

Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606-4637

Main Tel +1 312 782 0600
Main Fax +1 312 701 7711
www.mayerbrown.com

Kara K. Gibney
Direct Tel +1 312 701 8350
Direct Fax +1 312 706 8762
kgibney@mayerbrown.com

RECEIVED

FEB 24 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

February 24, 2010

Via Overnight Delivery

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, 2nd Floor
400 North Street
Harrisburg, PA 17120

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

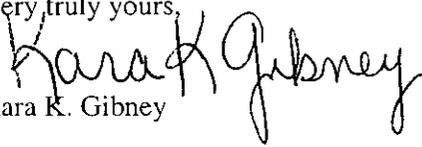
Dear Mr. McNulty:

Please find enclosed an original and three (3) copies of AT&T's Motion to Compel Responses to AT&T's Fifth Set of Interrogatories and Requests for Production of Documents to Core Communications, Inc., for each docket referenced above. The parties agreed that today would be the filing date for motions to compel in order to give the parties additional time to narrow the disputed issues.

Please also find enclosed two proof of filing copies. I ask that you date stamp each copy, and return one to me and one to Michelle Painter in the enclosed self-addressed postage pre-paid envelopes.

Please contact me if you have any questions or concerns with this matter.

Very truly yours,


Kara K. Gibney

Enclosure

cc: Certificate of Service
Office of Administrative Law Judge

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Core Communications, Inc.)
)
 Complainant)
)
v.)
)
AT&T Communications of PA, LLC)
)
and)
)
TCG Pittsburgh)
)
 Respondents)

Docket No. C-2009-2108186
Docket No. C-2009-2108239

RECEIVED

FEB 24 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

AT&T 'S MOTION TO COMPEL RESPONSES TO AT&T'S FIFTH SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO CORE COMMUNICATIONS, INC.

AT&T Communications of Pennsylvania, LLC and TCG Pittsburgh ("AT&T" and "TCG," collectively "AT&T"), pursuant to 52 Pa. Code § 5.342(g), submits its Motion to Compel Responses to AT&T's Fifth Set of Interrogatories and Requests for Production of Documents to Core Communications, Inc. ("Core"). AT&T asked relevant, targeted discovery of Core on January 12, 2010. Core served responses to this discovery on February 1, 2010. After the parties discussed AT&T's concerns with Core's responses, Core served supplemental responses on February 19, 2010. While those supplemental responses resolved some of the parties' disputes, they still did not come close to fully or properly responding to AT&T's discovery. Core's responses to some of the requests are wholly inadequate in that they: fail to answer the question asked; refuse to provide requested information and documents that are directly related to allegations made in the testimony of Core's witness, Mr. Mingo; claim that

Core does not have requested information or documents even though they are the type that plainly would be within Core's possession; and/or refuse to provide information or documents on confidentiality grounds even though the requests do not seek any confidential information.

AT&T requests that Core be compelled to provide answers that are responsive to AT&T's discovery no later than March 15, 2010.

AT&T-Core-5-1: With respect to Core's Surrebuttal Testimony at pages 2-3 regarding Mr. D'Amico, please list the date of each and every discussion Mr. Mingo had with Mr. Cammarota and/or Mr. Cederqvist.

- (a) In which of those discussions, or any other discussions with AT&T, did Mr. Mingo ask for the name of Mr. Cammarota's supervisor?
- (b) In which of those discussions, or any other discussions with AT&T, did Mr. Mingo request to speak to Mr. Cammarota's supervisor?
- (c) In which of those discussions, or any other discussions with AT&T, did Mr. Mingo ask that Mr. Cammarota's supervisor be included in the discussions?
- (d) If any of the "discussions" was in writing, provide the documentation regarding the discussion.

Core Response: The discussions between Mr. Mingo and Mrs. Cederqvist and Cammarota are described in the Direct Testimony of Bret L. Mingo, Core St. No. 1, at p. 13.

In none of those discussions did Mr. Cammarota indicate that he had a supervisor; nor did he ever mention Mr. D'Amico.

Supplemental Response: Accordingly, Mr. Mingo never asked to speak to a supervisor.

