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Via Electronic Filing

Rosemary Chiavetta, 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 Pennsylvania, LLC,
and TCG Pittsburgh, Inc., Docket Nos. C-2009-2108186 and C-2009-2108239

Dear Secretary Chiavetta:

This letter responds to Core's improper letter filed yesterday in the above-referenced matter. First, Core's letter is procedurally defective – as Core itself acknowledged. The Commission's regulations do not allow replies to Answers¹ and Core's blatant disregard for that limitation should not be permitted.

Second, Core's attempt to shift the blame to AT&T for the own shortcomings in Core's Reply Exceptions is baseless. Specifically, Core claims that because AT&T did not move to have the Ninth Circuit decision admitted in the evidentiary record of this case, Core did not have the opportunity to learn about the decision or address it in its pleadings. But a court opinion is not, and never has been, considered evidence,² and AT&T had no obligation to reopen the record to file a legal opinion as "evidence" before citing to it. Similarly, AT&T had no obligation to inform Core of the law. Core chose to make statements in its Reply Exceptions as to the current state of the law without first checking to ensure their accuracy – it should not now be allowed to correct its error.

¹ *Teleconcepts, Inc. v. Bell Atlantic-Pennsylvania, Inc.*, 1998 WL 992037(1998) wherein the Commission recognized that replies are not allowed "in order to establish a sense of finality to a proceeding." See also *Keith L. Daniels and/or Skd Pneumatics v. Conestoga Telephone and Telegraph*, 1991 WL 502060 (1991) where the Commission stated that its refusal to allow replies is "a sound legal decision based on the applicable laws, regulations and legal principles."

² Core cites to 52 Pa. Code §5.406 regarding Public Documents to support its position. Federal circuit court opinions do not fall within the definition of "Public Documents" that need to be admitted into the record before they can be relied upon as legal precedent. If court opinions were to fall within this definition, then each and every case cited by the parties in their Briefs and Exceptions and Reply Exceptions should have first been admitted into the record as "evidence." Obviously, that is ludicrous.

Finally, for the first time, Core claims that it was improper for AT&T to cite to the Ninth Circuit opinion because it was outside the scope of Reply Exceptions. This statement is legally and factually wrong. By citing the recent Ninth Circuit decision, AT&T was not in any way raising a new argument or issue – it was simply citing a case that defeated the arguments raised by Core in its Exceptions and supported the arguments AT&T had been making all along. Additionally, Core's Exceptions were filled with extensive references and cites to the Ninth Circuit case.³ Thus, AT&T's reference to the Ninth Circuit opinion was not in any way outside the scope of Reply Exceptions.

The bottom line is that, contrary to Core's representations, Core's Reply Exceptions did not reflect the most recent state of the law. Core should not be given a chance to correct its own error after-the-fact, and Core most certainly should not be permitted to pass the blame onto AT&T for Core's failures. Core also should not be allowed to disregard this Commission's regulations, and file a reply that is clearly not permitted.

Very truly yours,



Michelle Painter

cc: Deanne O'Dell, Counsel for Core
Administrative Law Judge Angela Jones
Cheryl Walker-Davis, Office of Special Assistants

³ See pages 6-7 of Core's Exceptions. In addition, Core's entire Exception #2 (pages 11-20) dealt with the FCC's amicus brief, which was filed as part of the Ninth Circuit case. Within that Exception, Core cites extensively to the California Commission's positions taken in its brief to the Ninth Circuit – positions the Ninth Circuit ultimately rejected. See also page 24, wherein Core makes yet another reference to the Ninth Circuit case.