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March 15, 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 Brief in Support of Petition For Interlocutory Commission Review and an Affirmative Answer to the Material Question Submitted by Respondents 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

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 Brief in Support of Petition For Interlocutory Commission Review and an Affirmative Answer to the Material Question Submitted by Respondents upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Dated: March 15, 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. Respondents	:	Docket No. C-2009-2108239

CORE COMMUNICATIONS, INC.
BRIEF IN SUPPORT OF PETITION FOR INTERLOCUTORY COMMISSION REVIEW AND AN AFFIRMATIVE ANSWER TO THE MATERIAL QUESTION SUBMITTED BY RESPONDENTS

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Date: March 15, 2010

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I. MATERIAL QUESTION AND SUGGESTED ANSWER

Pursuant to 52 Pa. Code § 5.302(b), Core Communications, Inc. ("Core") submits this brief in response to the March 5, 2010 Petition for Interlocutory Commission Review and Answer To material Question filed by AT&T Communications of Pennsylvania, LLC and TCG Pittsburgh (collectively, "AT&T").[1]

In its Petition, AT&T requests the Commission to answer the following question:

> *Does the ALJ's February 26, 2010 Order #6 correctly deny AT&T's Motion to Dismiss with respect to VoIP traffic alleged to have been terminated after September 2009?*

Core suggests the following answer:

> *Yes. There is no basis upon which to establish a different compensation scheme for the termination of intrastate telecommunications traffic destined for Core's VoIP wholesale customers and, to the extent such a scheme is now newly developed by the Commission, dismissal of Core's complaint now would be a draconian and unnecessary action and instead the parties should be given the opportunity to supplement the already extensively developed record in this proceeding.*

II. INTRODUCTION

The Material Question presented by AT&T should be answered in the affirmative because Order #6 issued by Administrative Law Judge Angela T. Jones ("ALJ Jones") correctly denied AT&T's Motion to Dismiss the complaint filed by Core Communications, Inc. ("Core") with respect to the intrastate telecommunications traffic sent by AT&T and terminated by Core to its Voice over Internet Protocol ("VoIP") wholesale customers.

Core initiated this proceeding, by complaint filed on May 19, 2009, to seek compensation from AT&T for Core's termination of some 406,102,334 (and counting) minutes of traffic that

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[1] Core is filing a separate brief to address the Petition for Interlocutory Commission Review and Answer to a Material Question that was filed by Core on March 5, 2010. Thus, the issues raised by that Material Question will not be addressed here.

AT&T sends Core indirectly through the Verizon tandems. Core's position, as supported by the law and this Commission's precedent, is that the "type" of Core customer who ultimately receives the intrastate telecommunications traffic initiated by AT&T's customers is irrelevant to determining what AT&T is legally required to pay. Core's Brief regarding its Material Question addresses the question when Core's customer is an Internet Service Provider ("ISP") and those arguments will not be repeated here. This brief focuses on when Core's customer is a VoIP customer.

Despite AT&T's statement to the contrary, this Commission has made clear that it has jurisdiction to decide what compensation is owed by AT&T to Core when AT&T's traffic is destined for Core's VoIP customers. While Order #6 concluded that the delivery of traffic to Core's VoIP wholesale customers was a "material" fact, Core submits that this determination was premature and incorrect for several reasons. First, the VoIP nature of Core's wholesale customers only becomes relevant if the Commission concludes that traffic destined for Core's ISP customers should be treated differently from traffic destined for Core's VoIP wholesale customers. For all the reasons set forth in Core's Brief addressing its Material Question, the ALJ incorrectly concluded that such a distinction was proper and Core seeks a reversal of that decision. Second, the Commission has never determined that the amount of compensation owed for termination of telecommunications traffic varies based on the type of customer receiving the traffic. In fact, the Commission recently rejected basing compensation determinations for the termination of traffic based on the technical nature of telecommunications traffic exchanged between two carriers.

