

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265

Core Communications, Inc.

2108186-OSA

v.

Docket Nos. C-2009-2108186
C-2009-2108239

AT&T Communications of Pennsylvania,
LLC and TCG Pittsburgh, Inc.

STATEMENT OF COMMISSIONER JAMES H. CAWLEY
CONCURRING IN PART AND DISSENTING IN PART

Before us for disposition is the Petition for Reconsideration and Clarification that was submitted by Core Communications, Inc. (Core) involving our Opinion and Order in this matter that was entered on December 5, 2012 (December 2012 Order), and the Petition for Reconsideration and Stay that was submitted by AT&T Communications of Pennsylvania, LLC, and TCG Pittsburgh, Inc. (collectively AT&T), regarding the same Order.

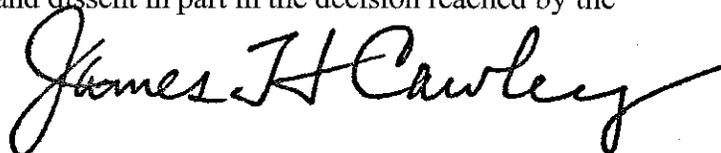
I agree with most of the sound and in-depth analysis contained in the decision reached by the majority and commend the Staff of the Office of Special Assistants for their work in this matter. However, I disagree with the resolution of the issue involving the interest that should be due and payable to Core for past due and non-paid intercarrier compensation amounts.

The decision reached by the majority would apply such an interest requirement only prospectively in the event that AT&T does not pay the appropriate intercarrier compensation amounts that are due to Core and are based on the \$0.0007 per minute of use (MOU) rate. I disagree with this approach especially in view of the fact that AT&T has not paid anything for the termination of traffic at Core's switched access network facilities for a rather prolonged period of time. It is immaterial that the appropriate rate for intercarrier compensation purposes for this traffic was in dispute between Core and AT&T and that Core invoiced AT&T at a rate different than the \$0.0007/MOU that was established in our December 2012 Order.

The November 18, 2011, *USF/ICC Transformation Order* of the Federal Communications Commission (FCC) notwithstanding,¹ this approach will undermine the long-held position of this Commission that regulated telecommunications public utilities cannot utilize the networks of other telecommunications carriers for free. *See generally Palmerton Tel. Co. v. Global NAPs South, Inc., et al.*, Docket No. C-2009-2093336, Order entered March 16, 2010. If interest payments for non-paid intercarrier compensation will apply only prospectively, the non-compensated usage of network facilities by the non-paying carrier essentially amounts to an "interest free loan" that accrues to the detriment of the unpaid carrier. On the other hand, if interest payments were to apply retrospectively to unpaid intercarrier compensation amounts, a non-paying carrier would have the incentive to at least make partial payments and/or negotiate a settlement of the outstanding intercarrier compensation dispute.

For these reasons, I respectfully concur in part and dissent in part in the decision reached by the majority.

DATED: August 15, 2013



James H. Cawley
Commissioner

¹ *In re Connect America Fund, et al.*, (FCC, Rel. Nov. 18, 2011), WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, *slip op.* FCC 11-161, 26 FCC Rcd 17663 (2011), and subsequent Reconsideration and Clarification rulings (collectively *USF/ICC Transformation Order*), *appeals pending*.