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By Hand Delivery
Rosemary Chiavetta
Secretary
Pennsylvania PUC
PO Box 3265
Harrisburg, PA 17105-3265

April 11, 2012

Re: Docket No. M-2012-2291824
Implementation of the FCC's November 18, 2011 Order

Dear Secretary:

Core Communications, Inc. hereby files an original and five (5) copies of its comments in the proceeding referenced above

If you have any questions with respect to this filing, please contact me at the number listed above.

Regards,

Chris Van de Verg
General Counsel

Copy: FCC Order Task Force (by email)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Implementation of the Federal Communications Commission's Order of November 18, 2011 As Amended Or Revised And Coordination With Certain Intrastate Matters	:	Docket No. M-2012-2291824

COMMENTS OF
CORE COMMUNICATIONS, INC.

Core Communications, Inc. ("Core") hereby submits its comments in response to the Commission's Order entered March 22, 2012 in the above-referenced matter. ("*Commission Order*") These comments respond to the Commission's request that interested stakeholders "address... issues related to the implementation of the *FCC Order* and its prospective effect on various intrastate matters." *Commission Order*, at 2. Core will address these issues from the perspective of a facilities-based competitive local exchange carrier ("CLEC"). Core will not comment on issues of interest exclusively or predominantly to incumbent local exchange carriers ("ILECs"). Specifically, these comments will focus on the following areas for discussion as outlined in the *Commission Order*:

"3. The potential modifications that will be required in existing interconnection agreements in order to timely effectuate the FCC's directives on intercarrier compensation where such interconnection agreements also involve wireline and wireless carriers," *Commission Order*, at 5; and

"5. The use of properly designed informal dispute resolution processes with or without the involvement of Commission Staff for addressing such areas as:

a. The verification of intrastate intercarrier compensation rates and amounts.

b. Intercarrier compensation disputes that may arise within or outside the context of interconnection agreements and where such disputes may involve both direct and indirect interconnection." *Id.*

I. Overview of State Commissions' Role in the Implementation of the *FCC Order's* Intercarrier Compensation Provisions

As the *Commission Order* recognizes, the FCC's long-awaited order[1] fundamentally transforms the landscape of intercarrier compensation ("ICC"), both at the interstate and the intrastate level. And even though much of that transformation is preemptive, the *FCC Order* does carve out significant areas of responsibility for state commissions. These areas include:

- **Determination of the network edge:** "[S]tates will retain important responsibilities in the implementation of a bill-and-keep framework. An inherent part of any rate setting process is not only the establishment of the rate level and rate structure, but the definition of the service or functionality to which the rate will apply. Under a bill-and-keep framework, the determination of points on a network at which a carrier must deliver terminating traffic to avail itself of bill-and-keep (sometimes known as the "edge") serves this function, and will be addressed by states through the arbitration process where parties cannot agree on a negotiated outcome. Depending upon how the "edge" is defined in particular circumstances, in conjunction with how the carriers physically interconnect their networks, payments still could change hands as reciprocal compensation even under a bill-and-keep regime where, for instance, an IXC pays a terminating LEC to transport traffic from the IXC to the edge of the LEC's network. Consistent with their existing role under sections 251 and 252, which we do not expand or contract, states will continue to have the responsibility to address these issues in state arbitration proceedings." FCC Order, ¶ 776.[2]

- **Continued ratesetting for "non-access traffic" during the transition:** "state commissions will continue to have a role in establishing rates for non-access traffic where those rates had not been previously established. States may initially establish such rates on the basis of the Commission's existing cost methodology (TELRIC) consistent with section 51.715 or on the basis of the Commission's new cost methodology, i.e., bill-

[1] Report & Order & Further Notice of Proposed Rulemaking, *In re Connect America Fund et al.*, FCC Item 11-161, WC Docket No. 10-90 *et al.*, 26 F.C.C.R. 17663, 2011 WL 5844975 (F.C.C.)(Nov. 18, 2011)("*FCC Order*"). Core, along with numerous other parties, has appealed the FCC Order and petitions for review have been consolidated in the Tenth Circuit under the case name *In re FCC 11-161*, Docket No. 11-9900. By filing these comments with the Commission, Core does not waive, and shall not be construed to waive, any of its rights to challenge the legality or effectiveness of the *FCC Order*, or its application in any specific context or to any specific set of facts, whether before the Tenth Circuit or any other forum of competent jurisdiction.

