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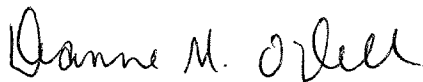
October 5, 2010

Via Electronic FilingRosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265Re: 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 Motion for Interim Relief along with 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: Hon. Angela Jones (w/enc)
Cert. of Service (w/enc)

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Core Communications, Inc.'s Motion for Interim Relief 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: October 5, 2010



Deanne M. O'Dell

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

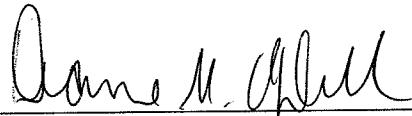
NOTICE TO PLEAD

To:		
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Attorneys for AT&T Communications of PA, LLC & TCG Pittsburgh, Inc.

Pursuant to 52 Pa. Code § 5.103(b) you are hereby notified to file a written response to the enclosed Motion within twenty (20) days from service hereof or a judgment may be entered against you.

Respectfully submitted,



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PO Box 1248
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717.255.3744

Dated: October 5, 2010

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**BEFORE THE
PENNSYLVANIA UTILITY COMMISSION**

Core Communications, Inc.
Complainant

v.

AT&T Communications of PA, LLC

:

Docket No. C-2009-2108186

:

:

and

:

Docket No. C-2009-2108239

:

TCG Pittsburgh, Inc.

:

:

Respondents

:

**MOTION FOR INTERIM RELIEF OF CORE
COMMUNICATIONS, INC.**

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Dated: October 5, 2010

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I. INTRODUCTION

Pursuant to 52 Pa. Code § 5.103, Core Communications, Inc. (“Core”) seeks an order directing AT&T Communications of PA, LLC and TCG Pittsburgh, Inc. (collectively “AT&T”) to make payment within 10 days of being ordered to do so of \$1,425,512.38¹ to Core consistent with the Commission’s September 8, 2010 Opinion and Order in this matter stating that “[t]he non-payment of appropriate intercarrier compensation from one CLEC to another CLEC cannot be condoned as a matter of law and as a matter of sound regulatory policy.”² Further, Core requests that AT&T be required, pending final resolution of this proceeding, to pay the Commission-approved Verizon tandem reciprocal compensation rate of \$0.002439 per minute of use for all the AT&T calls that Core terminates subsequent to August 31, 2010. All such payments would be subject to appropriate credits or true-up based on the final outcome of this proceeding.

While Core is also offering an alternative request for relief, which will be discussed further below, requiring AT&T to pay a reasonable amount immediately fairly recognizes the expressed intent of the Commission’s *Material Question Order* that neither AT&T nor any other carriers should be permitted to withhold payment for services rendered. Unless swift and decisive action is taken now, AT&T will have every incentive to continue to withhold any payment to Core for the continuing use of its termination services while, because of its significant resources, it erects every conceivable legal maneuver to delay the final resolution of

¹ This amount was calculated by applying the Commission-approved Verizon tandem reciprocal compensation rate of \$0.002439 to all of the locally-dialed AT&T MOUs terminated by Core through August 31, 2010, applying access rates to the very small amounts of traffic that were not locally-dialed, and includes interest charges accruing from the due date of each invoice. See Attachment A.

² *Core Communications, Inc. v. AT&T Communications of PA, LLC and TCG Pittsburgh, Inc.*, Docket Nos. C-2009-2108186 and C-2009-2108239, Opinion and Order entered September 8, 2010 at 11 (“*Material Question Order*”).

this proceeding. Such an unfair result does not give effect to the Commission's *Material Question Order* and, in fact, undermines it by permitting AT&T to continue to do what it has always done – utilize Core's termination services (at significant cost to Core) for free.

