ECKERT SEAMANS

Eckert Seamans Cherin & Mellott, LLC
213 Market Street - 8th Floor
Harrisburg, PA 17101

TEL 717 237 6000
FAX 717 237 6019
www.eckertseamans.com

Deanne M. O'Dell
717.255.3744
dodell@eckertseamans.com

June 23, 2011

Via Electronic Filing
Rosemary Chiavetta, 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 Chiavetta:

On behalf of Core Communications, Inc., ("Core") enclosed for filing please find the original of Reply Exceptions along with the electronic filing confirmation page with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely yours,

Deanne M. O'Dell

Deanne M. O'Dell, Esq.

DMO/jls

Enclosure

cc: Hon. Angela Jones, w/enc.
Cheryl Walker Davis, w/enc. (and cd)
Cert. of Service, w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Core Communications, Inc.'s Reply Exceptions 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
Michelle Painter, Esq.
Painter Law Firm
13017 Dunhill Dr.
Fairfax, VA 22030
painterlawfirm@verizon.net

Theodore A. Livingston, Esq.
Kara K. Gibney, Esq.
Mayer Brown LLP
71 S. Wacker Dr.
Chicago, IL 60606
tlivingston@mayerbrown.com
kgibney@mayerbrown.com

Dated: June 23, 2011

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	:	
	:	Docket No. C-2009-2108239
TCG Pittsburgh, Inc.	:	
	:	
Respondents		

CORE COMMUNICATIONS, INC.'S
REPLY TO THE EXCEPTIONS
OF RESPONDENTS

Deanne M. O'Dell, Esq.
Attorney I.D. # 81064
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Floor
Harrisburg, PA 17101
717.255.3744

Of Counsel:

Christopher Van de Verg, Esq.
General Counsel
Core Communications, Inc.
209 West Street, Suite 302
Annapolis, Maryland 21401
(410) 216-9865

Attorneys for Core Communications Inc.

Dated: June 23, 2011

TABLE OF CONTENTS

I. INTRODUCTION

There appears to be no end to the quest of AT&T Communications of Pennsylvania, LLC and TCG Pittsburgh (collectively, "AT&T") to try to divest this Commission of its jurisdiction to adjudicate the complaint of Core Communications, Inc. ("Core"). Incredibly, AT&T claims in its Exceptions that the "single fundamental question" now before the Commission is whether it has subject matter jurisdiction. This statement intentionally ignores the fact that the Commission has already definitively addressed that same question in an earlier phase of this proceeding and answered it contrary to AT&T's desires. *See,* Opinion and Order, *Core Communications, Inc. v. AT&T Communications of PA, LLC, and TCG Pittsburgh, Inc.*, Pa. P.U.C. Docket Nos. C-2009-2108186 and C-2009-2108239 at 11 (September 8, 2010) ("*Material Question Order*").

There has been no contrary decision or order from the Commission, any court, or the Federal Communications Commission ("FCC") reversing or altering this determination. The single document relied upon by AT&T in its latest effort to keep the Commission from adjudicating this case is a non-binding *amicus* brief submitted by FCC staff in another jurisdiction. Despite AT&T's wishful thinking and the incorrect recommendation of the Administrative Law Judge ("ALJ") in her Initial Decision ("I.D.") issued May 24, 2011, FCC staff's *amicus* brief does not compel a conclusion that the Commission lacks subject matter jurisdiction to apply state law to resolve the fundamental issue in this case – AT&T's willful and belligerent refusal to pay for the intrastate services rendered by Core. In fact, FCC staff's *amicus* brief to the Ninth Circuit contradicts the California Commission, the federal district court, and the Commission's own *Material Question Order* and the I.D. erred in finding that the staff brief somehow overrides this Commission's previously established subject matter jurisdiction in this case. Core Exceptions at 7-25. Amazingly, AT&T also argues that the Commission has no authority to resolve Core's

complaint pursuant to federal law, a claim which the I.D. correctly rejects, and one which even FCC staff does not make. Finally, as a "fail safe" for its primary position that the Commission does not have jurisdiction to hear this matter, AT&T's Exceptions attempt to show why Core's complaint should be dismissed based on state law. AT&T Exceptions 28-34. However, none of AT&T's arguments are consistent with state law, which actually compels that Core's complaint should be granted.