[2] Each of the paragraphs listed herein are set forth in full at **Tab A.**

and-keep. After such rates are initially established, they shall be subject to the transition set forth above." *Id.*, Note 1524.

- **Authority to implement the transition:** "[S]tate oversight of the transition process is necessary to ensure that carriers comply with the transition timing and intrastate access charge reductions outlined above. Under our framework, rates for intrastate access traffic will remain in intrastate tariffs. As a result, to ensure compliance with the framework and to ensure carriers are not taking actions that could enable a windfall and/or double recovery, state commissions should monitor compliance with our rate transition; review how carriers reduce rates to ensure consistency with the uniform framework; and guard against attempts to raise capped intercarrier compensation rates, as well as unanticipated types of gamesmanship." *Id.*, at ¶ 813.

- **Arbitrating change of law provisions in ICAs:** "[O]ur actions today constitute a change in law, and we recognize that existing agreements may contain change-of-law provisions that allow for renegotiation and/or may contain some mechanism to resolve disputes about new agreement language implementing new rules." *Id.*, at ¶ 815.

- **Gap authority to address non-section 252 intercarrier relationships:** "We decline, at this time, to extend the obligation to negotiate in good faith and the ability to compel arbitration to other contexts. For example, the T-Mobile Order did not address relationships involving competitive LECs or among other interconnecting service providers." *Id*, at ¶ 827.

- **Section 251(b)(5) authority over VOIP-PSTN traffic:** "We adopt a prospective intercarrier compensation framework that brings all VoIP-PSTN traffic within the section 251(b)(5) framework. As discussed below, the Commission has authority to bring all traffic within the section 251(b)(5) framework for purposes of intercarrier compensation, including traffic that otherwise could be encompassed by the interstate and intrastate access charge regimes, and we exercise that authority now for all VoIP-PSTN traffic." *Id*, at ¶ 943.

- **Arbitration of VOIP-PSTN provisions in ICAs:** "States continue to play an important role under our prospective intercarrier compensation framework for VoIP-PSTN traffic, including arbitration of disputes between carriers seeking to enter alternative arrangements." *Id*, at ¶ 951.

- **Arbitration of VOIP-PSTN factors:** "To the extent that the parties pursue a negotiated agreement but cannot agree upon the particular means of determining the amount of traffic that is VoIP-PSTN traffic, this can be subject to arbitration. Although most incumbent LECs are subject to this duty by virtue of the Act, while other carriers, such as competitive LECs, are not, we note that the Commission's rules already anticipate the possibility that two non-incumbent LECs might elect to bring a reciprocal compensation dispute before a state for arbitration under the section 252 framework." *Id*, at ¶ 967.

- **Arbitration of section 251(c)(2) interconnection arrangements for VOIP-PSTN traffic:** a carrier that otherwise has a section 251(c)(2) interconnection arrangement with an incumbent LEC is free to deliver toll VoIP-PSTN traffic through that arrangement, as well, consistent with the provisions of its interconnection agreement... With respect to the broader use of section 251(c)(2) interconnection arrangements, however, it will be necessary for the interconnection agreement to specifically address such usage to, for example, address the associated compensation." *Id*, at ¶ 972.

- **Gap authority over prospective CLEC-CMRS bill-and-keep arrangements:** "As part of our comprehensive ICC reform, we believe it is now appropriate for the Commission to clarify the system of intercarrier compensation applicable to non-access traffic exchanged between LECs and CMRS providers... [W]e adopt bill-and-keep as the default compensation for non-access traffic exchanged between LECs and CMRS providers." *Id*, at ¶ 978.