If the Commission concludes (which it should not) that ISP-bound traffic exchanged between two CLECs should be treated differently from the traffic exchanged between two

CLECs and bound for non-ISP customers (such as VoIP) customers, dismissing Core's complaint at this stage would be an unnecessarily draconian and unfair outcome. Between the filing of Core's complaint in May 2009 and Order #6 in February 2010, the parties and the Commission have invested substantial time and effort into developing the record of this case. All that remains now is evidentiary hearings. If the Commission decides to create a new standard that compensation for termination of traffic is dependent on the type of wholesale customer served by the terminating carrier, then the Commission should give both parties the opportunity to supplement the record as may be appropriate to address the new direction. Any other result would unfairly reward AT&T for belligerently and unreasonably refusing to pay Core for its use of Core's network and then – through its handling of this case – doing everything possible to delay resolution of Core's complaint. Such a result would give AT&T a significant and unlawful competitive advantage over Core and should not be permitted.

III. ARGUMENT

The Material Question presented by AT&T should be answered in the affirmative. While ALJ Jones prematurely decided that the issue of calls being terminated to Core's VoIP wholesale customers was material based on her incorrect conclusion regarding jurisdiction over CLEC-to-CLEC ISP-bound traffic, ALJ Jones still correctly denied AT&T's Motion to Dismiss with respect to traffic sent by AT&T after September 2009 and her decision in this regard should be upheld.

A. The Commission Has Jurisdiction To Address Compensation Owed When Intrastate Telecommunications Traffic Is Exchanged Between Two Carriers And Destined For A VoIP Wholesale Customer

In footnote 3 of AT&T's Petition for Material Question, AT&T states that it "does not agree that the Commission has jurisdiction over VoIP traffic in the context of this proceeding

[because] VoIP traffic is jurisdictionally interstate . . . and state commissions lack jurisdiction to regulate compensation for it . . ."[2] Even though AT&T states that this alleged jurisdictional question "is not determinative here," the fact is that AT&T's assertion is wrong as a matter of law.

The Commission recently and decisively made clear that it has jurisdiction to address intercarrier compensation issues related to VoIP traffic.[3] In Palmerton, Palmerton filed a complaint asking the Commission to require Global NAPs to pay Palmerton compensation for Palmerton's termination of traffic delivered by Global NAPs and destined for Palmerton's customers. In response to the complaint, Global NAPs argued, *inter alia*, that it was delivering traffic to Palmerton which contained VoIP traffic and the Commission did not have jurisdiction to determine compensation issues regarding VoIP traffic. Most specifically relevant here, Global NAPs argued (as AT&T does in footnote 3 of its Petition) that all VoIP traffic has been declared interstate and, therefore, the Commission has no jurisdiction to regulate compensation for it.

In a Motion by Chairman Cawley and adopted by the full Commission (a final order is still pending), the Commission specifically addressed this argument and reached the "inescapable conclusion that the FCC *Vonage* decision is not relevant or material on matters pertaining to intercarrier compensation."[4] According to the Commission, the *Vonage* decision addresses issues of market entry and regulation of nomadic VoIP service provides and not the transport and

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2 AT&T Petition for Interlocutory Review and Answer to Material Question, Docket No. C-2009-2108186 dated March 5, 2010 ("AT&T Material Question Petition") at 2, n. 3, *citing In the Matter of Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utility Commission*, 19 FCC Rcd, 22, 404, 2004 WL 2601194 (FCC 2004) ("*Vonage*").

3 *Palmerton Telephone Co v. Global NAPs South, Inc., et. al.*, Docket No. C-2009-2093336, Motion of Chairman James H. Cawley adopted February 11, 2010 (final order pending) ("Palmerton").

4 *Palmerton*, Chairman Cawley Motion at 14.

termination of traffic from one jurisdictional telecommunications carrier to another.[5] Because Palmerton, a jurisdictional utility, was seeking compensation from Global NAPs, a jurisdictional utility, for performance of a jurisdictional telecommunications service (i.e. termination of intrastate telecommunications traffic), the Commission concluded that *Vonage* did not control and did not preempt the Commission from addressing Palmerton's complaint.