While Core recognizes that this proceeding is moving forward, despite all of the procedural maneuverings of AT&T to quash or delay it, there is no dispute that Core has performed and continues to perform services for AT&T for which AT&T steadfastly refuses to pay. There is also no dispute that AT&T continues to be unjustly enriched with each passing day that it is not required to pay anything for previous or current services rendered. Further undisputed is the fact that Core is a much smaller company than AT&T and that, as a result, AT&T's outstanding receivables to Core have a significant impact on Core's business. Accordingly, the result of not requiring AT&T to pay anything only benefits AT&T to the detriment of Core despite the Commission's recent and unequivocal determination that AT&T cannot simply "pay nothing." For all of these reasons, granting the interim relief requested in this motion – which is fully consistent with Commission precedent – will level the respective positions of the parties here in a fair and reasonable way pending the outcome of this litigation.

II. STATEMENT OF FACTS

The principle facts of this case upon which Core relies for purposes of this motion are undisputed. On May 19, 2009, almost a year and a half ago, Core filed a complaint against AT&T seeking compensation for Core's termination of over 400,000,000 minutes of traffic sent by AT&T to Core's customers.³ AT&T has never disputed sending this traffic to Core.⁴ As this

³ See AT&T's Motion to Dismiss Formal Complaint of Core Communications, Inc. dated December 8, 2009 at Attachment B, Exhibit BLM-1.

⁴ See, e.g., *Id.*, at 4.

proceeding progressed, AT&T ultimately took the position that it was not legally required to pay Core anything for Core's termination service based on the "type" of traffic at issue here.⁵ Ultimately, this issue was squarely placed before the Commission as a result of the petitions for interlocutory review filed by both Core and AT&T.

In addressing this fundamental dispute between the parties, the Commission rejected AT&T's position. According to the Commission, it has subject matter jurisdiction in this matter and AT&T's nonpayment for services rendered cannot be condoned. The Commission also determined that AT&T's sole reliance on an order of the Federal Communications Commission ("FCC"), the *ISP Remand Order*, to justify its non-payment, "is misplaced."⁶ In direct response to the fact that AT&T has paid nothing and continues to refuse to pay anything to Core, the Commission stated that "[t]he non-payment of appropriate compensation from one CLEC to another CLEC cannot be condoned as a matter of law and as a matter of sound regulatory policy."⁷ After making this determination, the Commission returned this proceeding to the Office of Administrative Law Judge to address the only issue that remains – determining the specific amount owed by AT&T to Core. Since the answer to this last remaining question, as already decided by the Commission, cannot be \$0 and in consideration of the facts of this case, granting Core's interim relief now is a reasonable and fair way to give effect to the Commission's *Material Question Order* and to ensure that Core begins to recoup at least some of

5 *Material Question Order* at 12 ("the rationale that AT&T has used for non-payment is that the destination of the transport service is ISP-bound and, therefore, the service is not intrastate but is interstate and outside of the jurisdiction of this Commission. In the alternative, AT&T contends non-payment is justified because the FCC has preempted the Commission in the area of intercarrier compensation for the type of traffic in this matter.")

6 *Material Question Order* at 10 referring to the 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, FCC Docket No. 96-98, 16 FCC Rcd. 9151 (2001), 2001 WL 455869 ("ISP Remand Order").

7 *Material Question Order* at 11.

the costs it has already incurred and expects to continue to incur for the sole purpose of terminating calls originated by AT&T.

III. RELIEF REQUESTED

As discussed further below, Core's primary request for relief is that AT&T be required to pay \$1,425,512.38 within 10 days of entry of an interim order consistent with this motion and that AT&T be required to pay Core at the Commission-approved Verizon tandem reciprocal compensation rate of \$0.002439 per minute of use⁸ for all AT&T calls that Core terminates after August 31, 2010. Alternatively, Core requests that AT&T be required to place into escrow \$1,425,512.38 within 10 days of entry of an interim order to cover past invoices and to pay Core at the Commission-approved intrastate access rate of \$0.0014 per minute of use⁹ for all AT&T calls that Core terminates subsequent to entry of the interim order.

