

**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) of)	WC Docket No. 06-100
the Communications Act and Implementing Rules)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: July 26, 2007

Released: July 26, 2007

By the Commission:

I. INTRODUCTION

1. In this Order, we deny a petition filed by Core Communications, Inc. (Core) requesting that the Commission forbear from the rate regulation preserved by section 251(g) of the Communications Act of 1934, as amended (the Act), the rate averaging and rate integration required by section 254(g) of the Act, and all related implementing rules with respect to all telecommunications carriers.¹ For the reasons set forth below, we deny the petition because it fails to meet the statutory forbearance criteria.²

II. BACKGROUND

2. As a general matter, prior to the Telecommunications Act of 1996 (the 1996 Act), local exchange carriers (LECs) received compensation from interexchange carriers for the origination and termination of long distance calls in the form of interstate and intrastate access charges.³ In the 1996 Act, Congress sought to foster competition in the local telephone market, while at the same time ensuring the continued provision of affordable service to all Americans.⁴ As part of the 1996 Act, Congress

¹ 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, at 1 (filed Apr. 27, 2006) (Core Forbearance Petition). On May 5, 2006, the Commission released a Public Notice establishing a pleading cycle for comments on the Core Forbearance Petition. *Pleading Cycle Established for 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, Public Notice, 21 FCC Rcd 5075 (2006). The Appendix contains the list of parties filing comments in this proceeding.

² See 47 U.S.C. § 160(a).

³ See generally *MTS and WATS Market Structure*, CC Docket No. 78-72, Third Report and Order, Phase 1, 93 FCC 2d 241, *recon.*, *MTS and WATS Market Structure*, CC Docket No. 78-72, Memorandum Opinion and Order, 97 FCC 2d 682 (1983), *second recon.*, *MTS and WATS Market Structure*, CC Docket No. 78-72, Memorandum Opinion and Order, 97 FCC 2d 834 (1984).

⁴ See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket (continued....)

adopted section 251(b)(5), which requires that all local exchange carriers “establish reciprocal compensation arrangements for the transport and termination of telecommunications.”⁵ In addition, section 252(d)(2)(A) states that, for the purpose of incumbent LEC compliance with section 251(b)(5), a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless such terms and conditions: (i) 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;” and (ii) “determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.”⁶

3. To ensure the continued enforcement of certain pre-1996 Act access obligations and restrictions, Congress also enacted a transitional mechanism in section 251(g).⁷ In the *Local Competition First Report and Order*, the Commission, interpreting section 251(g), concluded that the reciprocal compensation provisions of section 251(b)(5) “do not apply to the transport or termination of interstate or intrastate interexchange traffic” and it required local exchange carriers to continue to offer interstate and

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Nos. 96-98 and 95-185, First Report and Order, 11 FCC Rcd 15499-15507, paras. 1-7 (1996) (subsequent history omitted) (*Local Competition First Report and Order*).

⁵ 47 U.S.C. § 251(b)(5). Section 51.701(c) of our rules defines transport as “the transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier’s end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.” 47 C.F.R. § 51.701(c). Section 51.701(d) of our rules defines termination as “the switching of telecommunications traffic at the terminating carrier’s end office switch, or equivalent facility, and delivery of such traffic to the called party’s premises.” 47 C.F.R. § 51.701(d). In the *Local Competition First Report and Order*, the Commission also concluded that “the new transport and termination rules should be applied to LECs and CMRS providers.” *Local Competition First Report and Order*, 11 FCC Rcd at 16016-17, para. 1043. See also *id.* at 16008-58, paras. 1027-1118 (discussing reciprocal compensation obligations for the transport and termination of telecommunications under section 251(b)(5) of the Act).

⁶ 47 U.S.C. § 252(d)(2)(A). The Commission concluded that the “additional cost” standard of section 252(d)(2) permits the use of the same Total Element Long Run Incremental Cost (TELRIC) standard that it established for interconnection and unbundled elements. *Local Competition First Report and Order*, 11 FCC Rcd at 16023, para. 1054. But see *Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, 9646, para. 101 (2001) (seeking comment on whether a different interpretation of the “additional cost” standard in section 252(d)(2) of the Act is warranted); *Review of the Commission’s Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers*, WC Docket No. 03-173, Notice of Proposed Rulemaking, 18 FCC Rcd 18954, 18992, para. 148 (2003) (asking whether the Commission should continue to apply the same pricing rules to unbundled elements and reciprocal compensation).

⁷ See 47 U.S.C. § 251(g) (providing that “[o]n and after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and non-discriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment”). See also *WorldCom v. Federal Communications Comm’n*, 288 F.3d 429, 432-33 (D.C. Cir. 2002) (finding that section 251(g) is a transitional provision designed to keep in place certain restrictions and obligations, including the existing access charge regime, until such provisions are superseded by Commission regulations).

intrastate access services just as they did prior to the 1996 Act.⁸ The Commission later characterized section 251(g) as a “carve-out provision” that “is properly viewed as a limitation on the scope of section 251(b)(5) [of the Act].”⁹ It found that Congress “did not intend to interfere” with the Commission’s pre-1996 Act authority with respect to the access charge regime and that Congress “exempted the services enumerated in section 251(g) from the newly imposed reciprocal compensation requirement in order to ensure that section 251(b)(5) is not interpreted to override either existing or future regulations prescribed by the Commission.”¹⁰