Likewise, Core's complaint is not about market entry or regulation of VoIP service providers. Like Palmerton, Core – a jurisdictional utility – is seeking compensation from AT&T – a jurisdictional utility – for providing the public utility service of terminating the calls sent by AT&T. Core's VoIP wholesale customers are not in this case and Core is not asking the Commission to do anything regarding its end-user customers. Thus, any attempt by AT&T to rely on the *Vonage* decision to claim that the Commission cannot adjudicate Core's complaint with respect to traffic destined for Core's VoIP wholesale customers, must be summarily rejected consistent with the Commission's decision in *Palmerton.*

B. There Is No Basis Upon Which To Establish A Different Compensation Scheme For The Termination of Intrastate Telecommunications Traffic Destined For VoIP Wholesale Customers

While the ALJ was correct that *Palmerton* is instructive for this case,[6] she incorrectly focused on the presence of VoIP traffic in the two cases as the relevant common thread and, therefore, concluded that the presence of VoIP traffic is a material question here.[7] The two cases, however, are not identical in this regard. In *Palmerton*, Global NAPs was sending Palmerton traffic that it claimed contained VoIP traffic. That is not an issue in this case. Here,

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5 *Id.* at 15.

6 The Commission decision in *Palmerton* provides guidance to this case not because it makes clear that the Commission has jurisdiction over VoIP traffic but rather because it makes clear that a utility's intrastate access traffic can apply to traffic that the originating party claims is subject to (1) exclusive federal jurisdiction and (2) bill-and-keep.

the facts show that after September 2009, Core began providing wholesale VoIP customers and other session initiation protocol ("SIP")-based service providers "Superport" service as described in Core's Pa. P.U.C. Tariff No. 1.[8] AT&T has never claimed to be sending Core VoIP traffic like Global NAPs claimed in *Palmerton*. Since VoIP exists in this case only because of Core's wholesale customers, the only way to apply the ALJ's reasoning regarding the applicability of *Palmerton* here is by concluding that the "type" of wholesale customer served by Core must be analyzed to determine the compensation AT&T should be required to pay for Core's termination. Treating traffic different based on the specific type of wholesale customer served by Core has no legal support and, if adopted, would create an anticompetitive and technical nightmare for the industry and regulators alike.

Pursuant to federal law, the carrier sending traffic for termination is required to pay the carrier receiving the traffic.[9] The carrier receiving the traffic is required to terminate the traffic regardless of whether or not it actually receives payment. When properly functioning, this policy is to ensure (1) the flow of telecommunications traffic and (2) that receiving carriers are compensated for the use of their networks by the originating carriers whose end users place calls to the receiving carriers' networks and thus cause the costs of terminating those calls.[10]

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7 Order #6 at 10-11.

8 AT&T Motion to Dismiss Formal Complaint of Core Communications, Inc., dated December 8, 2009, Attachment C, Core Response to AT&T Interrogatory 3-3 ("AT&T Motion to Dismiss").

9 Further Notice of Proposed Rulemaking, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, FCC 05-33 (Rel. March 3, 2005), 20 FCC Rcd. 4685 at ¶ 17 ("*FNPRM*").

10 *See, e.g.* Declaratory Ruling & Order, *In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers – Call Blocking by Carriers*, WC Docket No. 07-135, 22 FCC Rcd. 11629, 2007 WL 18880323 (F.C.C.)(June 28, 2007) at ¶¶ 5-6; and, *Level 3 Communications, LLC v. Marianna & Scenery Hill Telephone Company*, Docket No. C-20028114, Opinion and Order entered Aug. 8, 2020 at 9 ("all carriers are obligated to complete calls where it is technically feasible to do so regardless of whether they believe that the underlying intercarrier compensation arrangements for completion of calls are proper.")(emphasis added).

Determining who pays who what has never depended on the "type" of customer ultimately receiving the calls. Rather, federal and state access charge rules govern the payments that interexchange carriers and wireless providers make to LECs that originate and terminate long-distance calls while the reciprocal compensation rules of 47 U.C.S. 251(b)(5) govern the remaining traffic exchanged between LECs.[11] Thus, by law, a carrier sending traffic to another carrier for termination is required to pay the receiving carrier for the cost of termination regardless of the "type" of wholesale customer to whom the receiving carrier may be providing services.