A. AT&T Should Be Directed To Pay Core \$1,425,512.38 Within 10 Days of Entry of An Interim Order and to Pay Core at the Rate of \$0.002439 Per Minute of Use for All AT&T Calls that Core Terminates after August 31, 2010

The Commission's *Material Question Order* has conclusively determined the key issue in dispute here – whether AT&T has a legally justifiable reason to pay Core \$0 for Core's termination of AT&T's telecommunications traffic. In spinning legal theories, AT&T claimed that the Commission either lacked subject matter jurisdiction to answer the question or was preempted and, under its federal law theories, AT&T is not required to pay Core anything. All

⁸ The Commission derived this rate using the Supreme Court-approved costing methodology known as TELRIC. Generic Investigation Re Verizon Pennsylvania Inc.'s Unbundled Network Element Rates, Docket No. R-00016683, Compliance Order entered July 16, 2004, Appendix A, Exhibit Part C-4 at 6.

⁹ Core Communications, Inc., Pa. P.U.C. Tariff No. 4 ("Switched Access Tariff"), 1st Rev. Sheet No. 51. Adding all the rate elements except Tandem Switched Facility, per access per mile (in essence, assuming zero-mile transport) results in a cumulative intrastate access rate of \$0.0139387600.

of these arguments have been rejected by the Commission. Further, the Commission has made clear that non-payment from one CLEC to another CLEC cannot be condoned as a matter of law and as a matter of sound regulatory policy.¹⁰

Yet, that is exactly what is occurring here and what will continue to occur unless action is taken now. Importantly, AT&T has never disputed that it has sent traffic to Core or that Core has terminated this traffic nor has AT&T offered or paid anything for the termination of this traffic. While this case is proceeding to resolution, despite all of AT&T's attempts to delay or quash it, the fact remains that the Commission has determined that AT&T cannot pay \$0 for the service Core has provided in the past and continues to provide in the present. Therefore, granting Core interim relief now and requiring AT&T to make payment to Core is a reasonable way to give effect to the Commission's *Material Question Order* pending the final adjudication of Core's complaint.

Further, this result fairly recognizes the respective positions of the two parties. According to Fortune 500's ranking of America's largest corporations based on revenue for 2010, AT&T is ranked first among all telecommunications companies and seventh among all corporations with revenues of \$123 billion in 2010.¹¹ In contrast, Core is a small, privately-owned company that serves a few key markets in the Mid-Atlantic region. Core cannot continue to absorb the costs of providing service for free whereas an entity with the significant financial resources of AT&T can certainly pay Core pursuant to this request for interim relief without any cause for concern regarding its ability to continue to operate. Given the significant imbalance of financial positions of these two parties, in combination with the expressed intent of the

¹⁰ *Material Question Order* at 11.

¹¹ See <http://money.cnn.com/magazines/fortune/fortune500/2010/snapshots/2756.html>

Commission's *Material Question Order*, Core's request for interim relief is a reasonable way to proceed pending the outcome of this litigation.

Finally, pursuant to its complaint, Core is asking the Commission to require AT&T to compensate it pursuant to its access tariffs at the rate of \$0.014 for a total of almost \$6 million for the period of June 2004 through September 2009.¹² Core proposes that for purposes of this interim relief motion that AT&T be required to pay Core at the Commission's TELRIC termination rate of \$.002439 for a total of \$1,425,512.38 incurred from June 2004 through August 31, 2010.¹³ As this rate is a Commission-approved rate for traffic termination¹⁴ and is approximately one-fifth the tariffed access rates, Core believes this is a reasonable amount to direct AT&T to pay on an interim basis pending resolution of this complaint. Further, for costs incurred after August 31, 2010, Core proposes to be compensated at the TELRIC rate. With this proposal, Core is not waiving its right to continue to pursue compensation from AT&T pursuant to its access tariffs and any amount paid would be subject to credit or true-up depending on the final outcome of this proceeding. Core believes this proposal is a reasonable way to give effect to the Commission's *Material Question Order* as well as the undisputed facts of this case and the parties' respective financial positions.