In summary, the FCC envisions a continuing and robust state commission role in implementing various aspects of the bill-and-keep intercarrier compensation regime and the transition thereto. This role is premised largely on state commissions' authority to arbitrate, approve and enforce interconnection agreements ("ICAs") between carriers within its jurisdiction. Indeed, the FCC even suggests that state commissions have authority to arbitrate ICAs in non-traditional scenarios, including VOIP-PSTN traffic and the "the possibility that two non-incumbent LECs might elect to bring a reciprocal compensation dispute before a state for arbitration under the section 252 framework." *Id.*, at ¶ 967.

II. The Interaction between the *FCC Order* and the *ISP Remand Order*

The FCC Order brings whole new classes of traffic within the ambit of section 251(b)(5) of the Act, 47 U.S.C. § 251(b)(5), including VOIP-PSTN traffic. This new classification of traffic has significant ramifications for ILEC pricing of reciprocal compensation during the multi-year transition to bill-and-keep, because of its interaction with the FCC's longstanding "mirroring rule" for section 251(b)(5) traffic. In its order, the FCC notes that "[i]n the *2008 Order and ICC/USF FNPRM*, the Commission decided to maintain the $.0007 cap and the mirroring rule pursuant to its section 201 authority. These rules shall remain in place until we adopt more comprehensive intercarrier compensation reform." *FCC Order*, note 1447 (internal quotations omitted).

The mirroring rule originated in the 2001 *ISP Remand Order*,[3] and requires ILEC to make an election on a state-by-state basis. In order to gain the benefit of paying competitors the low rate of $0.0007 for termination of ISP-bound traffic, an ILEC must elect to charge the same low rate of $0.0007 for its termination of "section 251(b)(5) traffic." According to the FCC, "[t]his 'mirroring' rule ensures that incumbent LECs will pay the same rates for ISP-bound traffic that they receive for section 251(b)(5) traffic." *ISP Remand Order*, at ¶ 89. But as demonstrated herein, the *FCC Order* classifies all "VOIP-PSTN traffic" as "section 251(b)(5)" traffic. Therefore, the cumulative effect of the *FCC Order* and the *ISP Remand Order* is that an ILEC must elect to charge $0.0007 for its termination of section 251(b)(5) VOIP-PSTN traffic. Of course, many ILECs have already filed interstate and intrastate switched access tariffs charging switched access rates for such traffic. This raises the issue whether ILECs are still mirroring rates under the *ISP Remand Order*. If an ILEC is no longer mirroring, that ILEC may no longer cap the rates it pays competitors for the termination of ISP-bound traffic. Conversely, an ILEC could retain the benefits of the *ISP Remand Order* during the transition by electing to charge $0.0007 for its own termination of all section 251(b)(5) traffic, including VOIP-PSTN traffic.

III. The FCC's Continuing Disinterest in Resolving ICC Issues That Do Not Involve an ILEC

Although expansive, the *FCC Order* in some ways is remarkable for what it does not do. In particular, while the order does set forth a transition to a bill-and-keep regime for all

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[3] Order on Remand & Report and Order, *In the Matter of Implementation of the Local Competition Provision in the Telecommunications Act of 1996 – Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd. 9151, ¶ 89 (April 27, 2001)("*ISP Remand Order*"). This paragraph is attached hereto as **Tab B**.

