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September 14, 2009

Secretary James McNulty
Pennsylvania Public Utility Commission
400 North Street, Filing Room
Commonwealth Keystone Building
Harrisburg, PA 17120

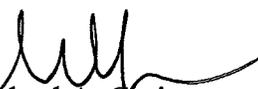
**Re: Core Communications, Inc. v. AT&T Communications of PA, LLC and TCG
Pittsburgh, Inc.
Docket Nos. C-2009-2108186 and C-2009-2108239**

Dear Secretary McNulty:

Enclosed please find the Prehearing Conference Memorandum of Core Communications, Inc. which was filed electronically today in the above-captioned matter. If you have any questions, please do not hesitate to contact me. Thank you.

Best regards,

STEVENS & LEE


Michael A. Gruin

Enclosure

cc: Certificate of Service

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A PROFESSIONAL CORPORATION

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Core Communications, Inc.)	
)	
Complainant)	
)	
v.)	
)	
AT&T Communications of PA, LLC,)	
)	Docket No. C-2009-2108186
and)	Docket No. C-2009-2108239
)	
TCG Pittsburgh, Inc.)	
)	
Respondents)	
)	
)	

**PREHEARING CONFERENCE MEMORANDUM OF
CORE COMMUNICATIONS, INC.**

Pursuant to 52 Pa. Code Section 5.222, Complainant, Core Communications, Inc. (“Core”), respectfully submits its Prehearing Conference Memorandum in the above-captioned matter.

I. HISTORY OF THE PROCEEDING AND CURRENT STATUS

Core filed its formal complaint (the “Complaint”) against AT&T Pennsylvania, LLC and TCG Pittsburgh, Inc. (collectively “AT&T”) in this matter on May 19, 2009.

On May 21, 2009, the Commission served a copy of the Complaint on AT&T Communications of Pennsylvania, LLC, docketed as C-2009-2108186, and on TCG Pittsburgh, Inc., docketed as C-2009-2108239.

On June 1, 2009, the Commission re-served a copy of the Complaint on TCG Pittsburgh, Inc., docketed as C-2009-2108239.

On June 9, 2009, AT&T filed its answer to the Complaint, and set forth new matter.

On June 18, 2009, by agreement of the parties, AT&T filed its amended answer and new matter.

On July 2, 2009, Core filed its reply to AT&T's new matter.

On June 23, 2009, ALJ Jones issued a notice of Initial Prehearing Conference on September 15, 2009 at 10:00 a.m. The notice indicated that Core's Complaint against AT&T is docketed as two cases: C-2009-2108186 – Core Communications, Inc. v. AT&T Pennsylvania, LLC and C-2009-2108239 – Core Communications, Inc. v. TCG Pittsburgh, Inc. The notice also indicated that the conference would be held at the same time and place with the conference for another case, C-2009-2108366 – Laurel Highland Telephone Company v. Choice One Communications of Pennsylvania, Inc.

On June 29, 2009, ALJ Jones issued the Prehearing Conference Order.

On July 21, 2009, Core filed a Petition for Protective Order.

Discovery has commenced, and the parties have exchanged several sets of Interrogatories, Requests for Production of Documents, and Requests for Admissions.

II. ISSUES FOR RESOLUTION AND CORE'S POSITION ON EACH

This Complaint involves a claim for intrastate telecommunications access charges billed by Core to AT&T for telecommunications traffic sent by AT&T to Core from 2004 through 2009. The following charges for Core's intrastate switched access services remain unpaid by AT&T for the periods from January 1, 2004 through December 31, 2007, and from January 1, 2009 through March 31, 2009:

AT&T Pennsylvania (CIC¹ Code 5438): \$216.83

AT&T Pennsylvania (CIC Code 288): \$99,911.36

TCG Pittsburgh, Inc. (CIC Code 0292): \$7,526,554.81

Core and AT&T are both Competitive Local Exchange Carriers (“CLECs”). Core and AT&T have not entered into an Interconnection Agreement or a Traffic Exchange Agreement. Therefore, the intercarrier compensation arrangements between the parties for traffic sent from AT&T to Core are governed by Core’s Intrastate Access Tariff (Tariff PA PUC No. 4). In the alternative, and to the extent Core’s tariff does not govern, then the intercarrier compensation arrangements between the parties for traffic sent from AT&T to Core are governed by the cost-based reciprocal compensation system set forth in section 251(b)(5) of the Act, as administered by the Commission.

Substantive Issues

1. Burden of Proof

As the proponent of a Commission order, Core has the burden of proof in this case. 66 Pa.C.S.A. § 332(a). To establish a sufficient case and satisfy the burden of proof, Core must show that AT&T is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990), *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm’n*, 134 Pa.Cmwlth. 218; 221-222, 578 A.2d 600; 602 (1990), app. denied, 529 Pa. 654, 602 A.2d 863 (1992).

