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May 6, 2011

VIA HAND DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

RE: Core Communications, Inc. v. Choice One Communications of Pennsylvania, Inc. d/b/a One Communications; Docket No. C-2009-2130379

Core Communications, Inc. v. CTC Communications Corp. d/b/a One Communications; Docket No. C-2009-2131838

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") are the original and three (3) copies of the Prehearing Memorandum on behalf of Choice One Communications of Pennsylvania, Inc. and CTC Communications Corp. (collectively, "One") in the above-referenced proceeding. In addition, please find enclosed for filing with the Commission the original and three (3) copies of the Notice of Appearance of Shelby A. Linton-Keddie on behalf of One in the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copy of this Transmittal Letter, Prehearing Memorandum and Notice of Appearance, and kindly return them to our messenger for our filing purposes. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By *Pamela C. Polacek*
Pamela C. Polacek

Counsel to Choice One Communications of Pennsylvania, Inc. and CTC Communications Corp.

SLK/km
Enclosures

c: Administrative Law Judge Wayne L. Weismandel (via E-mail and Hand Delivery)
Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Core Communications, Inc.	:	
	:	
v.	:	C-2009-2130379
	:	
Choice One Communications of Pennsylvania, Inc., d/b/a One Communications	:	
	:	
Core Communications, Inc.	:	
	:	
v.	:	C-2009-2131838
	:	
CTC Communications Corp., d/b/a One Communications	:	
	:	

**PREHEARING MEMORANDUM OF CHOICE ONE COMMUNICATIONS OF
PENNSYLVANIA, INC. D/B/A ONE COMMUNICATIONS AND CTC
COMMUNICATIONS CORP. D/B/A ONE COMMUNICATIONS**

Pursuant to 52 Pa. Code Section 5.222 and the April 11, 2011, Prehearing Conference Order of Pennsylvania Public Utility Commission ("Commission") Administrative Law Judge Wayne L. Weismandel, Choice One Communications of Pennsylvania, Inc. d/b/a One Communications and CTC Communications Corp. d/b/a One Communications (collectively, "One") submits this Prehearing Conference Memorandum in the above-captioned proceedings.

A. Service List.

One's attorney of record in this proceeding is Pamela C. Polacek. For purposes of the service list, Ms. Polacek's contact information is as follows:

Pamela C. Polacek, Esquire
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B. Proposed Witnesses And Subject Matter Of Testimony.

One has not definitively determined who will appear as a witness on its behalf in this proceeding. However, subject to substitution, replacement and addition, One presently anticipates that it will present the testimony of Pamela L. Hintz, Vice President of Regulatory Policy, One Communications an Earthlink Business Company, 5 Wall Street, Burlington, MA 01803, (781) 362-5712, (781) 362.1312 (fax). Ms. Hintz will be testifying in response to the direct testimony submitted by Core Communications, Inc. ("Core"). At this point, it is anticipated that Core will testify that the traffic at issue is jurisdictionally intrastate and subject to its Pennsylvania intrastate access tariff, or alternatively that it is retroactively subject to an alternative Commission imposed compensation arrangement. It is anticipated that Ms. Hintz will offer fact testimony regarding the jurisdictional nature of the traffic at issue (interstate, section 251(b)(5),¹ non-toll traffic), as well as on the intercarrier compensation mechanism which governs the traffic at issue (bill-and-keep).

C. Issues/Sub-Issues And Statement Of Positions Of One.

In its Complaint, Core seeks compensation for certain traffic allegedly originated by One and terminated by Core to its Internet Service Provider ("ISP") customers. Core alleges that at a point after it filed its Complaint it also began terminating an unknown amount of traffic to Voice over Internet Protocol ("VoIP") service providers. These claims raise the following issues:

1. Whether The Commission Has Jurisdiction Over The Traffic And Claims At Issue.

Notwithstanding the Commission's September 8, 2010, Order on the Material Questions raised in a similar complaint case involving Core and AT&T,² whether the Commission has jurisdiction over this case remains an issue. All, or substantially all, of the traffic at issue traffic terminated to ISPs. The Federal Communications Commission ("FCC") repeatedly has found such traffic to be jurisdictionally interstate. Notably, on February 2, 2011, the FCC filed an

¹ 47 U.S.C. § 251(b)(5) ("section 251(b)(5)").