intercarrier compensation traffic, it does not address various gaps in the implementation of that transition and regime. As demonstrated herein, the FCC expects many of those gaps to be filled by state commissions pursuant to section 252 of the Act. 47 U.S.C. § 252. Perhaps as important, the *FCC Order* does nothing to preempt state commissions from exercising their own jurisdiction over certificated carriers and intrastate traffic to resolve various intercarrier compensation issues arising outside of the traditional boundaries of section 252. This non-preemption is significant because, over the past two or three years, the Commission has asserted jurisdiction to resolve carrier-to-carrier disputes involving CLEC-RLEC traffic (where no ICA was in place),[4] CLEC-CLEC traffic[5] and CLEC-CMRS traffic.[6] The *FCC Order* appears to recognize and respect state commissions' role in resolving these types of disputes consistent with state and federal law. In any event, other than setting the "rate" for "non-access" LEC-CMRS traffic at bill-and-keep prospectively, the *FCC Order* does not disturb the work accomplished by the Commission. Moving forward, states' role will continue to have great importance, particularly for CLECs, since issues involving responsibility for transport between networks (i.e., setting the network edge for interconnection) will increase as compensation for transport and termination within a network moves towards bill-and-keep.

IV. Recommendations

The Commission has an historic opportunity to use the *FCC Order's* explicit and implicit delegation of authority to resolve a host of intercarrier compensation issues, some of which arise out of the order, and some of which existed beforehand. Although section 252 contemplates a

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[4] Opinion & Order, *Palmerton Telephone Company v. Global NAPs South, Inc., Global NAPs Pennsylvania, Inc., Global NAPs, Inc. and Other affiliates*, Pa. P.U.C. Docket No. C-2009-2093336 (entered March 16, 2010).

[5] Opinion & Order, *Core Communications, Inc. v. AT&T Communications of PA, LLC, and TCG Pittsburgh, Inc.*, Pa. P.U.C. Docket Nos. C-2009-2108186 & C-2009-2108239 (entered September 8, 2010).

[6] Opinion & Order, *Consolidated Communications Enterprise Services, Inc. v. Omnipoint Communications, Inc. d/b/a T-Mobile, et al.*, Pa. P.U.C. Docket No. C-2010-2210014 (entered March 15, 2012).

petition for arbitration of an ICA between a requesting carrier and an incumbent, the Commission can use and has used omnibus proceedings to update multiple ICAs in the wake of a significant change of law.[7] Alternatively, the Commission could issue a declaratory order setting forth conclusions on various issues after notice and comment, thereby establishing a foundation for carrier-to-carrier negotiations or arbitrations. The Commission should consider initiating such a proceeding to resolve the issues discussed herein, including designation of the network edge, compensation for VOIP-PSTN traffic, use of section 251(c)(2) arrangements for VOIP-PSTN and the interaction between the mirroring rule and the FCC's expanded definition of section 251(b)(5) traffic. With respect to the non-traditional ICC issues discussed herein (CLEC-CMRS, etc.), the Commission should continue to use its authority to resolve carrier complaints and thereby establish a body of precedent upon which individual carriers can negotiate mutually acceptable ICC agreements.

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[7] Order, *Petition of Verizon Pennsylvania Inc. and Verizon North Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Pennsylvania Pursuant to Section 252 of the Communications Act of 1934, As Amended and the Triennial Review Order*, Pa. P.U.C. Docket No. P-00042092 (entered February 7, 2005)("For the reasons set forth herein, we will grant the request for a consolidated arbitration, but give each CLEC the option of an arbitration on an individual company basis.").

