customers.

[8] Core Petition at Page 3.

Instead, they have provided a wide variety of services — some profitable, some not — to each and every customer in their franchised territory. Small, rural ILECs have served large and small, rich and poor, business and residential customers alike, with ubiquitous, universal service. They have expended considerable capital to become an integral part of a joint and seamless nationwide network.

Because of these combined carrier of last resort and universal service obligations, the small, rural ILECs have different cost structures from other network providers. Any intercarrier compensation or access charge plan which assumes away these differences will put ILEC revenues in serious jeopardy. FLEC models also fall far short of allowing ILECs to recover their actual costs.

Small, rural ILECs have high levels of embedded costs, including joint and common costs, which have been incurred to meet various regulatory requirements concerning universal service, network connectivity, and other social and industry obligations. These costs have not been incurred to provide competitive products or services to select markets. FLEC models which ignore embedded costs and substantial portions of joint and common costs — in effect, which treat traditional ILEC costs the same as new, competitive network provider costs — assume a degree of cost comparability which simply is not there.

ILEC embedded costs, including joint and common costs, are necessary and real. They have been incurred for valid purposes, often at the direction, or at least the encouragement, of regulators. They cannot now be swept under the rug because they don't fit cleanly into someone's theoretical, competitive costing and pricing model. In the "real world," then, ILECs must be allowed to recover their total costs, including an

appropriate return. These costs must be shared in reasonable proportion by the ILECs' end users, as well as the various network providers that use the ILECs' facilities and services. FLEC methodologies are deficient in relation to proper ILEC cost recovery, and therefore should not form the basis of intercarrier compensation. Unfortunately this is exactly what would happen if the Commission approves the Core petition.

V. TOLL RATE AVERAGING IS ESSENTIAL FOR RURAL CONSUMERS

The FCC has a long established policy of supporting geographic rate averaging, the benefits of which were set out in 1989.

> Geographic rate averaging redounds to the benefit of rural ratepayers, and consumers of high cost local exchange carriers: First, geographic rate averaging ensures that interexchange rates for rural areas, or areas served by high cost companies will not reflect the disproportionate burdens that may be associated with common line recovery costs in these areas. Thus, geographic rate averaging furthers our goal of providing a universal nationwide telecommunications network. Second, geographic rate averaging ensures that ratepayers share in the benefits of nationwide interexchange competition. If prices are falling due to competition in corridors carrying the most traffic, prices will also fall for rural Americans.[9]

In TA-96, Congress made clear in Section 254(g) its intention that toll rate averaging was to continue to be required. This Commission codified its policy position by adopting a rule which simply states that "the rates charged by all providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas."[10]

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[9] In re Policy and Rules Concerning Rates of Dominant Carriers, Report and Order and Second Further Notice of Proposed Rulemaking, 4 FCC Rcd 2873, 3132 (1989) (AT&T Price Cap Order).
[10] In re Policy and Rules Concerning the Interstate, Interexchange Marketplace, NPRM, CC Docket No. 96-61, FCC 96-123, ¶67 (released March 25, 1996).

Core would have us believe that the interexchange market is competitive to the extent that the rate integration and averaging regulations would not be required to ensure that interstate, interexchange rates are just and reasonable or unreasonably discriminatory.[11] This statement is not supported by any facts – it is merely a sweeping generalization by Core – and it is incorrect. Without the protections afforded by Section 254(g), per-minute toll rates in high cost areas would increase as a matter of simple economics. In a purely competitive market, the price of inputs drives the price of outputs. If the cost of RLEC switched access (the input) is higher than the rate charged in an urban area, then the toll rate (the output) would also be higher in the rural market.

Take for example a hypothetical scenario whereby the retail toll rate for rural and urban customers (as restricted by Section 254(g)) is $0.09 per minute. The "competitive toll market" has established this rate based on the following combined originating and terminating access costs – (1) urban rates of $0.02 per minute and (2) rural rates of $0.08 per minute. If we remove Section 254(g), a non-constrained competitive market will yield different toll rates in the two market segments. Urban rates would be driven down while rural toll rates would likely increase – or at best hold constant at the $0.09 level. For evidence as to how a non-constrained IXC might act, one can look to the implementation of the CALLS Order[12] in 2000. Despite agreement from major long distance companies (including AT&T) to pass these savings on to consumers living in all areas of the country[13], AT&T surprised the Commission with their subsequent rate plans. This led then FCC Chairman Kennard to state that "AT&T promised to pass on savings

[11] Core Petition at page 20.
[12] Sixth Report & Order in CC Docket Nos. 96-262 and 94-1, Report & Order in CC Docket No. 99-249, and Eleventh Report & Order in CC Docket No. 96-45, released May 31, 2000.
[13] See FCC News Release of May 31, 2000 announcing $3.2 billion access charge reduction in the CALLS Order.

to all consumers. Their new rate plan does not do that. It is in our Order and I am going to enforce it."[14] Commissioner Tristiani was even more succinct, stating "I was totally misled by AT&T".[15]

Core would have us believe that, absent the protections afforded in Section 254(g), interexchange carriers would continue to charge the same rate in all markets even though the underlying cost of the inputs is different. The continued application of Section 254(g) is essential to protect the public interest and to ensure that toll rates are just and reasonable and not unreasonably discriminatory. Enforcement of the regulation is necessary to protect rural consumers and is in the public interest. As such it fails all three of the criteria which must be met before forbearance can be granted by the Commission.

