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December 20, 2012

**Via Hand Delivery**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

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 Chiavetta:

On behalf of Core Communications, Inc., ("Core") enclosed for filing please find the original of its Petition for Reconsideration with regard to the above-referenced matter. Please note the Petition contains confidential material and should be handled accordingly. Copies to be served in accordance with the attached Certificate of Service.

Sincerely yours,

Deanne M. O'Dell, Esq.

DMO/lww

Enclosure

cc: Hon. Angela Jones, w/enc.  
Cert. of Service, w/enc.

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**PETITION OF CORE COMMUNICATIONS, INC.  
FOR RECONSIDERATION & CLARIFICATION TO COMMISSION  
OPINION & ORDER**

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Pursuant to 66 Pa. C.S. § 703(g) and 52 Pa. Code § 5.572, Core Communications, Inc. (“Core”) requests that the Commission reconsider its December 5, 2012 Opinion & Order in the above-captioned proceeding (“*Order*”). In its *Order*, the Commission directed AT&T Communications of Pennsylvania, LLC and TCG Pittsburgh, Inc. (collectively, “AT&T”) to pay Core at the rate of \$.0007 per minute of use (“MOU”) for the ISP-bound local traffic at issue in this proceeding from May 19, 2005 until such time that Core and AT&T may agree to a mutually agreed-upon reciprocal compensation rate. *Order* at 82. While Core greatly appreciates the Commission’s conscientious efforts to resolve the issues raised in these cases, Core continues to evaluate whether to exercise its legal rights to appeal or otherwise seek judicial review of the *Order*, including the Commission’s analysis of the jurisdictional and preemption issues raised in these cases and the scope of this Petition is narrowly limited to two specific issues arising from issuance of the *Order*.<sup>1</sup> *First*, Core requests that the Commission clarify that AT&T is required to pay interest at the rate of six % per annum and to fix a date certain for payment of principal and interest. *Second*, Core requests reconsideration to eliminate one finding relative to the scope of Core’s tariff, a finding which is superfluous and inaccurate.

In further support of this Petition, Core avers as follows:

## **I. STANDARD FOR RECONSIDERATION**

1. The Commission has articulated the circumstances under which a petition for reconsideration under 66 Pa. C.S. § 703(g) is appropriate:

The Public Utility Code establishes a party’s right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g) of the Public Utility Code (Code)...

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<sup>1</sup> The filing of this petition, and the arguments raised herein, do not constitute, and shall not be construed to constitute, any estoppel, modification or waiver of Core’s rights with respect to judicial review, or of any argument Core may raise on judicial review.

relating to rehearings, rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572(b) of our Regulations... relating to petitions for relief following the issuance of a final decision. The standards for a petition for relief following the issuance of a final decision were addressed in *Duick v. PG&W...* (Duick). Duick held that a petition for rehearing under Subsection 703(f) of the Code must allege newly discovered evidence not discoverable through the exercise of due diligence prior to the close of the record... A petition for reconsideration under Subsection 703(g), however, may properly raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Furthermore, such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by us. *Opinion & Order, In re Department of Transp. of Pennsylvania*, 2006 WL 3511224 (Pa. P.U.C.)(2006) A-00119288 (entered November 15, 2006)(emphasis added)(internal citations omitted).

2. As explained further below, reconsideration and/or clarification on both issues raised by this Petition is appropriate and necessary. As the Commission correctly found, AT&T has not paid Core anything for Core’s termination of traffic necessitating the filing of the complaints in this proceeding. As part of the relief sought, Core asked that the Commission direct AT&T to pay interest. The Commission did not address this issue in its *Order* and appears to have overlooked it. Core submits direction on this issue is important and necessary to enable the parties to resolve the actual amount that the Commission has directed AT&T to pay Core.

3. Similarly, as discussed further below, Core respectfully requests that the Commission reconsider and eliminate the finding that Core’s tariff “applies only to the settlement of toll charges between interexchange carriers as the finding is superfluous and inaccurate.

**II. THE COMMISSION SHOULD CLARIFY THAT AT&T IS REQUIRED TO PAY INTEREST AT THE RATE OF SIX % PER ANNUM AND FIX A DATE CERTAIN FOR PAYMENT OF PRINCIPAL AND INTEREST**

4. Core filed its formal complaint in these cases on May 19, 2009. In its complaint, Core requested, *inter alia*, that the Commission “[d]irect that the Respondents immediately pay Core all amounts outstanding for intrastate switched access services provided, plus late payment charges and interest as specified in Core’s Switched Access Service Tariff.” Formal Complaint of Core Communications, Inc. against AT&T Communications of PA, LLC & TCG Pittsburgh, Inc. (May 19, 2009), at 13.