4. Prior to the 1996 Act, the Commission had a well-established policy of supporting geographic rate averaging¹¹ and rate integration¹² for domestic interstate interexchange services. In adopting section 254(g), Congress sought to codify the Commission’s pre-existing policies of rate averaging and rate integration, and to apply these policies to all interexchange carriers.¹³ Section 254(g) provides that, within six months of enactment,

the Commission shall adopt rules to require that the rates charged by 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. Such rules shall also require that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State.¹⁴

⁸ See *Local Competition First Report and Order*, 11 FCC Rcd at 16013, para. 1034. In a subsequent order, the Commission interpreted this provision as a “continuation of the equal access and nondiscrimination provisions of the [AT&T] Consent Decree until superseded by subsequent regulations of the Commission.” *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Advanced Telecommunications Capability*, CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-78, 98-91, Order on Remand, 15 FCC Rcd 385, 407, para. 47 (1999). The Court of Appeals later held, however, that the pre-existing restrictions and obligations referenced in section 251(g) are not limited to Consent Decree obligations. See *WorldCom, Inc. v. Federal Communications Comm’n*, 288 F.3d at 433.

⁹ See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers -- Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151, 9167, para. 35 (2001) (*ISP Remand Order*), remanded, *WorldCom, Inc. v. FCC*, 288 F.3d at 429.

¹⁰ *Id.*, para. 36 (footnotes omitted).

¹¹ See *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Report and Order and Second Further Notice of Proposed Rulemaking, 4 FCC Rcd 2873, 3132, para. 537 (1989). Although the Commission consistently endorsed a policy of geographic rate averaging, prior to passage of the 1996 Act, it did not formally issue a rule requiring carriers to offer geographically average rates. *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934*, as amended, CC Docket No. 96-61, Report and Order, 11 FCC Rcd 9564, 9567-68, para. 6 (1996) (*Geographic Rate Averaging Order*).

¹² See *Geographic Rate Averaging Order*, 11 FCC Rcd at 9586-87, para. 47 (discussing the history of the Commission’s rate integration policies).

¹³ See *id.* at 9566, para. 3. See also 47 C.F.R. §64.1801 (implementing section 254(g) of the Act).

¹⁴ 47 U.S.C. § 254(g).

5. In its order implementing section 254(g), the Commission adopted rules that tracked the statutory requirements. First, it required providers of interexchange telecommunications services to charge rates in rural and high-cost areas that are no higher than the rates they charge in urban areas.¹⁵ Second, it required providers of interexchange telecommunications services to charge rates in each state that are no higher than in any other state.¹⁶ The Commission reiterated its policy of supporting geographic rate averaging for domestic interstate interexchange services.¹⁷ It explained that geographic rate averaging ensures that interexchange rates in rural areas or areas served by high cost companies will not reflect the disproportionate cost burdens that may be associated with these areas.¹⁸ Although some parties requested that the Commission forbear from enforcing geographic rate averaging based on competitive conditions, the Commission declined to do so on the ground that widespread deaveraged rates for interexchange services could produce unreasonably high rates for some subscribers.¹⁹ For similar reasons, the Commission also declined to forbear from rate integration.²⁰

6. On April 27, 2006, Core filed its petition seeking forbearance from the rate regulation preserved by section 251(g) of the Act, the rate averaging and rate integration required by section 254(g) of the Act, and all related implementing rules.²¹ Specifically, Core requests that the Commission forbear from: (1) 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] rule or otherwise, on the scope of section 251(b)(5) that is implied from section 251(g) preserving receipt of switched access charges.”²² Core requests that the Commission apply the forbearance requested in its petition to all telecommunications carriers, such that grant of its petition would subject these carriers to section 251(b)(5) of the Act for rate setting purposes.²³ In addition, Core asks the Commission to forbear from the rate averaging and integration requirements contained in section 254(g) of the Act and its implementing rules.²⁴

7. On June 8, 2006, the Wireline Competition Bureau (Bureau) extended by ninety (90) days, to July 26, 2007, the date by which the Core Forbearance Petition shall be deemed granted in the absence of

¹⁵ 47 C.F.R. § 64.1801(a). This is known as the geographic rate averaging rule.

¹⁶ 47 C.F.R. § 64.1801(b). This is known as the rate integration rule.

¹⁷ *Geographic Rate Averaging Order*, 11 FCC Rcd at 9567, para. 6 (citing *Policy and Rules Concerning Rates for Dominant Carriers*, Report and Order and Second Further Notice of Proposed Rulemaking, 4 FCC Rcd 2873, 3132 (1989)).

¹⁸ *Id.*

¹⁹ *Id.* at 9579-83, paras. 31-37, 39.

²⁰ *Id.* at 9588, para. 52.

²¹ Core Forbearance Petition at 2.

²² *Id.*; 47 U.S.C. §§ 251(b)(5), 251(g).

²³ Core Forbearance Petition at 1; 47 U.S.C. § 251(b)(5).

²⁴ Core Forbearance Petition at 1-2; 47 U.S.C. § 254(g).

a Commission decision.²⁵ Core filed an application for review of the *Bureau Extension Order* on March 28, 2007.²⁶

8. For the Commission to grant the forbearance requested by Core, we must determine that the three elements of section 10 of the Act are satisfied. In particular, section 10(a) provides that:

The Commission shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that –

- (1) enforcement of such regulation or provision is not necessary 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) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- (3) forbearance from applying such provision or regulation is consistent with the public interest.²⁷

III. DISCUSSION

9. As a preliminary matter, we deny Core's application for review of the *Bureau Extension Order* pursuant to section 1.115(g) of the Commission's rules and section 5(c)(5) of the Act.²⁸ Core's arguments are virtually identical to those considered and rejected by the Commission in the *Fones4All*

²⁵ *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, Order, DA 07-927 (Wireline Comp. Bur. rel. March 1, 2007) (*Bureau Extension Order*), Erratum, DA 07-1605 (Wireline Comp. Bur. rel. April 3, 2007).