The Commission's decision in *Palmerton* is consistent with this because it concludes that "[c]osts indeed attach to the termination of *any type of traffic*" and carriers "deserve[] compensation for the traffic that it terminates at its facilities."[12] It creates no separate compensation rules based on the type of wholesale end-user customers. In this case, there is no dispute that AT&T is sending locally dialed traffic to Core for termination.[13] There is no dispute about the type of traffic that AT&T is originating nor that Core is terminating the traffic. The fact that Core terminates traffic that is destined for its VoIP wholesale customers does not negate the costs incurred by Core to terminate this traffic nor does it justify treating the termination of traffic different for compensation purposes based only on the "type" of wholesale customer

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11 *FNPRM* at ¶ 5; Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, *In the Matter of High-Cost Universal Service Support*, WC Docket No. 05-337, 2008 WL 4821547 (F.C.C.)(Rel: Nov 5, 2009)("*Order on Mandamus*") at ¶ "in the Local competition First Report and Order, the Commission round that section 251(b)(5) applies only to local traffic, and some commenters continue to press for such an interpretation. . . [H]owever, the Commission in the ISP Remand Order, reconsidered that judgment and concluded that it was a mistake to read section 251(b)(5) as limited to local traffic, given that 'local' is not a term used in section 251(b)(5) . . . [W]e find that the better view is that section 251(b)(5) is not limited to local traffic. . . "

12 *Palmerton* at 15.

13 AT&T Motion to Dismiss, Attachment B, Core St. No. 1 at 4-5.

being served by Core. Thus, pursuant to the law and the Commission's decision in *Palmerton*, Core is legally entitled to be compensated for the termination of this traffic.

From a practical perspective, requiring compensation to be calculated based on the "type" of wholesale customer receiving the traffic would be impractical and place receiving carriers (already required by law to terminate all traffic sent to them) in an impossible situation. This is because under ALJ Jones' decision, compensation for termination of traffic bound for one wholesale customer would be treated differently than compensation for termination of the exact same type of traffic bound for a different "type" of wholesale customer. Such a result would be unsustainable as carriers sending the traffic could demand that carriers receiving the traffic explain what the receiving carrier's wholesale customers do with the traffic that they receive. This would give receiving carriers an impossible choice as they would have to choose between sharing the information about their wholesale customers which would essentially divulge their business plans to competitors or not receiving payment for services rendered. Such an outcome is not only unnecessary but not supported by the current law of intercarrier compensation. Moreover, as this proceeding and the one in *Palmerton* demonstrate, the current intercarrier compensation scheme creates significant opportunities already for an originating carrier to avoid payment because the receiving carrier is required by law to terminate traffic regardless of receipt of payment from the originating carrier. Burdening receiving carriers with another layer of complexity would be unfair, unreasonable and would significantly impact their ability to provide service to their wholesale customers and, ultimately, retail end-users.

C. To Extent The Commission Establishes Varying Compensation Requirements Regarding Termination of Telecommunications Traffic Based On The "Type" of Wholesale Customer Receiving The Traffic, Dismissal of Core's Complaint At This Time Would Be Premature

After incorrectly concluding that ISP-bound traffic is not within the Commission's jurisdiction, ALJ Jones determined that the issue of whether AT&T is originating traffic bound for Core's non-ISP wholesale customers is a material issue of fact and, therefore, denied AT&T's Motion to Dismiss Core's complaint regarding traffic after September 2009 (when Core began providing service to VoIP wholesale customers).[14] If the assumptions and conclusions forming the foundation of Order #6 are upheld by the Commission, then ALJ Jones' decision to deny AT&T's Motion to Dismiss regarding traffic delivered after September 2009 should be affirmed (by answering AT&T's Material Question in the affirmative) for several reasons.