¹ The acronym “CIC” refers to “Carrier Identification Codes”, which are unique codes assigned to individual telecommunications carriers and are used for intercarrier compensation billing purposes in the telecommunications industry

However, with respect to AT&T's affirmative defenses, AT&T bears the burden of proof. Affirmative defenses are distinguished from the mere denial of facts which make up the complainant's cause of action in that affirmative defenses require the averments of facts extrinsic to the complainant's claim. *Coldren v. Peterman*, 2000 Pa.Super. 364, 763 A.2d 905 (2000), app. denied, 566 Pa. 633, 781 A.2d 137 (2001). The party asserting an affirmative defense bears the burden of proof as to that affirmative defense. *Id.* See, also, *Commonwealth ex rel. Corbett v. Griffin*, 596 Pa. 549, 946 A.2d 668 (2008). Affirmative defenses are properly raised under the heading of "New Matter" in the pleadings, 52 Pa.Code § 5.62(b), and so would include issues raised by AT&T in the "New Matter" section of its Amended Answer, or which otherwise constitute affirmative defenses or new matter.

2. Bill-and-Keep Arrangements. AT&T maintains that the disputed traffic is "local" CLEC- to CLEC traffic and therefore subject to a "bill-and-keep" arrangement. "Bill-and-keep" is a type of reciprocal compensation arrangement in which each carrier pays the other "in kind" for the termination of traffic, i.e., both carriers provide termination service to the other, and neither pays the other any monetary compensation. Core's position is that, under applicable FCC reciprocal compensation rules, "bill-and-keep" applies only where traffic is "roughly balanced" between the two parties.² The facts are undisputed that A&T has sent Core large volumes of telecommunications traffic over the periods in question, but that Core has sent AT&T none. Accordingly, Core's position is that bill-and-keep is simply inapplicable to the facts of this case, and that Core's Intrastate Access Tariff controls the intercarrier compensation applicable to the traffic sent by AT&T to Core.

Since the facts of the case are largely undisputed, Core has proposed to AT&T that the parties file a joint Petition to Answer Material Question, in order resolve an important legal issue

that has arisen and in order to expedite the resolution of the proceeding. The material question would be “[i]n a situation where two CLECs do not have a written traffic exchange agreement or other written agreement for compensation in place, and where the telecommunications traffic exchanged between the two CLECs is not roughly balanced, under Pennsylvania and federal law, including applicable FCC rules and orders, is a "bill-and-keep" arrangement deemed to be in place?” If the Commission were to answer in the affirmative, then AT&T’s position would be affirmed. If the Commission were to answer in the negative, then Core’s position would be affirmed, and the parties would then be in position to negotiate a settlement under which Core would receive some level of compensation for its termination of AT&T’s traffic. AT&T has agreed to review Core’s proposal for a material question, and to indicate whether or not it will join with Core in petitioning the Commission for an answer.

3. AT&T Communications of Pennsylvania, LLC Traffic (CIC 288)

After discovery was exchanged, it became apparent that AT&T did not have any outstanding dispute with respect to Core invoices for traffic originated by CIC 288, which is the CIC for AT&T Communications of Pennsylvania, LLC.³ In its July 24, 2009 response to Core Set I Interrogatory No. 10, AT&T stated that “AT&T has not yet disputed any CIC 288 traffic on the basis that it is local.” Later, in its September 3, 2009 Objection to Core Set II Interrogatory No. 11, AT&T stated that “AT&T has not yet disputed any CIC 288 traffic on the basis that it is local. Because there is no controversy regarding this traffic, interrogatory requests directed at it are irrelevant.” Attempting to clarify the situation, on August 6, 2009 Core sent AT&T a spreadsheet showing the total amount of intrastate access payments AT&T had withheld from Core for CIC 288 invoices, which totals \$99,911.36. Core asked AT&T to identify any dispute

² The applicable FCC rule for bill-and-keep arrangements is set forth at 47 C.F.R. § 51.713.

³ By contrast, AT&T has disputed traffic on CIC 292, which is the CIC for TCG Pittsburgh, Inc.

that it may have in connection with CIC 288 traffic, or else, to simply pay the amount due for that traffic. Core repeatedly followed up on its request. Last Thursday (September 10, 2009) AT&T stated that it believed that it may have actually paid Core in full for the CIC 288 traffic, although it did not provide any documentation for its belief, nor could it explain its own spreadsheet, attached to its July 24, 2009 response to Core Interrogatory I-11, which clearly indicates that AT&T “withheld” \$97,335.38 in Pennsylvania intrastate access for CIC 288 traffic from Core. At this point, Core’s position is that AT&T in fact has no dispute on CIC 288 traffic, and that it should immediately pay the balance due for that traffic, together with applicable interest as set forth in Core’s Pennsylvania intrastate access tariff. This would render moot Core’s case against AT&T Communications of Pennsylvania, Inc. and permit the parties to remove the case docketed as C-2009-2108186 from the Commission’s docket.