5. In its main brief, Core requested that “[t]he Commission should... order AT&T to pay associated interest charges at a reasonable lawful rate, to accrue from the date of each invoice. Main Brief of Core Communications, Inc. (“*Core Main Brief*”)(Dec. 14, 2010), at 29.

6. Core also requested that the Commission find that “Respondent shall also pay the late payment charges at the tariffed rate of 1.5% per month pursuant to Core Tariff, Original Sheet No. 33, from the due date of each invoice.” *Core Main Brief*, Appendix C, Proposed Ordering Paragraph 1.

7. On May 11, 2011, the Initial Decision (“I.D”) in these cases was issued. The I.D. focused primarily on issues relating to the Commission jurisdiction over the issues in the cases, and did not rule on or otherwise address the interest issue. Accordingly, Core did not discuss the interest issue in its exceptions.

8. In the *Order*, the Commission ruled:

Based on the record developed in this proceeding and the application of federal of law to the facts of record, we shall direct AT&T to pay the FCC’s capped rate of \$0.0007 per MOU to Core for the ISP-bound local traffic at issue in this proceeding, until such time that Core and AT&T may agree to a mutually agreed-

upon reciprocal compensation rate. We note that this determination is subject to future reductions to the FCC's \$0.0007 rate cap that may occur in accordance with the FCC's *Unified Compensation Order*. We also note that our Opinion and Order does not extend to traffic terminated by Core prior to May 19, 2005, in accordance with Section 1312 of the Code, 66 Pa. C.S. § 1312. *Order*, at 82.

\* \* \*

Consistent with the discussion in this Opinion and Order, we conclude that Core is entitled to compensation from AT&T at the FCC's capped rate of \$0.0007 per MOU for the ISP-bound local traffic at issue in this proceeding. As such, we shall grant the Exceptions of the Parties in part and deny them in part, and adopt the ALJ's Initial Decision as modified by this Opinion and Order. *Id.*

9. The Commission did not consider the issue of interest in the *Order* because it was focused on the jurisdictional question and application of the \$0.0007 rate. Although the issue of interest was raised before the ALJ, it was understandably not the focus of the parties' exceptions to the I.D.

10. The *Order* relies on 66 Pa. C.S. § 1312 to limit Core's claim to the four-year period stated therein. That same provision provides for payment of interest at the legal rate, which is specified in 41 Pa. C.S. § 202 as "six per cent per annum."

11. 66 Pa.C.S.A. § 1312(a) provides:

**(a) General rule.--**If, in any proceeding involving rates, the commission shall determine that any rate received by a public utility was unjust or unreasonable, or was in violation of any regulation or order of the commission, or was in excess of the applicable rate contained in an existing and effective tariff of such public utility, the commission shall have the power and authority to make an order requiring the public utility to refund the amount of any excess paid by any patron, in consequence of such unlawful collection, within four years prior to the date of the filing of the complaint, *together with interest at the legal rate from the date of*

*each such excessive payment.* In making a determination under this section, the commission need not find that the rate complained of was extortionate or oppressive. Any order of the commission awarding a refund shall be made for and on behalf of all patrons subject to the same rate of the public utility. The commission shall state in any refund order the exact amount to be paid, the reasonable time within which payment shall be made, and shall make findings upon pertinent questions of fact. (Emphasis added).

12. 41 P.S. § 202 provides: “Reference in any law or document enacted or executed heretofore or hereafter to “legal rate of interest” and reference in any document to an obligation to pay a sum of money “with interest” without specification of the applicable rate shall be construed to refer to the rate of interest of six per cent per annum.”

13. Furthermore, interest is appropriate in these cases because the Commission recognized that AT&T’s nonpayment harmed Core:

The absence of intercarrier compensation from AT&T to Core generates an adverse and self-evident financial impact for Core’s operations, irrespectively of Core’s internal economic costs in operating its carrier access network facilities and services. In short, consistent with our prior decision in *Palmerton* we do not expect regulated telecommunications carriers that operate within this Commonwealth to provide carrier access network facilities and services for free. (*Order*, at 69)

14. The Commission further found that:

While the record in this case does not support a civil penalty against AT&T, we remain concerned that AT&T failed to consider other options besides withholding payment entirely for the relevant traffic during the time periods in question. These options include placing disputed payment amounts in escrow at the amount of \$.0007 per MOU, as advocated by the Company on the federal level, pending a resolution of the matter. (*Order*, at 74).