April 11, 2012

FCC Order Provisions Relating to Implementation of ICC by State Commissions

776. Finally, even assuming section 252(d) applies, our adoption of bill-and-keep as a default compensation mechanism would not intrude on the states' role to set rates as interpreted by the Eighth Circuit. To the extent the traffic at issue is intrastate in nature and subject to section 252(d)'s pricing standard, states retain the authority to regulate the rates that the carriers will charge their end users to recover the costs of transport and termination to ensure that such rates are "just and reasonable." Moreover, states will retain important responsibilities in the implementation of a bill-and-keep framework. An inherent part of any rate setting process is not only the establishment of the rate level and rate structure, but the definition of the service or functionality to which the rate will apply. Under a bill-and-keep framework, the determination of points on a network at which a carrier must deliver terminating traffic to avail itself of bill-and-keep (sometimes known as the "edge") serves this function, and will be addressed by states through the arbitration process where parties cannot agree on a negotiated outcome. Depending upon how the "edge" is defined in particular circumstances, in conjunction with how the carriers physically interconnect their networks, payments still could change hands as reciprocal compensation even under a bill-and-keep regime where, for instance, an IXC pays a terminating LEC to transport traffic from the IXC to the edge of the LEC's network. Consistent with their existing role under sections 251 and 252, which we do not expand or contract, states will continue to have the responsibility to address these issues in state arbitration proceedings, which we believe is sufficient to satisfy any statutory role that the states have under section 252(d) to "determin[e] the concrete result in particular circumstances" of the bill-and-keep framework we adopt today.

790. We now conclude that a uniform, national framework for the transition of intercarrier compensation to bill-and-keep, with an accompanying federal recovery mechanism, best advances our policy goals of accelerating the migration to all IP networks, facilitating IP-to-IP interconnection, and promoting deployment of new broadband networks by providing certainty and predictability to carriers and investors. Although states will not set the transition for intrastate rates under this approach, we do follow the State Member's proposal regarding recovery coming from the federal jurisdiction. Doing so takes a potentially large financial burden away from states. States will also help implement the bill-and-keep methodology: They will continue to oversee the tariffing of intrastate rate reductions during the transition period as well as interconnection negotiations and arbitrations pursuant to sections 251 and 252, and will have responsibility for determining the network "edge" for purposes of bill-and-keep.

803. The transition we adopt is partially based on a stakeholder proposal, with certain modifications, including the adoption of a bill-and-keep methodology as the end state for all traffic. As explained further below, states will play a key role in implementing the framework we adopt today. In particular, states will oversee changes to intrastate access tariffs to ensure that modifications to intrastate tariffs are consistent with the framework and rules we adopt today. For example, states will help guard against carriers improperly moving costs between or among different rate elements to reap a windfall from reform.

Note 1524 Although we do not require a "fresh look" to open existing contracts, we recognize that the framework we adopt today encourages carriers to enter into contracts in lieu of the tariffing framework. If two carriers do not have a reciprocal compensation rate today or are otherwise unable to agree to a rate through negotiations, we make clear that state commissions will continue to have a role in establishing rates for non-access traffic where those rates had not been previously established. States may initially establish such rates on the basis of the Commission's existing cost methodology (TELRIC) consistent with section 51.715 or on the basis of the Commission's new cost methodology, i.e., bill-and-keep. After such rates are initially established, they shall be subject to the transition set forth above.

813. Because carriers will be revising intrastate access tariffs to reduce rates for certain terminating switched access rate elements, and capping other intrastate rates, states will play a critical role implementing and enforcing intercarrier compensation reforms. In particular, state oversight of the transition process is necessary to ensure that carriers comply with the transition timing and intrastate access charge reductions outlined above. Under our framework, rates for intrastate access traffic will remain in intrastate tariffs. As a result, to ensure compliance with the framework and to ensure carriers are not taking actions that could enable a windfall and/or double recovery, state commissions should monitor compliance with our rate transition; review how carriers reduce rates to ensure consistency with the uniform framework; and guard against attempts to raise capped intercarrier compensation rates, as well as unanticipated types of gamesmanship. Consistent with states' existing authority, therefore, states could require carriers to provide additional information and/or refile intrastate access tariffs that do not follow the framework or rules adopted in this Order. Moreover, state commissions will continue to review and approve interconnection agreements and associated reciprocal compensation rates to ensure that they are consistent with the new federal framework and transition. Thus, we will be working in partnership with states to monitor carriers' compliance with our rules, thereby ensuring that consumers throughout the country will realize the tremendous benefits of ICC reform.