²⁶ *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, Application for Review (filed March 28, 2007) (Core Application). On April 12, 2007, Qwest filed comments on the Core Application. Comments of Qwest Communications International Inc., WC Docket No. 06-100 (filed April 12, 2007) (Qwest Application Comments). Core filed a reply to the Qwest Application Comments on April 20, 2007. Reply of Core Communications, Inc. to Qwest Communications International Inc.'s Comment on Application for Review, WC Docket No. 06-100 (filed April 20, 2007) (Core Application Reply).

²⁷ 47 U.S.C. § 160(a). With regard to the public interest determination required by section 10(a)(3), section 10(b) requires the Commission to "consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services." 47 U.S.C. § 160(b). Further, "[i]f the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest." *Id.*

²⁸ 47 C.F.R. § 1.115(g); 47 U.S.C. § 155(c)(5) ("In passing upon applications for review [of orders issued on delegated authority], the Commission may grant, in whole or in part, or deny such applications without specifying any reasons therefore.").

Forbearance Order.²⁹ Core argues that the Bureau had no authority to issue the *Bureau Extension Order* and that, even if it did, it did not adequately explain the rationale for its action.³⁰ In the *Fones4All Forbearance Order*, the Commission found, contrary to Core’s present assertions, that “[e]xtensions of time do not raise novel questions of fact, law or policy,” and that, therefore, “the Bureau is within its discretion to extend by 90 days the date by which a forbearance petition shall be deemed granted of behalf of the Commission.”³¹ The Commission concluded that the extension of time involved a routine and well-adjudicated procedural question and did not address the substance of the issues raised by the petition or any other novel question.³² For the reasons discussed in the *Fones4All Forbearance Order*, we reject Core’s arguments that the *Bureau Extension Order* raised “novel questions of fact, law or policy.”³³

10. We also reject Core’s contention that the *Bureau Extension Order* is insufficient because it fails to offer any analysis of why such an extension is necessary and fails to use the word “necessary.”³⁴ Pursuant to section 10(c), the Commission may extend the initial one-year period by an additional 90 days “if the Commission finds that an extension is necessary to meet the requirements of subsection (a).”³⁵ Thus, the Bureau reasonably construed the statutory language to permit an extension whenever an extension is necessary to complete the analysis required under section 10(a).³⁶ Further as the Commission stated in the *Fones4All Forbearance Order*, the extension order “needs only to satisfy the substantive criteria of section 10(c) rather than to quote any particular statutory text”³⁷ from that section, and the *Bureau Extension Order* easily meets this threshold.³⁸ We find that, in the circumstances of this

²⁹ See *Fones4All Corp. Petition for Expedited Forbearance Under 47 U.S.C. § 160(c) and section 1.53 from Application of Rule 51.319(d) To Competitive Local Exchange Carriers Using Unbundled Local Switching to Provide Single Line Residential Service to End Users Eligible for State or Federal Lifeline Service*, WC Docket No. 05-261, Memorandum Opinion and Order, 21 FCC Rcd 11125, 11128, para 6 (2006) (*Fones4All Forbearance Order*).

³⁰ Core Application at 1, 3.

³¹ *Fones4All Forbearance Order*, 21 FCC Rcd at 11128, para. 6.

³² *Id.* at 11128, para. 6, n.17. Section 0.91(m) of the Commission’s rules authorizes the Bureau to “[c]arry out the functions of the Commission under the Communications Act of 1934, as amended, except as reserved to the Commission.” 47 C.F.R. § 0.91. Section 0.291 of the Commission’s rules lists the powers reserved to the Commission and it does not reserve the right to grant extensions of time. 47 C.F.R. § 0.291. Moreover, to the extent that Core is indirectly seeking reconsideration of the conclusions reached in the *Fones4All Forbearance Order*, we note that such reconsideration is untimely and beyond the scope of this proceeding. See Core Application at 6 (stating that “[t]o the extent that decision serves as precedent in this proceeding, it should be overturned as suffering fatally from the perils of circular reasoning” and that “when the FCC denied Fones4All’s Application for Review and ratified the WCB Chief’s *ultra vires* order, it unlawfully failed to adhere to its own rules”).

³³ Core Application at 7.

³⁴ Core Application at 4-5, 8-11.

³⁵ 47 U.S.C. § 160(c).

³⁶ See Qwest Application Comments at 3.

³⁷ *Fones4All Forbearance Order*, 21 FCC Rcd at 11129, n. 17.

³⁸ *Bureau Extension Order* at para. 4 (explaining that the Core Forbearance Petition raises significant questions whether forbearance from sections 251(g) and 254(g) and their implementing rules meets the section 10(a) statutory

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proceeding, the Bureau justification for this extension was adequate. Accordingly, we deny Core's application for review.³⁹

A. Procedural Matters

11. In its petition, Core requests that the Commission apply the requested forbearance relief to all telecommunications carriers, such that grant of its petition would subject these carriers to section 251(b)(5) of the Act for rate setting purposes.⁴⁰ Several parties respond that the petition is procedurally defective on the theory that Core lacks standing to request forbearance under section 10(c) of the Act.⁴¹ Specifically, these parties argue that Core is not required to comply with the specific requirements of sections 251(g) and 254(g) and, therefore, cannot request forbearance from these statutory provisions and implementing regulations.⁴² According to these parties, section 10(c) allows a carrier to request forbearance only on its own behalf, not on behalf of other carriers, individually or as a class, that it does not represent. In reply, Core maintains that it is a telecommunications carrier requesting forbearance from application of certain regulations to all telecommunications carriers and that application of the forbearance to all telecommunications carriers is necessary to achieve the relief sought by the petition.⁴³ We need not reach these issues, however, as we deny Core's forbearance petition on other grounds.

