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July 19, 2011

**Via Electronic Filing**Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265Re: 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 Chiavetta:

On behalf of Core Communications, Inc., (“Core”), please accept this letter to address the wild and inflammatory accusations made against Core by AT&T Communications of Pa., LLC and TCG Pittsburgh, Inc. (collectively “AT&T”) in its July 15, 2011 Opposition to Core’s Motion for Leave to File Update to Core’s Reply to the Exceptions of AT&T. While Core recognizes that the Commission’s rules do not permit a formal reply, it would be highly prejudicial and unfair to deny Core this brief opportunity to respond to AT&T’s attempted smear campaign. This letter is limited to the character assassinations lodged by AT&T and not the substance of AT&T’s response (though Core disagrees with that as well).

AT&T makes much of the timing of the opinion from the Ninth Circuit Court of Appeals filed in *AT&T Communications Of Cal., Inc. v. Pac-W. Telecomm, Inc.*, 08-17030, 2011 WL 2450986 (9th Cir. June 21, 2011) (“*AT&T v. Pac-West*”). According to AT&T, the opinion was available two days prior to the due date for Reply Exceptions and Core was either negligent or nefarious in not addressing it in its Reply Exceptions. AT&T Opposition at 3. There are several serious flaws with AT&T’s position.

First, Core explained in its Motion that it did not know of the opinion. Core Motion at ¶ 3. AT&T’s baseless claim that Core was negligent in not knowing is insulting and conveniently ignores the fact that AT&T took no action to have the opinion admitted into the evidentiary record consistent with 52 Pa. Code § 5.406(a). Notably, the evidentiary record in this proceeding closed long ago and subsequent documents – including the FCC Staff’s *amicus* brief in the *AT&T v. Pac-West* proceeding – were formally admitted into the record as evidence. See Initial Decision at 9-11. AT&T, a party in the Ninth Circuit proceeding, did not seek to have the opinion admitted into the evidentiary record of this proceeding. If it had, Core would have clearly been informed of the decision, would have had the opportunity to address it, and its subsequent motion to update its reply exceptions would have been unnecessary.

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Second, and despite the fact that the opinion was not made a part of the evidentiary record in this proceeding, AT&T tries to claim that it acted within the Commission's rules by choosing to address the non-admitted opinion in its Reply Exceptions. AT&T Opposition at 4. This is a silly argument. Section 5.535 of the Commission's regulations clearly states that reply exceptions "may not raise new arguments or issues, but be limited to responding to the arguments or issues in the exception." 52 Pa. Code § 5.535. AT&T unabashedly violated this provision as the opinion was not addressed in the exception phase and AT&T did nothing to notify the Commission of its existence or to have it admitted into the record prior to relying on it in its reply exceptions. If AT&T had done this, Core would have unquestionably been provided notice of the opinion and would have been given an opportunity to address it.

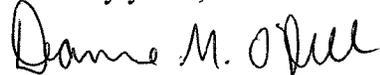
Third, AT&T insinuates that Core may have had a nefarious motive in not addressing the opinion so that it could have the alleged benefit of considering AT&T's analysis before providing its response. AT&T Opposition at 3, n.2. Thus, according to AT&T, it would be "unfair and prejudicial to AT&T" to admit Core's update. This argument, however, is completely undermined by the fact that Core limited its update to addressing the Ninth Circuit opinion. Core's update does not address or respond to AT&T's analysis of the opinion set forth in AT&T's reply exceptions.

Finally, AT&T wildly overstates the importance of the *AT&T v. Pac-West Proceeding* and Core's alleged "heavy" reliance on it to supposedly "resolve the same preemption issue facing the Commission here." AT&T Opposition at 2. Core's position regarding the Ninth Circuit proceedings has always been crystal clear – the Commission is not bound by the Ninth Circuit actions and is free to accept or reject its conclusions and the arguments made by various parties in the proceeding as it so chooses. See Core Exception Nos. 1 and 2.

The balance of AT&T's opposition (approximately six pages out of the ten page opposition) is devoted to providing a substantive response to Core's proposed update. Such advocacy is beyond the scope of responding to Core's motion and should not be given any consideration.

For these reasons, Core respectfully requests that the Commission accept this letter and grant Core's Motion for Leave to update its reply exceptions.

Sincerely yours,



Deanne M. O'Dell, Esq.

DMO/lww

cc: Hon. Angela Jones  
Cheryl Walker Davis  
Cert. of Service

## CERTIFICATE OF SERVICE

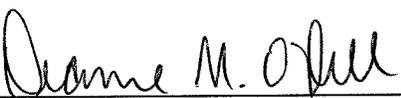
I hereby certify that this day I served a copy of Core Communications, Inc.'s Letter upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

### **Via Email and First Class Mail**

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Dated: July 19, 2011

  
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