815. Existing Agreements. With respect to the impact of our reforms on existing agreements, we emphasize that our reforms do not abrogate existing commercial contracts or interconnection agreements or otherwise require an automatic "fresh look" at these agreements. As the Commission has recognized, both telecommunications carriers and their customers often benefit from long-term contracts—providers gain assurance of cost recovery, and customers (whether wholesale or end-users) may receive discounted and stable prices—and we try to avoid disrupting such contracts. Indeed, giving carriers or customers an automatic fresh look at existing commercial contracts or interconnection agreements could result in a windfall for entities that entered long-term arrangements in exchange for lower prices, as compared to other entities that avoided the risk of early termination fees by electing shorter contract periods at higher prices. Accordingly, we decline to require that these existing arrangements be reopened in connection with the reforms in this Order, and leave such issues to any change-of-law provisions in these arrangements and commercial negotiations among the parties. We do, however, make clear that our actions today constitute a change in law, and we recognize that existing agreements may contain change-of-law provisions that allow for renegotiation and/or may contain some mechanism to resolve disputes about new agreement language implementing new rules.

827. We decline, at this time, to extend the obligation to negotiate in good faith and the ability to compel arbitration to other contexts. For example, the T-Mobile Order did not address relationships involving competitive LECs or among other interconnecting service providers. Subsequently, competitive LECs have requested that the Commission expand the scope of the T-Mobile Order and require CMRS providers to negotiate agreements with competitive LECs under the section 251/252 framework, just as they do with incumbent LECs. In addition, rural incumbent LECs urged the Commission to "extend the T-Mobile Order to give ILECs the right to demand interconnection negotiations with all carriers." We do not believe the record is currently sufficient to justify doing so, but ask further questions about the policy implications as well as our legal authority to do so in the FNPRM.

943. We adopt a prospective intercarrier compensation framework that brings all VoIP-PSTN traffic within the section 251(b)(5) framework. As discussed below, the Commission has authority to bring all traffic within the section 251(b)(5) framework for purposes of intercarrier compensation, including traffic that otherwise could be encompassed by the interstate and intrastate access charge regimes, and we exercise that authority now for all VoIP-PSTN traffic.

951. States continue to play an important role under our prospective intercarrier compensation framework for VoIP-PSTN traffic, including arbitration of disputes between carriers seeking to enter alternative arrangements. However, we are not persuaded to leave regulation of intercarrier compensation for intrastate toll VoIP-PSTN traffic entirely to the states. Our transitional framework for VoIP-PSTN traffic reflects the fact that our comprehensive intercarrier compensation reforms are gradually moving away from jurisdictionalized intercarrier compensation charges that have led to arbitrage and marketplace distortions, and reflects the importance of a uniform, predictable transition away from historical intercarrier compensation regimes. At the same time, our universal service reforms continue to provide for an important state role, consistent with the basic underlying objectives of state commenters.

967. Our transitional regime for VoIP-PSTN intercarrier compensation accommodates these disparities in several ways. For one, the ability to tariff these charges ensures that LECs have the opportunity to obtain the intercarrier compensation provided for by our rules. In addition, the section 252 framework applicable to interconnection agreements provides procedural protections. For example, it provides carriers the opportunity, outside the tariffing framework, to specify a mutually-agreeable approach for determining the amount of traffic that is VoIP-PSTN traffic. To this end, carriers could include an alternative approach in a state-approved SGAT or negotiate such an approach as part of an interconnection agreement. To the extent that the parties pursue a negotiated agreement but cannot agree upon the particular means of determining the amount of traffic that is VoIP-PSTN traffic, this can be subject to arbitration. Although most incumbent LECs are subject to this duty by virtue of the Act, while other carriers, such as competitive LECs, are not, we note that the Commission's rules already anticipate the possibility that two non-incumbent LECs might elect to bring a reciprocal compensation dispute before a state for arbitration under the section 252 framework. To the extent that a state fails to arbitrate a dispute regarding VoIP-PSTN intercarrier compensation, it will be subject to Commission arbitration.