B. Application of the Section 10 Forbearance Criteria

12. In this section, we consider whether the Core Forbearance Petition meets the statutory criteria necessary for forbearance under section 10(a) of the Act.⁴⁴ The Commission is obligated to forbear under

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requirements for the extension). See *Fones4All Forbearance Order*, 21 FCC Rcd at 11128, para. 6, n.17 (finding that the Bureau need only satisfy the substantive criteria of section 10(c) rather than quote any particular statutory language).

³⁹ Because we conclude that the *Bureau Extension Order* was sufficient to extend by 90 days the deadline for acting on the Core Forbearance Petition, we also reject Core's assertion that its petition was deemed granted by operation of law on April 27, 2007. See *Written Ex Parte of Core Communications, Inc.*, WC Docket No. 06-100, at 1 & n.1 (filed July 6, 2007) (*Core July 6 Ex Parte*).

⁴⁰ Core Forbearance Petition at 1; 47 U.S.C. § 251(b)(5).

⁴¹ Section 10(c) of the Act states that "[a]ny telecommunications carrier, or class of telecommunications carriers, may submit a petition to the Commission requesting that the Commission exercise the authority granted under this section with respect to *that carrier or those carriers*, or any service offered by that carrier or carriers." 47 U.S.C. 160(c) (emphasis added).

⁴² See ICORE Comments at 3-4 (asserting that Core does not offer switched access or retail toll services); ITTA *et al.* Comments at 2, 3-4 (stating that Core is not required to comply with the specific requirements of sections 251(g) and 254(g) of the Act); RICA Comments at 1 (arguing that the petition seeks relief for carriers who have not joined in the request); Verizon Comments at 4-5 (asking that the petition be dismissed because Core is not permitted to seek forbearance from laws and regulations that apply to other providers and other providers' services). See also Minnesota Coalition Comments at 2, 3-4 (stating that section 10 is not intended to enable a petitioner to eliminate statutory provisions and regulations that are applicable to other categories of carriers that do not include the petitioner).

⁴³ Core Reply at 16-17.

⁴⁴ See 47 U.S.C. § 160(a).

section 10(a) only if all three elements of the forbearance criteria are satisfied.⁴⁵ Thus, the Commission “could properly deny a petition for forbearance if it finds that any one of the three prongs is unsatisfied.”⁴⁶ As discussed below, we find that the Core Forbearance Petition does not meet certain of the statutory forbearance criteria and, accordingly, we deny the petition.⁴⁷

1. Forbearance from Rate Regulation Under Section 251(g)

13. We first consider whether Core’s request for forbearance from rate regulation preserved by section 251(g) of the Act and related implementing rules meets the statutory criteria contained in section 10(a).⁴⁸ For the reasons discussed below, we find that this portion of the forbearance request fails to meet these criteria. The first prong of section 10(a) states that the Commission shall forbear if it determines that “enforcement of such regulation or provision is not necessary 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.”⁴⁹ Core maintains that enforcing section 251(g) and its related price regulations is not

⁴⁵ See *Cellular Telecommunications & Internet Assoc. v. Federal Communications Commission*, 330 F.3d 502, 509 (D.C. Cir. 2003) (explaining that the three prongs of section 10(a) are conjunctive and that the Commission could properly deny a petition for failure to meet any one prong).

⁴⁶ *Id.*

⁴⁷ Core requests that the Commission address, in the context of this proceeding, a number of issues concerning application of the forbearance criteria in section 10 and further interpretation of its statutory terms. See Core July 6 *Ex Parte* at 6-9 (contending, *inter alia*, that the Commission is obligated to define “necessary,” as used in sections 10(a) and 10(c); explain the meaning of the phrases “promote competitive market conditions” and “enhance competition among providers” as used in section 10(b); and clarify “how the competition analysis interplays with . . . the public interest mandate”). Section 10 requires the Commission to determine whether the relief Core seeks satisfies the section 10(a) criteria, to weigh the competitive effect of the requested relief as set forth in section 10(b), and to explain its decision in writing as set forth in section 10(c). See 47 U.S.C. § 160(a)-(c). To the extent Core seeks some analysis beyond that described above, we find that the Commission is not obligated to undertake such an analysis.