¹² See AT&T's Motion to Dismiss Formal Complaint of Core Communications, Inc. dated December 8, 2009 at Attachment B, Exhibit BLM-1.

¹³ See Attachment A.

¹⁴ *Generic Investigation Re Verizon Pennsylvania Inc.'s Unbundled Network Element Rates*, Docket No. R-00016683, Compliance Order entered July 16, 2004, Appendix A, Exhibit Part C-4 at 6.

B. In the Alternative, AT&T Should Be Directed To Place \$1,425,512.38 In An Escrow Account Within 10 Days of Entry Of An Interim Order and to Pay Core at the Rate of \$0.014 Per Minute of Use for All AT&T Calls that Core Terminates after August 31, 2010

While Core's primary request is that AT&T be required to pay Core directly, Core recognizes that the Commission has directed non-paying carriers to establish escrow accounts for disputed amounts. In this case, however, Core is the smaller company that continues to be harmed while it is not receiving payment from AT&T – the country's largest telecommunications carrier. Given this fact, ordering AT&T to directly pay Core in this case is fair and reasonable.

Only as an alternative to payment to Core does Core support directing AT&T to pay \$1,425,512.38 into an escrow account pending final resolution of this proceeding and to pay Core at the rate of \$0.014 per minute of use for all AT&T calls that Core terminates subsequent to entry of an interim order. For current payment under this alternative, Core seeks to be compensated at the Commission-approved intrastate access rate set forth in its tariffs.¹⁵ Since this alternative does not compensate Core for any past due amounts, requiring payment going-forward at the higher access rate is a reasonable way to accommodate this fact.

This alternative request for relief is consistent with Commission precedent to order an escrow in situations where one carrier appears to owe another carrier payment but the final amount is not yet known. In perhaps the first case wherein the Commission was asked to address the potential harm to a telecommunications carrier required to provide a service for which it was not being paid, the Commission – on its own initiative – determined that requiring the non-

¹⁵ Core Communications, Inc., Pa. P.U.C. Tariff No. 4 ("Switched Access Tariff"), 1st Rev. Sheet No. 51.

paying carrier to either obtain a surety bond or place the disputed amount in escrow was a reasonable interim solution.¹⁶ In that case, Marianna & Scenery Hill claimed that payment from Level 3 was due and, because of that, Marianna & Scenery Hill threatened to stop carrying Level 3's traffic unless and until the parties reached a mutually acceptable payment arrangement.¹⁷ Level 3 filed a complaint against Marianna & Scenery Hill seeking to prohibit Marianna Scenery Hill from ceasing to provide service to Level 3. Through the resolution of a material question, the Commission concluded that Marianna & Scenery Hill could not cease providing Level 3 service but, in order to mitigate the harm to Marianna & Scenery Hill to provide a service for which it was not getting paid, the Commission required Level 3 to either obtain a surety bond or to place in a separate bank escrow account an amount equal to the charges owed.¹⁸ The case was subsequently returned to the ALJ for the development of a factual record related to the nature of the traffic at issue.

More recently, and consistent with the *Level 3* case, the Commission recognized that telecommunications carriers, “unlike an actor in a non-regulated, commercial setting,” are forced – unless they receive regulatory authorization – to incur costs to accept traffic even if they do not receive payment from the cost-causing telecommunications carrier.¹⁹ Again, in recognition of this fact, the Commission in the *Palmerton* case directed the ALJ to determine the appropriate amount for a surety bond or for placement in an escrow account “to provide a level of good faith

¹⁶ *Level 3 Communications, LLC v. Mariana & Scenery Hill Telephone Company*, Docket No. C-20028114, Opinion and Order entered August 8, 2002 at 6.