AT&T Motion to Compel:

Core's response does not answer all of the questions asked. The request asks Core to list the date of each discussion Mr. Mingo had with Mark Cammarota and/or Frederick Cederqvist – discussions referenced in Mr. Mingo's testimony. Subpart (d) then asks that, if any of the discussions were in writing, Core provide documentation regarding the discussions. Core failed

to provide the dates of the discussions referenced in Mr. Mingo's testimony, and did not indicate whether any documents regarding the discussions exists, even though Core did not object to the request on any basis. Because the request is directly related to discussions referenced in Mr. Mingo's testimony, it is proper discovery and Core should be compelled to provide a response and any responsive documents.

AT&T-Core-5-2: With respect to Core's Surrebuttal Testimony at page 5, lines 15-17, list each and every CLEC referred to in the statement "dozens of other CLECs..." With respect to each such CLEC:

- (a) How much traffic did each CLEC send to Core for each year 2004 to the present?
- (b) When did Core bill each and every CLEC for the traffic sent to Core? Provide the exact date of each bill and the time period covered in the bill. Break out the response by each CLEC.
- (c) How much did Core bill to each and every CLEC for the traffic sent to Core? Provide the date and amount for each bill broken out by CLEC.
- (d) How much has each CLEC paid to Core for the termination of traffic to Core? Break out the response by CLEC, amount paid, and date paid.
- (e) Has Core contacted any CLEC other than AT&T, XO or Choice One to request payment for the termination of traffic to Core? If so, provide the date of contact, the name of the CLEC and the name, address and telephone number of the person contacted.
- (f) Provide any and all documents that are available related to all parts of this Interrogatory.

Core Objection: Core Objected to parts (a) and (e) of this request on January 22, 2010 because they seek information which is irrelevant, not material to the subject matter involved in this proceeding nor is it reasonably calculated to lead to the discovery of relevant information. Core also objected to (a) on the basis that providing this information regarding each CLEC that sent traffic would require Core to undertake a costly, time-consuming, and unreasonable investigation. Core additionally objected to subpart (e) to the extent it seeks the discovery of information that is confidential.

Subject to and without waiver of its objection, Core provides the following response.

- Core Response:**
- (a) In the ordinary course of business, Core does not keep running MOU tallies for each CLEC from which it receives traffic.
 - (b) *Core billed each of the other CLECs at the same times and for the same usage periods as it billed AT&T.*
 - (c) In the ordinary course of business, Core does not keep running totals of the amounts Core bills to each CLEC from which it receives traffic.
 - (d) In the ordinary course of business, Core does not keep running totals of the amounts of compensation paid by CLECs to Core for intrastate Pennsylvania traffic termination.
 - (e) Yes. Core has contacted several CLECs in addition to AT&T, XO and One. These communications are highly sensitive, confidential settlement discussions.
 - (f) These documents relating contain highly sensitive, confidential settlement discussions.

Supplemental Response: In Pennsylvania, there are currently 173 certificated competitive local exchange carriers. *See* http://www.puc.state.pa.us/telecom/telecom_suppliers_list.aspx Any of these carriers whose customers want to reach Core's customers would necessarily send telecommunications traffic to Core for termination.

- (a) As Core identifies CLECs that are sending it traffic for termination, it issues invoices as it did for AT&T. As described in Core St. No. 1 at 8-10, identifying CLECs who are sending traffic to Core requires a laborious and costly analysis of the CABS records. This is an on-going process and, 61 CLE and IXC CICs, including AT&T, XO and One, for termination of traffic in Maryland and Pennsylvania.
- (b) and (c) Core objects to providing any details regarding the subject of on-going and confidential negotiations and discussions with billed CLECs. However, information regarding invoices and amounts due to Core from XO Communications, Inc., Choice One Communications of Pennsylvania, Inc. and CTC Communications Corp. were identified in Core's publicly available Pennsylvania complaints against these companies and are attached hereto.
- (d) and (e) *See* Response to AT&T-Core-5-9.