⁴⁸ In its July 6 *ex parte*, Core attempts to incorporate by reference arguments made in CC Docket No. 02-39 concerning section 251(g). See Core July 6 *Ex Parte* at 2, 20-21. Core maintains generally that these arguments are relevant to the forbearance analysis at issue in this proceeding. *Id.* at 2. As an initial matter, the Commission is not obligated to search the record in that proceeding to determine whether and how arguments in that proceeding may be relevant to the relief requested here. See *id.* at 2 & n.2 (arguing that any decision by the Commission must take into account related filings in CC Docket No. 02-39). To the extent Core believes that the arguments in CC Docket No. 02-39 support its petition, it is incumbent upon Core to make those arguments to the Commission in this proceeding. We also find that the specific arguments made in the context of CC Docket No. 02-39 referenced by Core are not relevant to the forbearance relief requested here. See *id.* at 21-22 (citing *Notice of Inquiry Concerning a Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, CC Docket No. 02-39, Reply Comments of AT&T Inc. (filed June 26, 2007); Comments of Alaska Communication Systems, Inc. (filed May 29, 2007)). Section 251(g) covers a number of preexisting equal access and nondiscrimination provisions. 47 U.S.C. § 251(g). The arguments made in CC Docket No. 02-39 and cited by Core primarily relate to obligations of local exchange carriers to inform customers that they may choose from multiple long-distance providers; they do not pertain to rate levels or the receipt of compensation at issue here. See Core July 6 *Ex Parte* at 21-22. Thus, the comments upon which Core relies are neither related nor relevant to the forbearance from rate regulation under consideration in this proceeding.

⁴⁹ 47 U.S.C. § 160(a)(1).

necessary to ensure that the charges and practices of carriers are just and reasonable and not unreasonably discriminatory because maintaining section 251(g) creates regulatory arbitrage and provides a tool for regulatory price discrimination.⁵⁰ Core contends that, if the Commission granted forbearance from the “carve-out” created by section 251(g), the section 251(b)(5) reciprocal compensation regime would apply to all telecommunications services.⁵¹ Thus, Core suggests that forbearance is appropriate because the reciprocal compensation regime would assure that charges and practices are just and reasonable and not unreasonably discriminatory.⁵²

14. We find that enforcement of the rate regulation preserved by section 251(g) and its related implementing rules remains necessary to ensure that intercarrier charges and practices are just and reasonable and not unreasonably discriminatory. Section 251(g) preserves pre-Act compensation obligations and restrictions for “exchange access, information access, and exchange services for such access . . . until such restrictions and obligations are explicitly superseded *by regulations prescribed by the Commission.*”⁵³ Because section 251(g) explicitly contemplates affirmative Commission action in the form of new regulation, we find that forbearance from section 251(g) would not give Core the relief it seeks, because the section 251(b)(5) reciprocal compensation regime would not automatically, and by default, govern traffic that was previously subject to section 251(g).⁵⁴ If the Commission were to forbear from the rate regulation preserved by section 251(g), there would be no rate regulation governing the exchange of traffic currently subject to the access charge regime.⁵⁵ Due to the absence of any such rate

⁵⁰ Core Forbearance Petition at 18-19; Core Reply at 10. Core explains that section 251(g) creates regulatory arbitrage by maintaining disparate rates for identical functionality for no economic reason. Core Forbearance Petition at 19.

⁵¹ Core Forbearance Petition at 18; Core Reply at 6.

⁵² See, e.g., Core Reply at 7-8 (arguing that grant of the petition would require that intercarrier compensation be negotiated and determined via the reciprocal compensation process of section 251(b)(5)) and 11-12 (stating that grant of the petition would maintain all traffic under section 251(b)(5) and that carriers would negotiate (and possibly arbitrate) agreements to implement traffic exchange under section 251(b)(5)).

⁵³ 47 U.S.C. § 251(g) (emphasis added).

⁵⁴ See *Competitive Telecom. Ass’n v. Federal Communications Comm’n*, 117 F.3d 1068, 1072-73 (8th Cir. 1997) (finding that section 251(g) preserves certain rate regimes “until such restrictions and obligations are explicitly superseded by regulations prescribed by the [Commission]” and “leaves the door open for the promulgation of new rates at some future date” but that any new rates would not (necessarily) be subject to the standards set forth in section 251 and 252). Core maintains that any conclusion by the Commission that forbearance from section 251(g) would not result in application of section 251(b)(5) to all telecommunications would mean that some traffic enumerated in section 251(g) does not qualify as “telecommunications.” See Core July 6 *Ex Parte* at 15-18. This contention reflects a misunderstanding of the interplay between sections 251(b)(5) and 251(g). See *supra* paras. 2-3. The Commission previously determined that “section 251(g) serves as a limitation on the scope of ‘telecommunications’ embraced by section 251(b)(5).” *ISP Remand Order*, 16 FCC Rcd at 9170, para. 42. Thus the “telecommunications” traffic that falls within the scope of section 251(g) is not subject to section 251(b)(5).

⁵⁵ See, e.g., Embarq Comments at 5-6 (observing that the question of whether forbearance from section 251(g) eliminates intrastate access and subjects intrastate interexchange traffic to section 251(b)(5) is hotly contested and will result in substantial legal wranglings); ITTA *et al.* Comments at 8 (stating that it is not clear that forbearance from section 251(g) would cause compensation arrangements to default to section 251(b)(5) rules or affect state laws and rules); Qwest Comments at 5-6, 7-8 (arguing that forbearance from section 251(g) would not give Core the relief it is seeking because a rulemaking would be necessary to address implementation issues); Verizon Comments at 7-8 (stating that it not clear that the forbearance requested would subject all telecommunications carriers to section 251(b)(5) and that forbearance cannot be used to impose reciprocal compensation on all traffic formerly subject to

(continued....)

regulation if forbearance were granted, we cannot conclude that enforcement of the rate regulation preserved by section 251(g) and related implementing rules is not necessary to ensure that charges and practices are just and reasonable, and are not unjustly or unreasonably discriminatory.⁵⁶