In its Exceptions, AT&T also argues that some of the I.D.'s findings of fact should be revised or removed. AT&T Exceptions at 3-7, 19-28. However, each and every finding of fact that AT&T seeks to remove is supported by the record and should be adopted. For the all the reasons set forth more fully below, the Commission should deny the exceptions of AT&T and grant the exceptions of Core. Upon doing so, AT&T should be directed to pay Core for the termination of past traffic pursuant to Core's intrastate access tariff, Pa. P.U.C. Tariff No. 4. To ensure payment for future traffic, AT&T should be directed to negotiate in good faith with Core to reach a mutually acceptable reciprocal compensation arrangement governing payment. Taking this action is consistent with this Commission's clearly expressed policy that carriers who receive mandated services from other carriers are required to pay reasonable compensation for the use of those services.

II. AT&T'S "STATEMENT OF FACTS" SHOULD NOT BE GIVEN ANY SIGNIFICANT WEIGHT AS THEY HAVE BEEN REBUTTED BY THE SUBSTANTIAL EVIDENCE IN THE RECORD

As the ultimate fact finder, the Commission is required to review the record and determine the appropriate credit or weight to give the evidence presented to support its ultimate resolution. 66 Pa. C.S. § 335(a). *Metro. Edison Co. v. Pa. PUC*, 2011 Pa. Commw. LEXIS 268 (Pa. Commw. Ct. June 14, 2011). AT&T offers a summary (allegedly "for the Commission's convenience") of items it claims to be "facts" that were "proven at the merits hearing." AT&T Exceptions at 3.

This "statement of facts," however, represents nothing more than AT&T's wish list of what it wants and hopes the Commission will find in this proceeding. Indeed, AT&T's "facts" are argumentative, superfluous, and do not constitute "exceptions" consistent with the Commission's regulations. On the contrary, the substantial evidence in the record rebuts AT&T's so-called "facts." Therefore, the Commission should not give them any significant weight in adjudicating this matter.

In item #1, AT&T argues that the Commission must assume that all of the traffic Core terminates is ISP-bound because Core has not stepped forward with a breakdown of the traffic originated by AT&T which is destined for termination on Core's network to Core's Internet Service Provider ("ISP") customers versus its Voice over Internet Protocol ("VOIP") customers. AT&T Exceptions, at 3. As explained in Core's Exception Number 3, Core Exceptions at 25-27, the Commission has already considered and rejected claims that compensation for intrastate telecommunications depends on the type of customer underlying the traffic exchanged between two jurisdictional carriers. *Palmerton,* at 8 ("GNAPs' fundamental telecommunications service function is not *altered* by the fact that GNAPs transports a 'mix' of traffic including the 'unique type' of VoIP calls."); *and, Material Question Order,* at 14 (incorporating by reference the "analysis set forth in *Global NAPs.*").[1]

In items #2 and 3, AT&T argues that Core waived its rights to *any* compensation, because it "knew (or should have known)" about the AT&T Indirect Traffic before it began to bill, AT&T Exceptions at 3-4, and because it "lacked the basic competence to read" the Verizon tandem call records. *Id.*, at 4. The record does not support AT&T's claims. Core fully explained what it did

---

[1] AT&T claims Core had a burden of proof to distinguish between ISP-bound and VOIP traffic terminating on its network. AT&T Exceptions at 9. However, since the *ISP Remand Order* does not cover competitive local exchange carrier ("CLEC") to CLEC traffic Core had no duty to segregate ISP-bound traffic.