Discovery Issues

1. Exact number of minutes of use (“MOUs”) exchanged.

The parties have been attempting to reach agreement on the exact amount of telecommunications traffic sent from AT&T to Core during the relevant periods. In its first set of interrogatories to AT&T, dated July 2, 2009, Core asked AT&T to “[p]lease state the exact quantities, in minutes, of intrastate telecommunications traffic “sent by AT&T, through Verizon, for termination to Core’s customers” during the periods from January 1, 2004 to the present, as referenced in AT&T’s Answer filed on June 10, 2009. Further, please provide a breakout of the amounts of such telecommunications traffic sent by AT&T to Core, by calendar month year.” Core subsequently provided AT&T with a spreadsheet setting forth the number of monthly minutes of intrastate traffic that AT&T sent Core, based on the same Verizon tandem call records that Core used to invoice AT&T, so that AT&T could independently verify and confirm that the

numbers were correct for each month. After AT&T indicated that it would review and confirm these numbers, Core prepared and forwarded the spreadsheet to AT&T on July 21, 2009. Core has repeatedly inquired as to the status of AT&T's review of the spreadsheet since then. On Thursday, September 10, 2009, AT&T informed Core that AT&T may not review and confirm the numbers on the spreadsheet, or otherwise respond to Interrogatory I-1. AT&T states that it cannot independently confirm the numbers without undertaking an unduly burdensome analysis. AT&T further states that while it does not challenge the accuracy of the Verizon tandem call records at this time, it would like to preserve its ability to do so in the future. Core's position is that AT&T should either confirm the numbers on the spreadsheet, or else identify with specificity the reasons why it can not do so, as well as the reasons why it views the Verizon tandem call records as potentially unreliable.

III. PROPOSED WITNESSES

Core expects to call the following witnesses:

Bret L. Mingo, President, Core— Mr. Mingo is expected to provide testimony regarding Core's receipt of the AT&T indirect traffic, Verizon's tandem call records for that same traffic, Core's billing of AT&T for that same traffic, and the course of discussions between Core and AT&T regarding disputes and payment of intercarrier compensation for the traffic.

Christopher Van de Verg, General Counsel, Core—Mr. Van de Verg is expected to provide testimony regarding the law applicable to intercarrier compensation in connection with the traffic sent by AT&T to Core, Core's Intrastate Access Tariff, and relevant provisions from ICAs and other compensation agreements between AT&T and third parties which have a bearing on this dispute.

V. PROPOSED DISCOVERY, HEARING, AND BRIEFING SCHEDULE

Core proposes the following schedule:

September 15, 2009	Prehearing Conference
September 22, 2009	File Material Question, if Appropriate
October 22, 2009	Commission Answer to Material Question
December 1, 2009	Each Party Serves its Direct Testimony
December 15, 2009	Each Party Serves its Rebuttal Testimony
January, 2010	Evidentiary Hearing
30 days after transcript	Main Briefs Filed
15 days after Main Brief	Reply Briefs Filed

Core intends to introduce the written, pre-served, testimony of each of its witnesses, as necessary, and make its witnesses available for cross-examination at the hearing. Additionally, Core expects to cross-examine witnesses presented by AT&T in this proceeding.

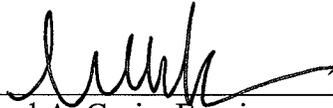
Core reserves the right to identify and present the testimony of additional witnesses, as necessary, in direct or rebuttal phases of these proceedings, in accordance with the schedule adopted in this proceeding.

VI. SETTLEMENT

Settlement negotiations have not been initiated by the parties. However, Core remains open to the amicable resolution of this matter. Furthermore, if full settlement cannot be achieved, Core intends to work with AT&T to reach agreement on as many factual and legal

issues as possible, to limit the number of issues in dispute and to streamline this proceeding to the greatest extent possible.

Respectfully submitted,



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Counsel for Core Communications, Inc.

DATED: September 14, 2009

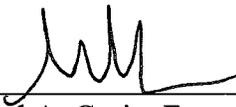
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TCG Pittsburgh, Inc.)	
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Respondents)	
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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of September, 2009, a true and correct copy of the foregoing Responses to Interrogatories and Requests for Production of Documents was served upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 and 1.55, via Electronic and First Class mail.

Michelle Painter, Esq.
Painter Law Firm PLLC
13017 Dunhill Dr.
Fairfax, VA 22030



Michael A. Gruin, Esq.