AT&T Motion to Compel:

The request asks Core to list the CLECs referred to when Mr. Mingo claimed in his testimony that “dozens of other CLECs” sent Core traffic. Mr. Mingo presumably had a basis for making this claim, yet Core’s response does not identify the “dozens” of CLECs Mr. Mingo claims exist. Instead, Core suggests that any of the 173 currently certificated competitive local exchange carriers *might* have sent Core traffic. But when it comes to carriers that Core has determined *did* send traffic to Core, Core identifies only four CLECs (XO Communications, Inc., Choice One Communications of Pennsylvania, Inc., and CTC Communications Corp.). Core did not object to the portion of the request that asked it to list the CLECs included in Mr. Mingo’s “dozens of other CLECs.” And any such objection could not be sustained for the requested information is directly related to the allegations made in Mr. Mingo’s testimony and therefore is proper discovery. Moreover, Core cannot claim through its witness’s testimony that there are “dozens of other CLECs,” and then refuse to provide the names of those CLECs because it purportedly is too “laborious and costly.” Core brought these matters into issue and must be compelled to provide a response. If, contrary to Mr. Mingo’s testimony, Core is only aware of four CLECs that have sent traffic to Core, its response should say so. And if additional CLECs are identified at a later date, Core should provide the information to AT&T at that time.

Subsection (a) asks Core to provide the amount of traffic each of the “dozens of other CLECs” sent to Core. Core’s original response claims that it does not keep running MOU tallies for each CLEC from which it receives traffic. That claim is not credible. Core admits that it has contacted several CLECs to request payment for services (response to subsection (e)), and it admits that it has sent bills to these CLECs (response to subpart (b)). If Core has done these things, it must have data showing the amount of traffic each CLEC sent to Core. Moreover, even if Core does not keep a “running . . . tall[y],” it should be required to provide the amount of

traffic each CLEC sent to Core by month or by whatever other increment Core maintains the information.

Core's Supplemental Response purports to provide some limited data regarding the MOUs of a few carriers, XO Communications, Inc., Choice One Communications of Pennsylvania, Inc. and CTC Communications Corp. But it is impossible to determine from the data provided which CLEC the MOU data relates to and, in any event, Core must be required to provide data on the MOUs of all carriers included in Mr. Mingo's referenced "dozens of other CLECs" – not just a select few. Core's Supplemental Response also claims that providing MOU data on each CLEC would be too "laborious and costly." Core, however, brought these matters into issue and cannot hide behind its claim that it is to "laborious or costly" to produce the data supporting the allegations in Mr. Mingo's testimony.

Subsection (b) asks Core to provide the date(s) when Core billed each CLEC for traffic sent to Core and the time period(s) covered in the bill. Core did not object to this subsection, yet its original answer is not responsive – stating only that Core billed each of the other CLECs at the same time and for the same usage periods as it billed AT&T. Core should be required to provide the precise date(s) on which it billed each CLEC and the precise period(s) covered by each bill. If Core did not bill these CLECs until sometime in 2008 – as it did with AT&T – then Core surely has all of the requested information readily available. Core's Supplemental Response claims to provide data responsive to this request; but the documents provided make it impossible for AT&T to determine which CLEC the data pertains to, and, in any event, falls short of providing the requested data as to all of the "dozens of CLECs" referenced by Mr. Mingo. Core's Rebuttal Testimony specifically stated at page 5 that "the dozens of other CLECs which, at one time or another, may have sent Core substantial amounts of traffic." AT&T has a

right to explore the details behind that claim, and determine if Core is not billing certain CLECs despite them sending “substantial amounts of traffic to Core,” thereby demonstrating that Core is unfairly targeting AT&T while not pursuing other CLECs, thus undermining Core’s claims in this case that bill and keep is not a viable or industry-standard practice. Core’s Supplemental Response also claims that the requested information is confidential. But even Core admits that data for some carriers was included in Core’s “publicly available” complaints; so the data is not confidential.