First, given the magnitude of this traffic sent by AT&T to Core, Core should be given the opportunity to respond to any changes in precedent by the Commission. The undisputed fact in this case is that Core has terminated an enormous amount of traffic originated by AT&T end-user customers. The overwhelming majority of this traffic has been bound for Core's ISP wholesale customers. ISP-bound traffic constitutes all of the 406,102,334 minutes sent by AT&T end-users to Core between June 2004 and September 2009.[15] Core's position is that AT&T is legally required to compensate it for all the traffic it sends to Core for termination regardless of what type of wholesale customer Core serves. This position, as discussed above in Section B, is consistent with the law. Prior to the ALJ's determination, separating originating traffic based on the different types of wholesale customers served by the terminating carrier was neither relevant nor material to any issue in this proceeding. To the extent the Commission decides to reverse course, it would be fair and appropriate to give both parties the opportunity to supplement the record based on this new direction.

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14 Order #6 at 11.

15 AT&T Motion to Dismiss, Attachment B, Core St. No. 1 at 5.

Second, if the precedent is changed, Core should be permitted to present evidence to satisfy the new standard. Here, in support of its claim that Core has not "met its burden," AT&T misconstrues Core's response to AT&T's Interrogatory 3-4 by stating that "Core has admitted that it cannot provide any evidence establishing that it terminated any VoIP traffic originated by AT&T."[16] However, this is not an accurate characterization of Core's discovery response which actually states "Core does not track the amount of AT&T Indirect Traffic, or any other class of traffic, that is delivered to a particular customers or classes of customers. Core terminates all telecommunications on its network on a nondiscriminatory basis."[17] By the clear language of this interrogatory response, Core states that it "does not track" and not that it "cannot track." If the Commission were to reverse course and determine that compensation for termination of traffic depends on the type of wholesale customer that receives the specific traffic, then Core should be given the opportunity to supplement the record. It would be unfair and unreasonable to dismiss this case without giving Core the opportunity to satisfy the Commission's new direction (if adopted).

Third, it should be recognized that AT&T's position that Core's complaint should be dismissed will significantly harm competition by giving an extreme benefit to one competitive carrier that admits using its competitor carrier's network for free. AT&T refuses to pay Core. It has not compensated Core a cent for the 406,102,334 minutes Core has already terminated nor will AT&T agree to compensate Core on a regular basis for the minutes that it continues to send and which Core terminates, even though Core has offered to enter into a Traffic Exchange Agreement with AT&T using the Commission-approved TELRIC rate for termination. *Palmerton* recognized that "[c]osts indeed attach to the termination of *any type of traffic*" and

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16 AT&T Material Question Petition at 3.

carriers "deserve[] compensation for the traffic that it terminates at its facilities."[18] Likewise the FCC has found that "carriers incur costs in terminating traffic that are not *de minimis*."[19] Rather than pay its fair share of such costs, AT&T has taken the position that it owes nothing to Core. If the Commission adopts AT&T's position on this issue, AT&T will be handed the power to competitively harm Core (or other CLECs) by forcing them to bear the costs of terminating AT&T's traffic. This is exactly the result that the Commission has been adamant that it will not tolerate.

In *Palmerton*, the Commission cited to the Public Utility Code, other decisions of the Commission, other state commission orders, and an FCC decision to make clear that "GNAPs' non-payment of intrastate carrier access charges to Palmerton cannot be condoned as a matter of law and as a matter of sound regulatory policy."[20] More specifically, the Public Utility Code requires the Commission to encourage competitive services *on equal terms* throughout the Commonwealth.[21] In statements supporting the Commission's decision in Palmerton, both Vice Chairman Christy and Commissioner Gardner made clear their positions that carriers using the networks of others should be required to compensate the other carrier for this use.

Vice Chairman Christy states:

> I believe that all certified carriers . . . are responsible for compensating each other when they originate and terminate telecommunications traffic on the various networks that exist in Pennsylvania."[22]

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17 *Id.* at attachment, Response of Core to AT&T Interrogatory 3-4.

18 *Palmerton* at 15.

19 First Report & Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunciations Act of 1996*, CC Docket No. 96-98, FCC 96-325 (Rel: August 8, 1996)("*Local Competition Order*").

20 *Palmerton* at 29.

21 66 Pa. C.S. § 3011(8).

22 *Palmerton*, Statement of Vice Chairman Tyrone J. Christy at 1.