972. Use of Section 251(c)(2) Interconnection Arrangements. Although we bring all VoIP-PSTN traffic within section 251(b)(5), and permit compensation for such arrangements to be addressed through interconnection agreements, we recognize that there is potential ambiguity in existing law regarding carriers' ability to use existing section 251(c)(2) interconnection facilities to exchange VoIP-PSTN traffic, including toll traffic. Consequently, we make clear that a carrier that otherwise has a section 251(c)(2) interconnection arrangement with an incumbent LEC is free to deliver toll VoIP-PSTN traffic through that arrangement, as well, consistent with the provisions of its interconnection agreement. The Commission previously held that section 251(c)(2) interconnection arrangements may not be used solely for the transmission of interexchange traffic because such arrangements are for the exchange of "telephone exchange service" or "exchange access" traffic – and interexchange traffic is neither. However, as long as an interconnecting carrier is using the section 251(c)(2) interconnection arrangement to exchange some telephone exchange service and/or exchange access traffic, section 251(c)(2) does not preclude that carrier from relying on that same functionality to exchange other traffic with the incumbent LEC, as well. This interpretation of section 251(c)(2) is consistent with the Commission's prior holding that carriers that otherwise have section 251(c)(2) interconnection arrangements are free to use them to deliver information services traffic, as well. Likewise, it is consistent with the Commission's interpretation of the unbundling obligations of section 251(c)(3), where it held that, as long as a carrier is using an unbundled network element (UNE) for the provision of a telecommunications service for which UNEs are available, it may use that UNE to provide other services, as well. With respect to the broader use of section 251(c)(2) interconnection arrangements, however, it will be necessary for the interconnection agreement to specifically address such usage to, for example, address the associated compensation.

978. As part of our comprehensive ICC reform, we believe it is now appropriate for the Commission to clarify the system of intercarrier compensation applicable to non-access traffic exchanged between LECs and CMRS providers. Accordingly, as described herein, we clarify that the compensation obligations under section 20.11 are coextensive with the reciprocal compensation requirements under section 251. In addition, consistent with our overall reform approach, we adopt bill-and-keep as the default compensation for non-access traffic exchanged between LECs and CMRS providers. To ease the move to bill-and-keep for rural, rate-of-return regulated LECs we adopt an interim default rule limiting their responsibility for transport costs for this category of traffic. We find that these steps are consistent with our overall reform and will support our goal of modernizing and unifying the intercarrier compensation system.

ISP Remand Order Mirroring Rule

89. It would be unwise as a policy matter, and patently unfair, to allow incumbent LECs to benefit from re-duced intercarrier compensation rates for ISP-bound traffic, with respect to which they are net payors, while permitting them to exchange traffic at state reciprocal compensation rates, which are much higher than the caps we adopt here, when the traffic imbal-ance is reversed. Because we are concerned about the superior bargaining power of incumbent LECs, we will not allow them to "pick and choose" intercarrier compensation regimes, depending on the nature of the traffic exchanged with another carrier. The rate caps for ISP-bound traffic that we adopt here apply, therefore, only if an incumbent LEC offers to exchange all traffic subject to section 251(b)(5) at the same rate. Thus, if the applicable rate cap is \$.0010/mou, the ILEC must offer to exchange section 251(b)(5) traffic at that same rate. Similarly, if an ILEC wishes to continue to exchange ISP-bound traffic on a bill and keep basis in a state that has ordered bill and keep, it must offer to exchange all section 251(b)(5) traffic on a bill and keep basis. For those incumbent LECs that choose not to offer to exchange section 251(b)(5) traffic subject to the same rate caps we adopt for ISP-bound traffic, we order them to exchange ISP-bound traffic at the state-approved or state-arbitrated reciprocal compensation rates reflected in their contracts. This "mirroring" rule ensures that incumbent LECs will pay the same rates for ISP-bound traffic that they receive for section 251(b)(5) traffic.