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March 5, 2010

Via Electronic Filing

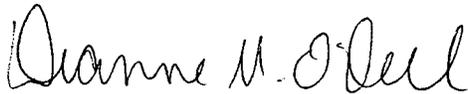
James McNulty, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

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 McNulty:

On behalf of Core Communications, Inc., ("Core") enclosed please find the original of its Petition for Interlocutory Commission Review and Answer to a Material Question of Core Communications, Inc. and the electronic filing confirmation page with regard to the above-referenced matter. Copies have been served in accordance with the attached Certificate of Service.

Sincerely yours,



Deanne M. O'Dell, Esq.

DMO/lww

Enclosure

cc: James H. Cawley, Chairman (w/enc)
Tyrone J. Christy, Vice Chairman (w/enc)
Robert F. Powelson, Commissioner (w/enc)
Wayne E. Gardner, Commissioner (w/enc)
Hon. Angela Jones (w/enc)
Cheryl Walker Davis (w/enc)
Cert. of Service (w/enc)

CERTIFICATE OF SERVICE

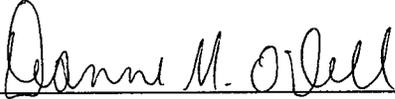
I hereby certify that this day I served a copy of Core's Petition For Interlocutory Commission Review and Answer to a Material Question of Core Communications, Inc., upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email and First Class Mail

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Dated: March 5, 2010



Deanne M. O'Dell

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PETITION FOR INTERLOCUTORY COMMISSION REVIEW AND ANSWER TO A
MATERIAL QUESTION OF CORE COMMUNICATIONS, INC.,**

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Attorney for Core Communications, Inc.

Dated: March 5, 2010

Pursuant to 52 Pa. Code § 5.302, Core Communications, Inc. (“Core”) submits this Petition seeking interlocutory Commission review of Order #6 issued by Administrative Law Judge Angela T. Jones (“ALJ Jones”) on February 26, 2010. Core also seeks an answer to a material question to clarify that the Commission has subject matter jurisdiction to adjudicate a complaint regarding locally dialed, intrastate telecommunications traffic that is originated by one Pennsylvania Competitive Local Exchange Carrier (“CLEC”) and delivered to another Pennsylvania CLEC for termination on its network to an Internet service provider (“ISP”). Addressing this issue now will ensure an efficient resolution of the formal complaint in this proceeding, similar formal complaints in other pending proceedings,¹ and will send a clear message that, consistent with the Commission’s recent ruling in Palmerton v. Global NAPs,² carriers that originate telecommunications traffic to other carriers must compensate carriers that terminate that traffic. In other words, there is no “free ride” on Pennsylvania networks.

Order #6 granted, in part, a Motion to Dismiss filed by AT&T Communications of PA, LLC and TCG Pittsburgh, Inc. (“AT&T”). Specifically, ALJ Jones concluded that the Commission lacks subject matter jurisdiction to adjudicate the complaint in this proceeding for locally dialed, dial-up, ISP-bound traffic that AT&T sends to Core for termination. Order #6, however, permitted the complaint to move forward to determine whether AT&T sends Voice over Internet Protocol (“VoIP”) traffic to Core for termination and if so, what compensation mechanism should apply. Core respectfully submits that interlocutory and expeditious review is necessary because it presents a matter of first impression regarding the Commission’s jurisdiction, resolution of this petition will materially impact the remaining progress of this case as well as other currently pending cases, and as long as this complaint remains unresolved, Core continues to be forced to provide a public utility service for free to AT&T (and other CLECs). In support of this Petition, Core avers as follows:

MATERIAL QUESTION

Question: Does the Commission have subject matter jurisdiction to adjudicate a formal complaint by one Pennsylvania CLEC against another Pennsylvania CLEC for traffic that originates and terminates in Pennsylvania and is terminated to a CLEC’s ISP end users?

Suggested Answer: Yes. The Commission has subject matter jurisdiction over all carriers, services and facilities provided or located in Pennsylvania. There has been no federal preemption of the Commission’s authority to address compensation issues regarding locally-dialed ISP-bound traffic exchanged between two CLECs.

¹ See Core v. Choice One Communications and CTC Communications Corp. Docket No. C-2009-2130379 and C-2009-2131838 (Complaint filed September 3, 2009) and Core v. XO Communications, Inc., Docket No. C-2009-2133609 (Complaint filed September 23, 2009).

² Palmerton Telephone Company. V. Global NAPs South, Inc., et al, Docket No. C-2009-2093336, Motion of Chairman James H. Cawley dated February 11, 2010. See *Id.* Statement of Vice Chairman Tyrone J. Christy at 1.