Subsections (c) and (d) ask Core how much it billed each CLEC, the date of each bill, the amount paid by each CLEC, and the date each bill was paid. Core did not object to these subsections, but its original response claims that Core does not track the amount it bills CLECs or the amount the CLECs pay. That claim is not credible. Core – like any legitimate business – must keep records of amounts billed and received. Indeed, if Core did not keep copies of the bills it admits sending CLECs, and did not keep track of any payments made by those CLECs, it would have no way of knowing how much it was owed or if its bills were ever paid. That simply makes no sense. Core should be compelled to provide the requested information. Again, if Core did not bill these CLECs until 2008 – as it suggests in its response to subpart (b) – then Core surely has all of the information for past years readily available.

Core’s Supplemental Response purports to provide the amounts billed to certain CLECs; but the requested information makes it impossible for AT&T to determine which CLEC the date pertains to and, in any event, falls short of providing the requested data as to all of the “dozens of CLECs” referenced by Mr. Mingo.

Subsection (e) asks whether Core has contacted CLECs (other than AT&T, XO or Choice One) to request payment for the termination of traffic and, if so, the date of the contact, the name

of the CLEC, and the name, address, and telephone number of the person contacted. Core's original response answers "yes," but then refuses to provide any of the requested information on the basis that the "communications are highly sensitive, confidential settlement discussions." Core's Supplemental Response identifies five CLECs (Comcast, Commpartners, CTSI, D&E Systems, and Paetec), but does not provide any of the other requested information (i.e., the date of the contact, the name of the CLEC, and the name, address, and telephone number of the person contacted). AT&T's request does not ask for the substance of any settlement discussions or for any sensitive information. Moreover, through the testimony of Mr. Mingo, Core has put at issue the negotiations and compensation from other CLECs delivering traffic to Core.¹ AT&T is entitled to investigate the allegations in Mr. Mingo's testimony through discovery to see if they have any factual basis. Core cannot make allegations in its testimony, yet deny AT&T the opportunity to investigate those allegations.

Subsection (f) asks for all documents relating to the subparts of the interrogatory. Core claims that all such documents "contain highly sensitive, confidential settlement discussions." Again, the subparts of this interrogatory do not ask for the content of settlement discussions, but rather ask for specific billing, payment, and other information about the "dozens" of CLECs referred to in Mr. Mingo's testimony. AT&T is entitled to this information so that it can respond to Mr. Mingo's allegations.

¹ See, e.g., Core's Surrebuttal Testimony at page 8, lines 3-5, where Core states: "Core's experience negotiating with CLECs is that none of them are willing to pay anything for any service unless and until specifically directed by the Commission." See also Core's Surrebuttal Testimony at page 9, lines 18-19 whereby Core claims: "As for carriers, to the extent they use Core's network, they should be prepared to compensate Core at a lawful rate." If that is in fact Core's position, then AT&T has a right to explore whether Core is requesting such compensation from other CLECs based on the traffic that is being sent to Core.

AT&T-Core-5-9: With respect to Core's Surrebuttal Testimony at page 8, lines 3-4, list the CLECs with whom Core has experience negotiating. Provide the name of each CLEC, the date of any such negotiations, the summary of each negotiation, and any documents Core has regarding such negotiations, including e-mails, notes, etc. whether from Core personnel or from the CLEC with whom Core was negotiating. Explain the basis for Core's claim that "none of them are willing to pay anything for any service unless and until specifically directed by the Commission." Include all supporting documentation.

Core Objection: Core objected this request on January 22, 2010 because it seeks information which is irrelevant, not material to the subject matter involved in this proceeding nor is it reasonably calculated to lead to the discovery of relevant information. Core also objected to the extent this question is seeking information related to confidential settlement negotiations with non-parties to this case as they are confidential and not admissible evidence pursuant to 52 Pa. Code § 5.231(d).

Subject to and without waiver of its objection, Core will provide the following response.

Core Response: The statement is literally correct; no CLEC yet has acknowledged any responsibility to pay for the indirect traffic they send Core (and likely other carriers) for termination.