Likewise, Commissioner Gardner states:

> I strongly believe that if you use the network or facilities of a Pennsylvania jurisdictional utility, you must, in good faith, make the proper arrangements to compensate the company for such use.[23]

In this case, Core and AT&T are both competitive local exchange carriers that compete in the marketplace. The law requires Core to accept traffic sent by AT&T for termination regardless of whether or not Core receives payment for this traffic and requires Core to address non-payment through litigation (which Core has done here). Using a change in the law (if the Commission does implement such change which Core does not support) to dismiss this case would give AT&T an extreme advantage as it would require Core to either accept no payment or start this process before the Commission anew, thus devoting more time and expense to this issue rather than working to expand and improve its network. Such a result is unnecessary, unfair and is not in accordance with the law or this Commission's expressed position to not reward "non-payers."

Lastly, it should be noted that AT&T appears to be engaged in efforts intimidate and silence Core (and potentially other CLECs who are terminating traffic from AT&T without compensation) by burdening Core with prolonged litigation. AT&T has successfully delayed resolution of Core's complaint for almost a year now. Right from the first days of this case, AT&T stretched out by almost ten extra days its filing of an appropriate Answer to Core's complaint.[24] Having established in September 2009 a litigation schedule, AT&T waited until the Friday before its Rebuttal Testimony was due to file its Motion to Dismiss which included a request to stay the procedural schedule. In response to Core's Answer to AT&T's Motion to

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[23] *Id.*, Statement of Commissioner Wayne E. Gardner at 2.

Dismiss, AT&T filed a Motion for Leave to Reply which extended by another 20 days resolution of its Motion to Dismiss. AT&T again requested a stay of the procedural schedule and conversion of the evidentiary hearings to an oral argument on AT&T's Motion. Pending Core's Answer to AT&T's Motion, AT&T filed a letter with ALJ Jones informing her of the *Core v. FCC* decision and reiterating its request for a stay of the procedural schedule.[25] Simultaneous with these requests to stay the procedural schedule, AT&T filed a Motion to Compel on January 20, 2010 to which Core filed a response. A day prior to the scheduled evidentiary hearings, ALJ Jones granted AT&T's Motion to suspend the schedule and hold oral argument on February 3, 2010 regarding the Motion to Dismiss. After the oral argument, and pending a decision from ALJ Jones on the Motion to Dismiss, AT&T filed another Motion to Compel discovery to which Core filed a response.[26]

The practical result of all AT&T's legal maneuverings has been to delay the orderly resolution of this case while Core and the Commission have been forced to address AT&T's non-stop filings. Core submits that AT&T's Material Question Petition is just the latest example of a multitude of efforts to either "outspend" Core or to have this litigation ended before the Commission can resolve the merits of the complaint. Rather than rewarding these tactics, Core should be given the opportunity to satisfy the Commission's new direction (if adopted).

For all of these reasons, ALJ Jones' decision to partly deny AT&T's Motion to Dismiss was correct and AT&T's Material Question should be answered in the affirmative. At this point in the procedural schedule, hearings have been stayed. Once the Commission finally resolves the

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24 *See* AT&T's Amended Answer to the Formal Complaint of Core Communications, Inc. dated June 18, 2009 at 1 ("pursuant to an agreement with counsel for Core . . . [AT&T] files this Amended Answer. . .")

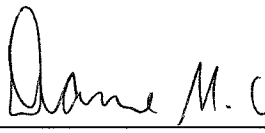
25 *See* Order #6 at 3-6.

outstanding legal matters and makes clear that it has the jurisdiction to hear Core's complaint, the rest of the proceeding can be structured accordingly. If there is a need for supplemental testimony, then that issue can be addressed. To dismiss this case now, however, would be premature and unnecessary.

IV. CONCLUSION

For all the reasons set forth herein, Core respectfully requests that the Commission answer AT&T's question in the affirmative and, in doing so, conclude that Order #6 correctly denied AT&T's Motion to Dismiss Core's complaint with respect to the intrastate telecommunications traffic sent by AT&T and terminated by Core to its VoIP wholesale customers.

Respectfully submitted,



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Date: March 15, 2010

Attorney for Core Communications, Inc.

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[26] Both Motions to Compel discovery filed by AT&T are being held in abeyance by agreement of the parties pending resolution of the material question petitions.