**INTERLOCUTORY REVIEW WILL PREVENT SUBSTANTIAL PREJUDICE AND
EXPEDITE THE CONDUCT OF THE PROCEEDING**

1. In its May 2009 complaint, Core sought compensation from AT&T for its termination of intrastate traffic that AT&T has sent Core indirectly via the Verizon Pennsylvania tandems. As of November, 2009, the total volume of traffic AT&T has dumped on Core's network (without paying any compensation whatsoever) stood at a whopping 406,102,334 minutes of use (MOUs) and this figure grows larger every day. Core terminates this traffic so that AT&T's end users can reach Core's end users. Prior to September 2009, all intrastate traffic sent by AT&T to Core was ultimately bound for Core's ISP customers. Core has never been compensated by AT&T for performing the public utility service of terminating these intrastate calls for AT&T and resolving this matter is the entire purpose of Core's complaint. Every day resolution of this matter is pending, AT&T continues to send Core traffic for termination (which Core does) and AT&T refuses to pay any amount of compensation for this service.

2. Despite conceding Commission jurisdiction in its Answer to Core's complaint, AT&T insisted that the parties move forward to engage in costly and timely discovery, preparation of testimony and numerous motions. Then, just less than two months prior to the date set for evidentiary hearings, AT&T filed a Motion to Dismiss claiming lack of subject matter jurisdiction (and/or preemption) because AT&T's end users' calls were bound for Core's ISP end users—a fact of which AT&T was fully aware when it filed its Answer. Because of AT&T's Motion, the evidentiary hearings were cancelled and converted to an oral argument.

3. Order #6 granted in part and denied in part AT&T's Motion to Dismiss. The Order ruled that the Commission lacks subject matter jurisdiction to adjudicate Core's complaint with respect to ISP-bound traffic. However, Order #6 denied AT&T's Motion to Dismiss for traffic sent by AT&T that is bound for Core's VoIP customers. Thus, evidentiary hearings regarding the traffic sent after September 2009 (which may comprise both ISP-bound and VOIP-bound calls) were scheduled for March 25 and 26, 2010. Subsequently, the parties requested a stay of the procedural schedule pending resolution of this Petition.³

4. The issue of whether the Commission has subject matter jurisdiction (or has otherwise been preempted) to adjudicate a complaint by one Pennsylvania CLEC against another Pennsylvania CLEC for the exchange of intrastate ISP-bound traffic is one of first impression for the Commission.

5. Core's position is that under controlling law, the Commission has jurisdiction to adjudicate a complaint involving (as this case does) two Pennsylvania CLECs who are exchanging

³ By order dated March 5, 2010, Core's complaint against XO was also stayed per request of the parties.

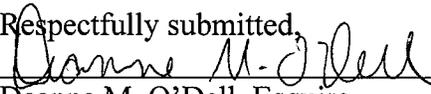
intrastate telecommunications traffic with one CLEC (Core) providing a utility service (i.e. call termination) to the other CLEC through its Pennsylvania facilities.

6. Order #6 relies on a decision from the United States Court of Appeals for the District of Columbia Circuit (“DC Circuit”), which addressed the legal basis for the Federal Communications Commission’s (“FCC”) 2009 *ISP Mandamus Order* and 2001 *ISP Remand Order*.⁴ As Core will explain further in its brief, the FCC orders leading to the DC Circuit’s decision are not applicable to the complaint involved here and, therefore, Order #6 improperly relied on the DC Circuit court’s decision to support its conclusion.

7. Resolving the jurisdiction question in this case before moving forward with the non-ISP-bound traffic will prevent an unnecessary waste time and resources because the Commission’s resolution of this material question is crucial to the full resolution of Core’s complaint. Resolution of this issue is also important for resolution of the other two pending complaint cases brought by Core that are before the Commission. Finally, until the Commission makes clear that it has subject matter jurisdiction over Pennsylvania CLECs and has not been federally preempted to adjudicate the issue of ISP-bound traffic exchanged between CLECs, carriers will be empowered to continue to hide behind the guise of a lack of subject matter jurisdiction to justify their outright refusal to pay for services rendered. In short, it is important for the Commission to resolve this issue to end the free ride some carriers are and have been taking on the back of other carriers’ networks.

8. For all these reasons, granting interlocutory review will prevent substantial prejudice and expedite the conduct of these proceedings.

WHEREFORE, for all the foregoing reasons, Core respectfully requests that the Commission grant interlocutory review and answer the presented material question in the affirmative.

Respectfully submitted,

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Dated March 5, 2010

Attorney for Core Communications, Inc.

⁴ *Core Communs., Inc. v. FCC*, 592 F.3d 139 (D.C. Cir. 2010); Order on Remand, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996—Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 96-98, 16 FCC Rcd. 9151, (FCC 2001)(“*ISP Remand Order*”); and, *In re High-Cost Universal Serv. Support*, 24 FCC Rcd 6475 (FCC 2008)(“*ISP Mandamus Order*.”)