Supplemental Response: In addition to AT&T, XO Communications, Inc., Choice One Communications of Pennsylvania, Inc. and CTC Communications Corp., Core has received written correspondence from the following Pennsylvania CLECs regarding its intrastate access bills: Comcast, Commpartners, CTSI, D&E Systems, and Paetec. While Core objects to providing any details regarding the subject of on-going and confidential negotiations and discussions with billed CLECs, generally these CLECs take the position that locally-dialed traffic between CLECs is or should be subject to a "bill and keep" arrangement, although the specific reasons for that position vary widely. Notably, none of these CLECs take the position that Core has implicitly agreed to a bill-and-keep arrangement and is estopped from arguing otherwise.

AT&T Motion to Compel:

Mr. Mingo's testimony claims that Core has "experience negotiating with CLECs" and "none of them are willing to pay anything for any service unless and until specifically directed by the Commission." AT&T's request asks Core to list the CLECs with whom it has "experience negotiating." Core provides a list (Comcast, Commpartners, CTSI, D&E Systems,

and Paetec) but does not answer the rest of the request. The request also asks for the date of any such negotiations and a summary of each negotiation referenced by Mr. Mingo, including any supporting documents. Core provides no details or documents. The request also asks Core to provide the basis for its claim that none of the CLECs with whom it has negotiated are willing to pay for any services. Core provides *nothing*. This is yet another attempt by Core to deny AT&T the opportunity to investigate allegations made in Mr. Mingo's testimony. Mr. Mingo makes allegations about Core's negotiations with other CLECs – and the CLECs' purported refusal to pay for services – yet Core refuses to provide any of the requested information or documents relating to those allegations. Core, however, put these matters at issue, and therefore AT&T has a right to investigate them through discovery and Core should be compelled to provide responses to that discovery. Core's claim that the requested information is not relevant is baseless, again, because Core raised these matters in the testimony of Mr. Mingo. Core's refusal to provide the information on the basis that it seeks confidential settlement information is also without merit. AT&T's request does not ask for any confidential or sensitive information. It asks for information directly related to the allegations in Mr. Mingo's testimony. Core cannot hide behind a claim of confidentiality and should be compelled to provide the requested information.

AT&T-Core-5-11: With respect to Core's Surrebuttal Testimony at page 11, lines 1-3, list each and every service Core has to price "at very close to zero, i.e., give it away" and each customer that utilizes that service. Provide the tariff and/or contract identifying each and every service and the price charged at close to zero. Which of the originating services that Core prices "at very close to zero" are currently used by its customers?

Core Response: As the testimony plainly states, Core does not offer outbound services, because scofflaw carriers (including AT&T), which essentially steal use of terminating carrier networks, severely depress the price levels for outbound services. Since these originating carriers do not pay other carriers for the use of their networks, originating carriers charge their end users very little. Core can not effectively compete in such a market without engaging in the same unlawful conduct for which it has sued AT&T and others.

Supplemental Response: Core does not, because it cannot (as described in the Response), provide originating services and, therefore, the information requested does not exist.

AT&T Motion to Compel:

Mr. Mingo's testimony asserts that Core has had "to price originating services at very close to zero, i.e., give it away." AT&T's request asks Core to back up that claim by listing each service that it has priced "very close to zero," the price of each such service, and the customers that utilize each such service. Core's original response provides none of the requested information, even though it did not object to the request. Core's Supplemental Response states: "Core does not, because it cannot (as described in the Response), provide originating services and, therefore, the information requested does not exist." That only answers the third sentence of the request. The first and second sentences of the request ask Core to list each and every service it has been forced to price "at very close to zero, i.e., give it away," the customer(s) utilizing each such service, and the tariff and/or contract identifying each service and the price(s) charged. Again, Core makes allegations in its testimony yet refuses to answer discovery directed at those allegations. Because Core has put these matters at issue, AT&T is entitled to the requested information and Core should be compelled to provide it. By the same token, if there are no services that Core had been forced to price "at very close to zero, i.e., give it away," Core should say so in its response.