15. The second and third prongs of section 10(a) state that the Commission shall forbear if “enforcement of such regulation or provision is not necessary for the protection of consumers”⁵⁷ and if “forbearance from applying such provision or regulation is consistent with the public interest.”⁵⁸ Core contends that forbearance from rate regulation under section 251(g) will benefit consumers by eliminating subsidies and allowing consumers to make service and technology choices based on the real economics of a service offering.⁵⁹ Core further asserts that the forbearance requested is consistent with the public interest and will promote competition by unifying intercarrier compensation rates, thereby “leveling the intercarrier compensation playing field.”⁶⁰

16. Significantly, Core provides no analysis of what the “real economics of an offering” might be if the Commission were to grant the forbearance requested, and the record suggests that many LECs depend on access revenues to maintain affordable rates and service quality to consumers, especially in rural areas.⁶¹ Because the record suggests that changes to access revenue streams without more comprehensive intercarrier compensation reform may harm consumers, we find that enforcement of rate regulation under section 251(g) remains necessary for the protection of consumers. Further, because we find that the requested forbearance would not result in a unified intercarrier regime under section 251(b)(5) and, instead, would result in the absence of rate regulation for access services, the requested forbearance would not “level the intercarrier compensation playing field” and promote competition as

(Continued from previous page) _____

access charges); Nebraska Companies Reply at 8 (arguing that forbearance from section 251(g) does not mean that traffic would default into the reciprocal compensation regime). We note that the Commission could decide to subject all traffic to the reciprocal compensation regime in section 251(b)(5) through new regulation; however, such action would have to occur in the context of a rulemaking proceeding. We emphasize that we do not base our denial of the Core Forbearance Petition on the fact that there is a pending rulemaking considering intercarrier compensation reform. *See generally Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005). Thus, we need not address Core’s contention that the Commission may not avoid Core’s petition due to the pendency of that rulemaking. *See Core July 6 Ex Parte* at 13-14.

⁵⁶ USTA notes that the petition fails to recognize that changes to one aspect of intercarrier compensation “cause substantial changes to other forms of intercarrier compensation, universal service support, interconnection arrangements, and end user rates. Core does not begin to address these impacts, much less show that rates would remain just and reasonable after such changes.” USTA Comments at 6.

⁵⁷ 47 U.S.C. § 160(a)(2).

⁵⁸ *Id.* § 160(a)(3). In making its public interest determination, the Commission must consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services. *Id.* § 160(b).

⁵⁹ *See* Core Forbearance Petition at 19. *See also* Core Reply at 10.

⁶⁰ Core Forbearance Petition at 19-20. *See also* Core Reply at 10.

⁶¹ *See, e.g., ITTA, et al. Comments* at 9; *PTA Comments* at 22; *USTA Comments* at 4, 5-6; *WTA Comments* at 3, 10-11; *Nebraska Companies Reply* at 7. *See also* *PTA Comments* at 8 (stating that a loss of all access revenues would increase local service rates in Pennsylvania by an additional \$21.18 per line per month above current rates).

Core suggests.⁶² Rather, the absence of rate regulation for access services would likely result in a regulatory void and uncertainty, which may harm network investment.⁶³ Thus, we cannot find that the requested forbearance is consistent with the public interest. For these reasons, we find that this section of the Core Forbearance Petition fails to meet the statutory criteria necessary for forbearance.⁶⁴

2. Forbearance from the Rate Averaging and Rate Integration Required Under Section 254(g)

17. We next consider whether Core's request for forbearance from the rate averaging and rate integration required by section 254(g) of the Act and related implementing rules meets the statutory criteria contained in section 10(a). In the *Geographic Rate Averaging Order*, the Commission considered whether to forbear from enforcing geographic rate averaging and rate integration based on competitive conditions and declined to do so, reasoning that forbearance could produce unreasonably high rates for some subscribers.⁶⁵ In its petition, Core contends that the Commission should forbear from section 254(g) and its related implementing rules because the interstate, interexchange marketplace is highly competitive, even in remote areas, and that customers may switch interexchange carriers to the extent they feel they are being treated unfairly.⁶⁶ Core argues that such competition will ensure that interstate interexchange rates are just and reasonable and that consumers will not be harmed as a result of the proposed forbearance. Core contends further that section 254(g) requires interexchange carriers to pay inflated access charges and creates implicit subsidies that harm the public interest.⁶⁷ Only AT&T appears to support complete forbearance from the rate averaging and rate integration required by section 254(g) of the Act (and related implementing rules) based on similar claims of competition in the interstate, interexchange marketplace.⁶⁸

⁶² See 47 U.S.C. § 160(b) (requiring the Commission to determine under section 10(a)(3) whether forbearance will promote competitive market conditions).

⁶³ See, e.g., ITTA, *et al.* Comments at 8; Qwest Comments at 8; USTA Comments at 4.

⁶⁴ Because we conclude that the Core Forbearance Petition fails to meet the statutory criteria necessary for forbearance, we need not consider whether transitional rules or conditions are necessary. See Core July 6 *Ex Parte* at 25-27 (suggesting that the Commission has the authority to adopt temporary transitional rules and conditions).

⁶⁵ See *supra* discussion para. 5.

⁶⁶ Core Forbearance Petition at 20. See also Core July 6 *Ex Parte* at 23-25 & Attach. B (describing various types of telecommunications service providers and service plans available to consumers throughout the United States, including Hawaii and Alaska).

⁶⁷ *Id.* at 21.