15. Finally, Core notes that, in ordering payment at \$0.0007, the Commission simply imposed the rate set forth in the very *ISP Remand Order* – a rate which AT&T has argued

in similar litigation in California should apply. AT&T could have, and should have, been paying Core this rate all along.

16. Alternatively, the Commission could impose interest at the rate of 1.5% set forth in Core's tariff. Although the Commission found that Core's tariff does not apply to the AT&T Indirect Traffic, the Commission could nevertheless resort to Core's tariff as a source for basic commercial terms and conditions. The Commission has accepted the FCC Staff's logic that the *ISP Remand Order* encompasses CLEC-CLEC traffic, so that the FCC's \$0.0007/MOU rate applies. In the absence of any FCC guidance on issues ancillary to the \$0.0007 rate, such as payment and interest terms, it is appropriate for the Commission to resort to Core's tariff as a source for these "missing" basic commercial terms and conditions.

16. Core's tariff provides:

Amounts not paid within 30 days after the date of invoice will be considered past due. Core will assess a late payment charge equal to 1.5% per month for any past due balance that exceeds 30 days. Core Communications, Inc. Pa. P.U.C. Tariff No. 4 ("SWITCHED ACCESS TARIFF"), § 2.5.2, Original Sheet No. 33.<sup>2</sup>

17. Core calculated the principal amount due pursuant to the *Order* by multiplying the number of locally-dialed CIC 292 MOUs CoreTel terminated on behalf of AT&T from May 19, 2005 through the end of November, 2012 by the FCC's ISP-bound traffic rate of \$0.0007/MOU. The resulting principal amount is reflected in the attached **Confidential** Exhibit A.

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<sup>2</sup> The tariff is available online at:  
[http://www.tariffs.net/tariffs/100139lpqa/tempPA\\_TRF\\_ACCESS\\_VoIP\\_07-01-12\\_CUR04.pdf](http://www.tariffs.net/tariffs/100139lpqa/tempPA_TRF_ACCESS_VoIP_07-01-12_CUR04.pdf)

18. For the interest calculation, based on the date Core invoiced AT&T for each usage period, Core calculated interest due at the legal rate of interest of six % per annum and the tariff rate of 1.5% per month in the attached **Confidential** Exhibit A.

19. Core also requests that the Commission specify “the exact amount to be paid” and “the reasonable time within which payment shall be made” in accordance with section 1312. 66 Pa.C.S.A. § 1312(a). Specifically, the Commission should order AT&T to pay Core the sum of (1) the principal amount due; and (2) interest either at the tariff rate or the legal rate of interest, within ten (10) days of the Commission’s order on reconsideration.

**III. THE COMMISSION SHOULD ELIMINATE THE FINDING THAT CORE’S TARIFF “APPLIES ONLY TO THE SETTLEMENT OF TOLL CHARGES BETWEEN INTEREXCHANGE CARRIERS AS THE FINDING IS SUPERFLUOUS AND INACCURATE**

20. In the *Order*, the Commission found that Core’s tariff applies to “toll” traffic but not “local” or “locally-dialed” traffic.

21. Specifically, the Commission found:

We agree with AT&T that Core has not identified any instances in which this Commission, or any other state commission, has applied intrastate switched access rates to local traffic generally, or to locally dialed ISP-bound traffic specifically. The primary purpose of a switched access charge tariff is to establish compensation for the origination and termination of toll or non-local calls. The reciprocal compensation scheme addressed in the federal Telecommunications Act of 1996 and in subsequent FCC Orders, such as the *ISP Remand Order*, was created primarily for the settlement between local exchange companies for the transport and termination of local calls. The reciprocal compensation regime is the counterpart to the switched access charge regime, which involves the settlement between interexchange carriers for the origination, transport and termination of long distance calls. Furthermore, we take administrative notice that, as noted in our *Global Order*, we have held that “[s]witched access charges are those that LECs bill to IXC’s or other LECs, for using their facilities in the placement or receipt of toll calls.” As such, from a historical perspective, switched access charge tariffs do not apply to the termination of local calls. And since the traffic in this

proceeding is limited to local ISP-bound traffic, it is clear that Core's Switched Access Tariff No. 4 is not applicable here. *Order*, at 59-60.

