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January 7, 2011

Via Overnight Delivery

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, 2nd Floor
400 North Street
Harrisburg, PA 17120

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

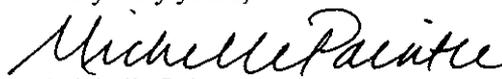
Dear Secretary Chiavetta:

Please find enclosed an original and three (3) copies of AT&T's Motion to Re-Open the Record and for Admission of Late-Filed Exhibit for filing in the above-referenced matter. Please note that the Exhibit contains Proprietary information and should be treated accordingly. Two copies of the Exhibit have also been sent to Sargent's Court Reporting Service, Inc.

Please also find enclosed a proof of filing copy that I ask you to date stamp and return to me in the enclosed self-addressed postage pre-paid envelope.

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

Very truly yours,


Michelle Painter

cc: Certificate of Service
Administrative Law Judge Angela Jones

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**AT&T’S MOTION TO RE-OPEN THE RECORD AND
FOR ADMISSION OF LATE-FILED EXHIBIT**

AT&T Communications of Pennsylvania, LLC and TCG Pittsburgh (“AT&T” and “TCG,” collectively “AT&T”) hereby submit this Motion to reopen the record, and for the admission of a late-filed exhibit, which has been pre-marked as AT&T Cross Examination Exhibit 21. This Exhibit is Proprietary and therefore should be put into the Proprietary record. In support of this Motion, AT&T states as follows:

1. On November 18, 2010, a hearing was held in this matter.
2. At this hearing, Core introduced Core Exhibit 5 containing Core’s supplemental discovery response to AT&T-Core-6-5. That discovery response was supplemented and provided to the parties the day before the hearing, on November 17, 2010. The response referenced and attached a Traffic Exchange Agreement (“TEA”) between Core and PAETEC/Cavalier.
3. The TEA between Core and PAETEC/Cavalier was executed two days before the hearing, or on November 16, 2010.

4. The TEA covers traffic exchanged between Core and PAETEC/Cavalier beginning on January 1, 2011 and ending on January 1, 2012.

5. In response to cross examination, Core's witness Mr. Mingo testified that Core had also entered into a settlement agreement to cover all past amounts Core had billed to PAETEC/Cavalier. Transcript at p. 57.

6. Due to the fact that the settlement agreement is confidential, Mr. Mingo refused to provide information about the settlement terms and conditions until he received approval to release the settlement agreement from PAETEC/Cavalier. Transcript at pp. 59-62.

7. AT&T asked an on-the-record data request to obtain the full terms of the settlement agreement, including the amounts billed to PAETEC/Cavalier. *Id.*

8. As a result of this outstanding data request, Administrative Law Judge ("ALJ") Angela Jones kept the record open until December 2, 2010. Transcript at pp. 213-216.

9. AT&T received Core's initial response to its on-the-record data request on December 1, 2010. That response did not contain all of the terms of the settlement agreement, did not contain the total amount Core billed to PAETEC/Cavalier, and did not contain a copy of the settlement agreement.

10. On December 2, counsel for AT&T contacted counsel for Core regarding the deficiency in the data response. AT&T also contacted the ALJ given the impending close of the record.

11. On December 5, the parties held a telephonic conference with the ALJ to discuss Core's data response. On that call, Core was ordered to supplement its response consistent with the request made at the hearing.

12. Core provided its supplemental response on the afternoon of Monday, December 13. That response contains Proprietary information, as well as the Proprietary Settlement Agreement between PAETEC/Cavalier and Core.

13. After receiving the supplemental response, the parties informally discussed further information related to the Settlement Agreement and AT&T's intention to introduce it as a post-hearing exhibit. AT&T requested additional information from Core, and Core provided that information on January 5, 2011. At that time, Core's counsel also notified AT&T's counsel that Core would not object to AT&T's admission of its exhibit, with the understanding that Core did not waive any right to respond to AT&T's discussion of the exhibit in AT&T's Reply Brief.

14. 52 Pa. Code §5.431 states that after the record has closed, additional evidence may be relied upon for good cause shown.