VI. CORE'S PREVIOUS RECORD ON REGULATORY NON-COMPLIANCE SHOULD CAUSE THIS COMMISSION TO CAREFULLY CONSIDER CORE'S UNDERLYING OBJECTIVES.

Core has shown a propensity to be indifferent at best to adherence to state and federal commission rules and regulations. This Commission issued a Notice of Apparent Liability for Forfeiture after finding that Core had apparently violated 47 C.F.R. § 52.15(f) by willfully failing to report its number utilization and forecast data[16]. This resulted in forfeiture in the amount of $6,000. Core was also subject to numerous reclamation efforts by the Pennsylvania Public Utility Commission ("PA PUC") with respect to the use of numbering resources[17]. When recently

[14] See Statement of Chairman William Kennard, FCC News Release of June 7, 2000
[15] See Statement of Commissioner Gloria Tristiana, FCC News Release of June 7, 2000.
[16] In the Matter of Core Communications, Inc., OCN #2593, File No. EB-01-IH-0017e NAL / Acct. No. 200132080036, released April 24, 2001.

[17] The PA PUC reviewed Core's use of the 412-285 NXX and issued a $5,000 penalty. Underlying that investigation were reclamations of the 484-258 NXX and 26 NXXs in the 724 area code. The 724

addressing Core's practices, the PA PUC penalized and publicly rebuked Core for what was described as a potential "pattern" of ignoring the Commission's directives, stating:

> "It is noted that this is not the first instance of similar violations on the part of Core Communications. There have been *at least* two other instances in which Core has been subjected to similar investigations and civil penalties with respect to numbering matters. In addition, it is further noted that there is a pending investigation concerning Core's alleged failure to timely file its 2003 Annual Report with the Commission that could result in the imposition of a civil penalty. These actions, or inactions, on the part of Core indicate that there may be a pattern developing whereby it chooses to ignore Commission directives, Orders and/or regulations"[18].

Core seems to acknowledge the regulator only when it needs forbearance from certain rules. On August 17, 2001, Core filed a petition requesting a one-year waiver of application of the ten-percent growth cap and new market rules that mandate the application of bill-and-keep for ISP-bound traffic with respect to carriers that were not exchanging traffic pursuant to interconnection agreements prior to April 18, 2001. On July 14, 2003 Core asked for forbearance from application of the ISP Remand Order. The forbearance requested was for all aspects of the ISP Remand Order, including the rate caps, the growth cap, the new market rule, and the mirroring rule. Core offered

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reclamation resulted in Core's filing a Petition for Reconsideration, and ultimately the imposition by the PA PUC of a $1,000 penalty. Core was also subject to reclamation of the 267-477 NXX, which also resulted in Core's filing of a Petition for Reconsideration and ultimately the PA PUC's imposition of a $2,400 penalty. Finally, the PA PUC, while not reclaiming the number, by Secretarial Letter dated September 8, 2003, also investigated Core's use of the 717-321-1 NXX as a result of the Commission receiving from NeuStar notice that the 1,000 block of numbers had not been placed into service, and by Secretarial Letter dated July 11, 2005 was still investigating Core's use of this number block.

[18] *Pennsylvania Public Utility Commission Law Bureau Prosecutory Staff v. Core Communications, Inc.*, Docket No. M-00051874, Tentative Order issued June 29, 2005, and Statement of Commissioner Bill Shane (emphasis added).

nothing more than sweeping generalizations that the rules adopted in the ISP Remand Order deterred investment in the telecommunications business, and had thereby substantially harmed the competitive telecommunications industry. They stated that forbearance from these rules would generate increased technological innovation, robust competition, and enhanced consumer choice. Upon further review, Core's current operations do not match the utopia which they portrayed in their petition. Despite gaining forbearance from the new market rule and the growth cap, Core has done nothing to expand the competitive telecommunications options available to consumers. Instead, Core has simply elected to serve the ISP market, ignoring the telecommunications needs of all other residential and business consumers. In the recent Pennsylvania proceeding, Core acknowledged that it serves no residential or business customers, does not provide access to interexchange carriers, 911 emergency calling, access to operator services, or CLASS services. In short, Core took its forbearance "win" and elected to serve only internet service providers. At least to the extent of Core's operation, there was no benefit to telecommunications consumers – only to Core's bottom line at the expense of the ILEC whose customer called one of Core's ISP customers.

VII. CONCLUSION

This petition for forbearance fails to meet the three criteria required to satisfy the statutory test for forbearance. Having obtained a forbearance petition which enabled them to receive reciprocal compensation for ISP-bound traffic, Core now seeks the FCC's permission to avoid access charges when it receives interexchange virtual NXX traffic. For this slight of hand, Core ignores the interrelated issues of access charges, universal service support, and the provisioning of advanced services. The Commission should reject this petition and continue to focus on comprehensive solutions to this trilogy of issues.

Respectfully submitted,
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