¹⁷ *Level 3 Communications, LLC v. Mariana & Scenery Hill Telephone Company*, Docket No. C-20028114, Opinion and Order entered August 8, 2002 at 6.

¹⁸ *Id.* at 10.

¹⁹ *Palmerton Telephone Company v. Global NAPs South, Inc., Global NAPs Pennsylvania, Inc., Global NAPs, Inc. and Other affiliates*, Docket No. C-2009-2093336, Opinion and Order entered May 5, 2009 at 7-8.

during the pendency of the proceeding.”²⁰ After such amount was determined, the Commission reconfirmed its prior decision and stated that the “interim determination [was] completely neutral to the eventual outcome of the case, including. . . what intercarrier compensation rates are applicable to such traffic.”²¹

The complaint in this matter is similar to the ones addressed by the Commission in *Level 3* and *Palmerton* in that one carrier, AT&T, refuses to pay another carrier, Core, for a service that Core has rendered to the benefit of AT&T. Also similar to those cases, Core is seeking interim relief pending the final resolution of its complaint. Both *Level 3* and *Palmerton* addressed the question of how to equalize the relationship between the parties on an interim basis as Core is asking to be done here. In both cases, the Commission concluded that requiring the non-paying carrier to set aside money to demonstrate “good faith” was reasonable and appropriate. Ordering the same result here is consistent with these cases.

Moreover, the Commission has already rejected AT&T’s one and only reason proffered for its refusal to pay Core and, in fact, made clear that it would not condone the “non-payment of appropriate intercarrier compensation from one CLEC to another CLEC.”²² The only way to give effect to the clear meaning of this order is to require AT&T to make a good faith payment of the disputed amount and to pay for future services as rendered. Once the only question that remains regarding what is the final amount due is answered, then any amount paid by AT&T on an interim basis can be credited or trued-up accordingly. To do nothing, however, is to permit AT&T to continue to steal service and to unfairly require Core to absorb this cost despite the

²⁰ *Id.* at 9-10.

²¹ *Palmerton Telephone Company v. Global NAPs South, Inc., Global NAPs Pennsylvania, inc., Global NAPs, Inc. and Other affiliates*, Docket No. C-2009

²² *Material Question Order* at 11.

Commission's clear finding that non-payment for services rendered between CLECs cannot be condoned as a matter of law and sound regulatory policy.

IV. CONCLUSION

Core seeks this relief in consideration of the fact that the only other alternative to requiring AT&T to make payment would be to permit Core to cease accepting traffic from AT&T for termination. The general rule pursuant to both state and federal law is that telecommunications carriers cannot cease providing service to other telecommunications carriers based on a payment dispute.²³ The reason for this prohibition is to prevent stopping the flow of telecommunications traffic over a payment dispute because such disruption might result in preventing consumers from making and receiving the telephone calls of their choosing. This is very different from a traditional commercial setting wherein businesses are not forced to provide service to other businesses for free. In fact, if a business fails to pay another for services rendered, the business providing the service has the right – usually through a contract – to cease providing the service. This is also different from the perspective of providing public utility service to an end-user as all public utilities have the right – pursuant to the law and Commission regulations – to terminate service to a retail customer who fails to pay his or her bills.²⁴

While the general rule is that carriers cannot take unilateral action to disrupt the flow of traffic over a payment dispute, the Commission can and has specifically permitted such action in various circumstances. For example, where telecommunications carriers have interconnection

²³ See, 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 1880323 (F.C.C.)(June 28, 2007), at ¶¶ 5-6; and, Opinion and Order, *Level 3 Communications, LLC v. Marianna & Scenery Hill Telephone Company*, Pa. P.U.C. Docket No. C-20028114 (Aug. 8, 2002), 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).