15. 52 Pa. Code §5.571 provides that, "[a]t any time after the record is closed but before a final decision is issued, a party may file a petition to reopen the proceeding for the purpose of taking additional evidence."

16. 52 Pa. Code §5.401(a) states that all relevant and material evidence is admissible, subject to objection.

17. In this case, re-opening the record and admitting AT&T's late-filed exhibit is in the public interest.

18. The agreement between PAETEC/Cavalier and Core was only entered into two days before the hearings, and Core supplemented its discovery response the day before the hearings (when AT&T's counsel was travelling to the hearing in Philadelphia). Therefore, AT&T could not have requested this information prior to the hearings. In addition, the TEA was not introduced into the record by Core until November 18, 2010.

19. Core introduced into the record only part of its full agreement with PAETEC/Cavalier – the part of the agreement that covers January 1, 2011 through January 1, 2012. However, there was also an agreement covering past billed amounts.

20. Core has requested in this case that this Commission order AT&T to pay either intrastate access rates, or alternatively the Verizon tandem rates, both retroactively and prospectively for the termination of locally dialed traffic sent by AT&T to Core.

21. To AT&T's knowledge, PAETEC/Cavalier is the only CLEC who has entered into an agreement to pay Core for the termination of locally dialed traffic. It is highly likely that Core will argue that the existence of the PAETEC/Cavalier TEA should be given weight as a precedent. In fact, in its Main Brief, Core referenced the TEA, arguing that the Commission could use it as a model for the relief Core is requesting in this case. Core Main Brief at p. 31.

22. To the extent the Commission considers the PAETEC/Cavalier agreement as relevant to the relief in this case (which it should not), AT&T has the right to argue that PAETEC/Cavalier's full agreement included additional terms and conditions beyond those in the TEA, including an agreement to pay substantially less than Core billed retroactively.

23. AT&T has argued in this case that the Commission cannot impose discriminatory rates upon AT&T, and the admission of this settlement agreement is directly relevant to that issue.

24. Core entered into a mutual obligation of non-disclosure and chose not to obtain approval to release the settlement terms from PAETEC/Cavalier prior to the hearing, and therefore the details of that settlement agreement were not available to AT&T at the hearing, placing AT&T in the position of having to make an on-the-record data request to obtain the terms and conditions associated with the settlement.

25. In addition, Core did not provide a full and complete response to AT&T's on-the-record data response until eleven days after the close of the record. Further information relevant to the discovery was provided on January 5, 2011.

26. The ALJ, and this Commission, and any reviewing court should have a full and complete record in order to make a fully informed decision on the issues in this case.

27. Core does not object to the admission of this late-filed exhibit.

For all of the above reasons, AT&T respectfully requests that ALJ Angela Jones reopen the record for the sole purpose of accepting AT&T's late-filed exhibit, which has been pre-marked as AT&T Cross Examination Exhibit 21, and which has been marked as a Proprietary document, into the record.

Respectfully submitted,

By: 

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Counsel to AT&T

DATED: January 7, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of AT&T's Motion to Re-open the Record and for Admission of Late-filed Exhibit upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Fairfax, Virginia this 7th day of January, 2011

VIA E-MAIL AND OVERNIGHT MAIL

Deanne O'Dell
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PA PUBLIC UTILITY COMMISSION
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Michelle Painter

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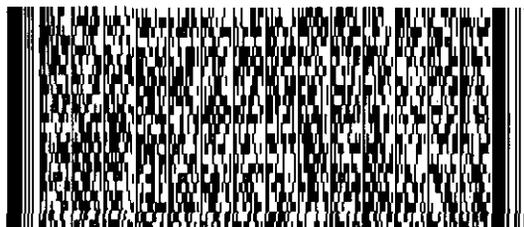
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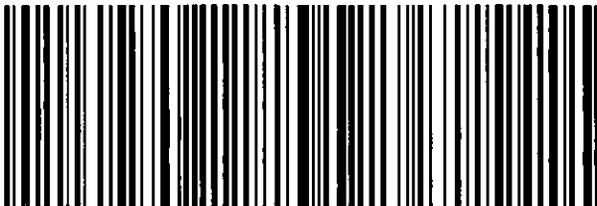
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