⁶⁸ See, e.g., AT&T Comments at 5-7; AT&T Reply at 4-9. See also Sprint Nextel Comments at 5-7 (supporting forbearance from section 254(g) upon implementation of a unified intercarrier compensation regime); Verizon Comments at 15-16 (supporting forbearance from section 254(g), but only in highly competitive, urban markets); *But see* Qwest Comments at 8-10 (suggesting that the Commission reform rather than eliminate rate averaging and rate integration). AT&T claims that significant developments in the long distance marketplace eliminate any justification for continued imposition of the section 254(g) requirements. See AT&T Comments at 5-7 (describing developments in the long distance marketplace, including competition by wireless carriers and VoIP providers); AT&T Reply at 4-9 (providing additional evidence and statistics concerning changes in the long distance marketplace).

18. We find that Core's request for forbearance from the rate averaging and rate integration required by section 254(g) of the Act and related implementing rules fails to meet the statutory criteria contained in section 10(a). As discussed previously, geographic rate averaging is intended to assist customers in rural and high cost areas by ensuring that interexchange rates charged to such customers do not reflect the disproportionate burdens associated with the high cost of providing service in these areas.⁶⁹ In the *Geographic Rate Averaging Order*, the Commission concluded that forbearance could produce unreasonably high rates for some subscribers.⁷⁰ Although changes in the long distance marketplace have undoubtedly occurred, we do not agree that increased competition will necessarily protect consumers in high cost areas from unaffordable toll rates should we forbear from rate averaging and rate integration.⁷¹ Competition may bring long distance rates closer to cost, but section 254(g) was intended to make rates equally affordable to all consumers.⁷² Moreover, although Core alleges that competition in the marketplace will help protect consumers, it fails to provide any evidence of such competition beyond mere conclusions and, more importantly, fails to provide any analysis of the potential impact of its request on consumers.⁷³ Indeed, the only consumer impact analysis in the record suggests that a failure to retain the rate averaging and rate integration requirements may result in significant pricing disparities and high interstate toll rates for consumers in insular areas.⁷⁴ Thus, based on the record in this proceeding, we find that enforcement of the section 254(g) requirements remains necessary for the protection of consumers.

19. We also find that Core's petition fails to satisfy the first and third prongs of section 10(a). These provisions state that the Commission shall forbear if "enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications or regulations by, for, or in

⁶⁹ See *Geographic Rate Averaging Order*, 11 FCC Rcd at 9567, para.6 (quoting *Policy and Rules Concerning Rates for Dominant Carriers*, Report and Order and Second Further Notice of Proposed Rulemaking, 4 FCC Rcd 2873, 3132 (1989)).

⁷⁰ See *id.* at 9583, para. 39.

⁷¹ See *Geographic Rate Averaging Order*, 11 FCC Rcd at 9583, para. 39 (finding that, *despite competitive conditions*, widespread deaveraged rates for interexchange services could produce unreasonably high rates for some subscribers).

⁷² See Hawaii Reply at 6-7.

⁷³ See, e.g., Embarq Comments at 4 (stating that Core provides no analysis of how consumer rates may fluctuate without section 254(g)); ITTA *et al.* Comments at 10-11 (observing that Core provides no support for its claim that section 254(g) is no longer necessary to protect consumers); NJ Ratepayer Advocate Comments at 4 (noting that Core provides no empirical support or record evidence to support the conclusions reached in the petition). See also Letter from Bruce A. Olcott, Counsel to the States of Alaska and Hawaii, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 01-92 and 06-100, Attach. at 2 (filed February 6, 2007) (stating that Core seeks a "repeal" of the section 254(g) Congressional mandates and Commission regulations without any analysis of the effects on any locales, regions, or states) (Alaska & Hawaii Feb. 6 *Ex Parte* Letter). For this reason, we also reject Core's contention that the availability of bundled services and intermodal competition has eliminated any consumer protection rationale for maintaining section 254(g) because Core fails to address how these offerings might be affected by forbearance from section 254(g). See Core July 6 *Ex Parte* at 23-25 & Attach. B.

⁷⁴ As an example of what types of interstate toll rates may be charged in insular areas such as Hawaii and Alaska if forbearance were granted, these states provide a chart examining the rates of carriers disregarding the requirements of section 254(g). See Alaska & Hawaii Feb. 6 *Ex Parte* Letter, Attach. at 1. The chart suggests that consumers in these areas could see rates as high as \$0.227/per minute in Hawaii and \$0.342/per minute in Alaska as compared to \$.025/per minute charged in other areas of the country. *Id.*

connection with that telecommunications carrier or telecommunications service are just and reasonable, and are not unjustly or unreasonably discriminatory,”⁷⁵ and if “forbearance from applying such provision or regulation is consistent with the public interest.”⁷⁶ Core has made broad statements regarding the state of competition in long distance services.⁷⁷ Core has not, however, provided any actual evidence to establish that sufficient competition exists in all markets, and in particular in rural areas, such that rates will be constrained to just and reasonable levels.⁷⁸ Because Core has provided no such evidence, we find that Core has not established that enforcement of section 254(g) is not necessary to ensure that the charges, practices, classifications or regulations by, for, or in connection with interexchange services are just and reasonable, and are not unjustly or unreasonably discriminatory.