22. In addition, the Commission found that Core's tariff only applies to charges between IXCs.

23. Specifically, the Commission found that: “[b]ased upon our review of Core's Switched Access Charge Tariff, we conclude that the Tariff applies only to the settlement of toll charges between interexchange carriers.”

24. Core respectfully requests that the Commission reconsider and eliminate the finding that Core's tariff “applies only to the settlement of toll charges between interexchange carriers.”

25. *First*, this finding is superfluous. As noted, the Commission has found that Core's tariff applies to toll traffic but not local traffic. That finding alone is sufficient to eliminate the AT&T Indirect Traffic (which is all, without dispute, locally-dialed) from the scope of Core's tariff.

26. *Second*, this finding is inaccurate for several reasons. Core's tariff plainly does not address settlement of charges “between interexchange carriers,” but rather charges imposed by a LEC (Core) upon users of Core's switched access services. And, notwithstanding the referenced definition of “Access Service,” Core's tariff clearly applies to toll traffic sent by *any type of carrier*, including LECs and CMRS carriers, which may send toll traffic to Core. This clear from the tariff's definition of “Switched Access Service” which is the operative provision through which Core's tariff defines the universe of traffic to which it applies.

27. Core's tariff defines “Switched Access Service” as: “[a]ccess to the switched network of an Exchange Carrier for the purpose of originating or terminating

communications. Switched Access is available to *carriers* as defined in this rate sheet.” Tariff, at Original Sheet No. 10 (emphasis added). The Tariff defines the term “Carrier” as an “Interexchange Carrier *or Exchange Carrier.*” Tariff, at Original Sheet No. 6. The Tariff defines the term “Exchange Carrier” as: “[a]ny individual, partnership, joint-stock company, trust, governmental entity or corporation engaged in the provision of local exchange telephone service.” In addition, the Tariff defines “Customer” as: “[t]he person, firm, other entity which orders Service and is responsible for the payment of charges and for compliance with the Company’s rate sheet regulations. The Customer could be an interexchange carrier, a wireless provider, *or any other service provider.*” Tariff, at Original Sheet No. 7 (emphasis added). *See, Core Main Brief*, at 19-20.

28. In sum, Core’s tariff defines “Switched Access Service” to encompass traffic terminating from any “carrier,” which includes an “Interexchange Carrier or Exchange Carrier,” and defines “Customer” to include “an interexchange carrier, a wireless provider, or any other service provider.”

29. In this respect, Core’s tariff is fully consistent with the *Global Order*, in which the Commission recognized that “[s]witched access charges are those that LECs bill to *IXCs or other LECs*, for using their facilities in the placement or receipt of toll calls.” *See, Order*, at 60. (Emphasis added).

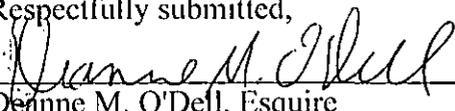
30. *Third*, the finding that Core’s tariff “applies only to the settlement of toll charges between interexchange carriers” could have unintended, prejudicial impacts on unrelated disputes. Pursuant to Core’s ICAs and TEAs with other LECs, each LEC is entitled to charge the other at tariffed switched access rates for toll usage each LEC sends the other. A Commission finding in this case that Core’s tariff “applies only to the settlement of toll charges

between interexchange carriers” could prematurely and unfairly prejudice Core’s ability to bill and collect switched charges from other LECs pursuant to such agreements.

**IV. CONCLUSION**

**WHEREFORE**, Core respectfully requests that the relief requested in this Petition be granted for the reasons set forth herein.

Respectfully submitted,



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Date: December 20, 2012

Attorneys for Retail Energy Supply Association

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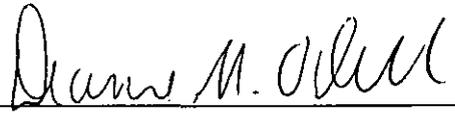
I hereby certify that this day I served a copy of Core Communications, Inc.'s  
*Petition for Reconsideration upon the persons listed below in the manner indicated in*  
accordance with the requirements of 52 Pa. Code Section 1.54.

**Via Email and First Class Mail**

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