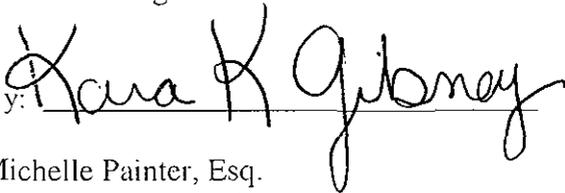
* * *

In sum, Core's responses to the above discovery requests are wholly inadequate. Core fails to answer the questions asked, refuses to answer questions directly related to allegations made in Mr. Mingo's testimony, claims not to have information that plainly must be within Core's possession, and refuses to answer requests on confidentiality grounds even though the

requests do not seek confidential information. Further, it should be noted that there is a Protective Order in this case, and the parties are bound to treat confidential information in accordance with that Order. AT&T requests that the ALJ promptly order Core to provide answers that are responsive to the aforementioned discovery by no later than March 15, 2010.

Respectfully submitted,

AT&T Communications of PA, LLC and
TCG Pittsburgh

By: 

Michelle Painter, Esq.
PA Bar ID No. 91760
Painter Law Firm, PLLC
13017 Dunhill Drive
Fairfax, VA 22030
(703) 201-8378
painterlawfirm@verizon.net

Theodore A. Livingston
J. Tyson Covey
Kara K. Gibney
Mayer Brown LLP
71 S. Wacker Drive
Chicago, IL 60606
(312) 782-0600
tlivingston@mayerbrown.com
jcovey@mayerbrown.com
kgibney@mayerbrown.com

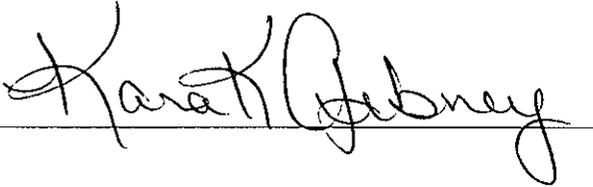
Its Attorneys

DATED: February 24, 2010

CERTIFICATE OF SERVICE

I hereby certify that a copy of AT&T's Motion to Compel Responses to AT&T's Fifth Set of Interrogatories and Requests for Production of Documents to Core Communications, Inc. was served on February 24, 2010 by e-mail and overnight mail, postage prepaid, on the following party:

Counsel for Core Communications, Inc.
Deanne O'Dell
Eckert Seamans Cherin & Mellott, LLC
213 Market St. – 8th Floor
Harrisburg, PA 17101
DODell@eckertseamans.com

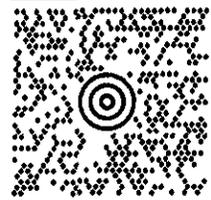


Karat Qubney

(312) 701-7717
MAYER BROWN LLP
SUITE 3300
71 SOUTH WACKER DRIVE
CHICAGO IL 60603

1 LBS 1 OF 1

SHIP TO: JAMES J. MCNULTY SECRETARY
(312) 701-7717
PENNSYLVANIA PUBLIC UTILITY COMMN
400 NORTH STREET
COMMONWEALTH KEYSTONE BLDG. 2ND FL.
HARRISBURG PA 17120.



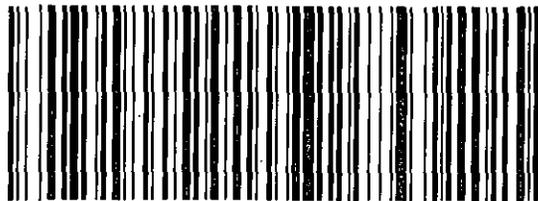
PA 171 9-20



UPS NEXT DAY AIR

1

PACKING #: 1Z 6E4 31E 01 3694 6812



ILLING: P/P

ID:1326965

ASC 0760 DMX/J693 99.5V 01/2010

Consumer Content

PUBLIC UTILITY COMMISSION
400 NORTH ST

HARRISBURG PA 17120-1005

P: SILVER S: BBLUE I: B52

54B-RDL

1Z6E431E0136946812

1030

IRMSLU PAWR154 FAX 25 07:56:01 2010

US 1711 HEP 9.1.13 INT-20

ink is for use with the

Do not use t

Kara K. Gibney
Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606-4637

UPS

JAMES J. MCNULTY, SECRETARY
PENNSYLVANIA PUBLIC UTILITY COMM'N
COMMONWEALTH KEYSTONE BLDG., 2ND FL.
400 NORTH STREET
HARRISBURG, PA 17120