20. In support of its assertion that forbearance from section 254(g) is consistent with the public interest, Core relies on general allegations that forbearance will eliminate implicit subsidies and thus promote competition. Section 254(g) is a regulation that addresses retail rates.⁷⁹ Carriers generally rely on three revenues streams – revenues from end-user (retail) services, carrier-to-carrier charges (such as access charges and reciprocal compensation), and universal service revenue. Core claims that the elimination of rate averaging and rate integration requirements will allow carriers to adjust retail rates to account for differences in access charges. Core is correct to note the interrelationship of the retail rates end users pay and the wholesale access rates carriers charge,⁸⁰ but it fails to make any showing whatsoever of the likely impact of forbearance from section 254(g) on retail rates and universal service flows.⁸¹ According to Core, the relief it seeks would result in rates for interexchange services that reflect different levels of interstate and intrastate access charges charged by LECs. Thus, customers of those LECs with relatively high access rates will face higher retail rates for interexchange services, or, alternatively, universal service subsidies to those LECs may have to increase to offset the pressure on rates. The Act reflects Congress’s judgment that the public interest is served by promoting affordable

⁷⁵ 47 U.S.C. § 160(a)(1).

⁷⁶ *Id.* § 160(a)(3).

⁷⁷ Core Forbearance Petition at 20.

⁷⁸ In recent years, the Commission has found that there exists robust competition in the markets for interexchange services in the state study areas of the Bell Operating Companies. *See generally SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290 (2005); *Verizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433 (2005); *Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission’s Dominant Carrier Rules As They Apply After Section 272 Sunsets*, WC Docket No. 05-333, 22 FCC Rcd 5207 (2007); *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, *recon.*, 22 FCC Rcd 6285 (2007). It has not recently examined the state of interexchange competition in other areas of the United States, however, nor has it considered the impact of forbearing from section 254(g).

⁷⁹ Core Forbearance Petition at 21.

⁸⁰ *See, e.g., Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262 and 94-1, Sixth Report and Order, *Low-Volume Long Distance Users*, CC Docket No. 99-249, Report and Order, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Eleventh Report and Order, 15 FCC Rcd 12962, 12969-70, para. 18 (2000) (subsequent history omitted).

⁸¹ Thus, Core’s assertions fall short of demonstrating that forbearance from section 254(g) will promote competitive market conditions. *See* 47 U.S.C. § 160(b).

telecommunications services for all Americans,⁸² yet Core nowhere addresses the affordability issues raised by its petition.⁸³ Nor does Core's petition contain any proposal to offset the reduction in implicit subsidies with an explicit universal service subsidy to ensure affordability.⁸⁴ Accordingly, we find that Core has not established that forbearance from section 254(g) is consistent with the public interest.

IV. EFFECTIVE DATE

21. Consistent with section 10 of the Act and our rules, the Commission's forbearance decision shall be effective on July 26, 2007.⁸⁵ The time for appeal shall run from the release date of this Order.⁸⁶

V. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED, pursuant to section 10(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 160(c), that the petition for forbearance of Core Communications, Inc. IS DENIED as set forth herein.

23. IT IS FURTHER ORDERED, pursuant to section 10 of the Communications Act of 1934, as amended, 47 U.S.C. § 160, and section 1.103(a) of the Commission's rules, 47 C.F.R. § 1.103(a), that the Commission's forbearance decision SHALL BE EFFECTIVE on July 26, 2007. Pursuant to sections 1.4 and 1.13 of the Commission's rules, 47 C.F.R. §§ 1.4 and 1.13, the time for appeal shall run from the release date of this Order.

⁸² See, e.g., 47 U.S.C. § 151 (establishing the Commission for the purpose of "mak[ing] available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges"), § 254(b)(3) ("Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services, . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas").

⁸³ Core merely suggests that rural LECs could roll out new services, increase charges to their end users, or "seek additional, explicit corporate welfare from the federal universal service fund or other federal or state governmental sources." Core Reply at 7.

⁸⁴ See Core Forbearance Petition at 21 (suggesting, without specificity, that the Commission make such subsidies explicit through universal service).

⁸⁵ 47 U.S.C. § 160(c) (deeming the petition granted as of the forbearance deadline if the Commission does not deny the petition within the time period specified in the statute); 47 C.F.R. § 1.103(a).

⁸⁶ 47 C.F.R. §§ 1.4 and 1.13.

24. IT IS FURTHER ORDERED, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5), and section 1.115(g) of the Commission's rules, 47 C.F.R. § 1.115(g), that the application for review of Core Communications, Inc. IS DENIED as set forth herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

List of Commenters

Comments in WC Docket No. 06-100

<u>Comments</u>	<u>Abbreviation</u>
AT&T Inc.	AT&T
Embarq Corporation	Embarq
State of Hawaii	Hawaii
ICORE Companies	ICORE
Independent Telephone and Telecommunications Alliance; National Exchange Carrier Association, Inc; National Telecommunications Cooperative Association; and Organization for the Promotion and Advancement of Small Telecommunications Companies	ITTA <i>et al.</i>
New Jersey Division of the Ratepayer Advocate	NJ Ratepayer Advocate
Pennsylvania Telephone Association	PTA
Qwest Communications International, Inc.	Qwest
Rural Independent Competitive Alliance	RICA
Sprint Nextel Corporation	Sprint Nextel
United States Telecom Association	USTA
Verizon	Verizon
Western Telecommunications Alliance	WTA

Reply Comments in WC Docket No. 06-100

<u>Reply Comments</u>	<u>Abbreviation</u>
AT&T Inc.	AT&T
Core Communications, Inc.	Core
State of Hawaii	Hawaii
Minnesota Independent Coalition	Minnesota Coalition
Nebraska Rural Independent Companies	Nebraska Companies
Pennsylvania Telephone Association	PTA