² *Core Communications, Inc. v. AT&T Communications of Pennsylvania, LLC and TCG Pittsburgh, Inc.*, Docket Nos. C-2009-2108186 and C-2009-2108239.

Amicus Brief in a U.S. Court of Appeals case pending in the Ninth Circuit.³ In that brief, the FCC took a position contrary to that relied on by the Commission in its September 8, 2010 order in the *Core v. AT&T* case. The Commission has yet to reach a final decision in the *Core v. AT&T* case.

One respectfully submits that the Commission does not have jurisdiction over the ISP-bound traffic at issue in this dispute because the traffic is jurisdictionally interstate and the Commission has not been vested with jurisdiction over such traffic.

2. Whether Any VoIP Traffic Is At Issue In This Case.

Core has made conflicting representations to One about the traffic at issue in this case. At one point, Core stated that the traffic was all ISP-bound traffic. Later, Core stated that some traffic exchanged after it filed its Complaint may be VoIP traffic. Hence, whether Core can prove and identify which traffic was VoIP as opposed to ISP-bound is an issue to be decided. One's position is that Core is unable to prove that any traffic exchanged was VoIP traffic.

3. Whether Core's Intrastate Access Tariff Applies To The Traffic At Issue In This Case.

Core claims that it is entitled to collect intrastate access charges for the traffic at issue in this case.

One's position is that Core's intrastate access tariff does not apply to the traffic at issue in this case which is interstate and non-toll in nature. The FCC has determined that ISP-bound traffic is jurisdictionally interstate section 251(b)(5) traffic. Such traffic is not subject to access charges or access tariffs.

4. If Core's Intrastate Access Tariff Does Not Apply, Whether Another Compensation Regime Governs The Traffic At Issue.

Core asserts that, if its access tariff does not apply, the traffic at issue is subject to compensation at the section 251(b)(5) reciprocal compensation rates established by the Commission.

³ *AT&T Communications of California, Inc., et al., v. Pac-West Telecomm, Inc., et al.*, Case No. 08-17030 (9th Cir.).

One's position is that the traffic at issue is subject to "bill-and-keep" whereby carriers do not charge each other for traffic exchanged between them. One respectfully submits that the Commission lacks the authority to impose a cash-based compensation requirement on either a retroactive or prospective basis for the traffic at issue in the context of this complaint proceeding.

D. Statement Of Evidence To Be Presented At Hearing.

In addition to the testimony described above, One anticipates presenting evidence necessary to support its positions also described briefly above. It is anticipated that the evidence will demonstrate that Core will be unable to prove that the traffic at issue is jurisdictionally intrastate traffic properly subject to its Pennsylvania intrastate access tariff or that Core has reached any agreement with One that provides for cash-based compensation for the termination of such traffic.

E. Proposed Modifications To Rules Pertaining To Discovery.

One consents to service via electronic mail. One also agrees to Core's proposal regarding the provision of oral notice of any objections to discovery requests within five (5) days of service. To the extent either party owes the other discovery responses, subject to objections, the parties should mutually agree (and One individually agrees) to serve such information by May 20, 2011. To the extent that discovery responses include confidential information, One agrees to protect the confidentiality of such information consistent with any Protective Order entered in this case. One is reviewing Core's proposed protective order and will work toward an agreement on a proposed protective order prior to next Thursday's Initial Prehearing Conference.

F. Proposed Schedule.

The Parties have reached agreement on a proposed procedural schedule and it is as follows:

June 8, 2011	Core Direct Testimony
August 3, 2011	One Rebuttal Testimony
August 31, 2011	Core Surrebuttal Testimony
October 12-13, 2011	Hearings
30 days after receipt of hearing transcript	Main Briefs
20 days after Main Briefs filed	Reply Briefs

G. Motions for Admission Pro Hac Vice.

Motions for Admission Pro Hac Vice were filed on March 9, 2010, for the following attorneys representing One:

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jwilson@kelleydrye.com

One respectfully requests grant of these motions at or before the commencement of the Initial Prehearing Conference.

H. Settlement.

One is willing to engage in settlement discussions to attempt to amicably resolve this matter.

Respectfully submitted,



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Dated: May 6, 2011

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