²⁴ 52 Pa. Code §§ 64.61-64.111.

agreements between them, the Commission has recognized the right to cease providing service upon a failure to pay.²⁵ Even where no interconnection agreement exists, such as in the *Level 3* case, the Commission has made clear that it can authorize one carrier to cease providing service to a non-paying carrier.²⁶ The Commission's regulations also permit telecommunications companies to terminate wholesale service to carrier customers for nonpayment.²⁷ In practical application, these regulations allow an incumbent carrier, such as Verizon Pennsylvania, to terminate wholesale services to CLECs even when that termination of service will result in the loss of service to the CLEC's customers.²⁸ To address the impact on the service of the customers of non-paying carrier, the Commission's regulations set forth a process by which the non-paying carrier is required to transition service to another provider.²⁹

Consistent with this precedent, the Commission could authorize Core to cease accepting traffic from AT&T due to AT&T's refusal to pay for Core's termination services but such action could lead to the potential disruption of services to AT&T's customers attempting to call Core's customers and, for this reason, Core is not seeking such relief. The only alternative to disrupting the flow of telecommunications traffic over a payment dispute, therefore, is to require the carrier

²⁵ *Buffalo-Lake Erie Wireless Systems Col, LLC Petition for Emergency Order*, Docket No. P-2009-2150008, Emergency Order at 3, ratified by Ratification Order entered January 14, 2010.

²⁶ *Palmerton Telephone Company v. Global NAPs South, Inc., Global NAPs Pennsylvania, Inc., Global NAPs, Inc. and Other affiliates*, Docket No. C-2009-209336, Opinion and Order entered May 5, 2009 at 7.

²⁷ 52 Pa. Code § 63.304(a).

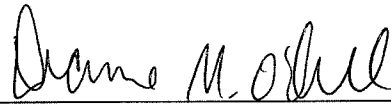
²⁸ *See, e.g., Application of Remi Retail Communications, LLC for approval of the Abandonment or Discontinuance as a Statewide Reseller of Interexchange Toll Carrier Services and as a Competitive Local Exchange Carrier Serving Customers in the Service Territories of Verizon Pennsylvania Inc. and Verizon North Inc.*, Docket Number A-2008-2019752, Application to Abandon Service and Abandonment Plan filed on January 18, 2008 at 1 ("Remi received notice from its underlying network service providers . . . Verizon that . . . it will terminate wholesale services provided to Remi on or after February 19, 2008. As Remi utilizes Verizon as its sole underlying network service provider . . . for all Pennsylvania local service customers through a variety of UNE-P, UNE-L, resale and access service arrangements, termination of these services prevents Remi from continuing to provide service to its current 351 business customers in Pennsylvania.")

²⁹ 52 Pa. Code § 63.306.

– which the Commission has already determined must pay something – to make a good faith payment either directly to Core or to an escrow pending adjudication of Core’s complaint. Such an interim order is both consistent with and will give effect to the Commission’s *Material Question Order* entered in this case.

Therefore, Core respectfully requests that an interim order be entered which directs AT&T pay Core \$1,425,512.38 within 10 days of entry of the order and to pay Core at the Commission-approved Verizon tandem reciprocal compensation rate of \$0.002439 per minute of use for all AT&T calls that Core terminates after August 31, 2010.

Respectfully submitted,



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Date: October 5, 2010

ATTACHMENT A
Calculation of Amount for which Core Seeks Payment by AT&T

Unpaid amounts due on CIC 0292 in PA, through 8/31/2010:

Interstate Access \$5.39
Intrastate Access \$15,931.99
Local \$1,409,575.00

Local amount is calculated using the Verizon Pennsylvania tandem reciprocal compensation rate of \$0.002439 which was derived by the Commission using the Supreme Court-approved costing methodology known as Total Element Long Run Incremental Cost ("TELRIC"). *See Generic Investigation Re: Verizon Pennsylvania Inc.'s Unbundled Network Element Rates*, Docket No. R-00016683, Compliance Order entered July 16, 2004, Appendix A at 6, Exhibit Part C-4.

Rating is based on NPA-NXX of calling party and called party numbers.

Interest at the tariffed rate of 1.5% is included in each amount.