and did not know regarding the AT&T Indirect Traffic. Core Main Brief ("M.B.") at 9-10. More specifically, Core did not reasonably expect that CLECs such as AT&T would be sending large volumes of traffic to Core because, in its experience at that time, dial-up ISP-bound traffic was generally originated by ILEC (i.e., Verizon) residential end users, not competitive LEC small business customers. *Id.* at 10. Further, Core explained that it began to examine the call records once it decided to enter the market for VOIP traffic, because it reasonably expected that VOIP traffic would generate calls from third-party carriers, including other CLECs. *Id.* at 9. Once Core discovered the AT&T Indirect Traffic, it began to bill AT&T accordingly. *Id.* at 10. Finally, it is abundantly clear now – after three years of scorched earth litigation tactics – that AT&T would have adopted the same nonpayment position regardless of when, what or how Core began to bill. In light of AT&T's continuing refusal to pay anything (more than three years after it received the first invoice), its quibbles about the timing and format of Core's bills rings hollow.

In item #4, AT&T's complains that Core "did not file a local reciprocal compensation rate" in Pennsylvania, even though it did so in other states. This is a red herring. The issue in this case is whether Core's *actual* Pennsylvania P.U.C. Tariff No. 4 (the "Tariff"), which encompasses all intrastate "communications," applies to CLEC-CLEC traffic in the absence of a Traffic Exchange Agreement ("TEA"). Core M.B. at 31-33. What Core *might have filed* in Pennsylvania or did file in *Maryland, New York, or Virginia*, is simply irrelevant to the case before the Commission.

In item #5, AT&T claims that the "plain language" of Core's Tariff "applies only to intrastate toll traffic." But as Core has demonstrated repeatedly, the record supports a finding that the plain language of Core's Tariff is not limited to "toll" traffic, but applies to the locally-dialed traffic at issue in this case. Core Exceptions at 28-32; *and*, Core M.B. at 17-25; *and*, Core Reply Brief ("R.B.") at 11-14. Indeed, "[l]ocal and toll dialing are retail concepts," FOF #17, and not determinative of intercarrier compensation obligations. Nor does the record support AT&T's

claim that it had "properly assumed" its traffic was subject to no rate whatsoever. As even AT&T recognizes, Core maintained that AT&T must pay a rate consistent with "a cost-based standard," Tr. at 94, such as TELRIC.

In item #6, AT&T states that "the volume of AT&T-originated locally dialed traffic terminated by Core has varied over time." AT&T Exceptions at 5. This is another red herring. The record supports a finding, consistent with the I.D.'s FOF #6, that "AT&T sends and has sent large volumes of telecommunications traffic to Core indirectly, via the tandem switch network of Verizon." Core St. No. 1 at 1, I.D. at 12. AT&T's attempt to minimize or downplay that fact, by pointing to fluctuations in traffic volumes, should be rejected.

In item #7, AT&T argues that Verizon only pays Core "$0.0007 per minute for the termination of... locally dialed ISP-bound traffic." AT&T Exceptions, at 5. Of course, Verizon pays that rate because that is the rate set forth in the *ISP Remand Order*. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996—Intercarrier Compensation for ISP-Bound Traffic*, 16 F.C.C.R. 9151, at ¶ 78 (Order on Remand & Report and Order, Apr. 27, 2001) ("*ISP Remand Order*"). However, the *ISP Remand Order* applies to ILEC-CLEC ISP-bound traffic, not CLEC-CLEC traffic. *See, Material Question Order* at 10 ("Compensation applicable from CLEC to CLEC for ISP-bound traffic was not addressed in the *ISP Remand Order*..."). Further, AT&T fails to mention that it collects $0.002814 per minute (more than four times what Core collects from Verizon) in Pennsylvania for the termination of locally dialed ISP-bound traffic. Core R.B. at 18. Finally, AT&T's insinuation that Verizon's *payment* practices somehow support AT&T's *nonpayment* self-help practices is absurd.

In item #8, AT&T offers a cryptic statement regarding carriers that pay "an explicit rate for the termination of locally dialed traffic." AT&T Exceptions at 5. The undisputed record evidence shows that four Commission-certificated CLECs pay Core for the termination of their locally-

dialed traffic, all of them at "an explicit rate." Core Hearing Exhibit No. 5; Tr. at 50-54. While two of these carriers only recently agreed to pay for this traffic, both have relented from their prior nonpayment positions and in fact have paid for historical as well as current traffic. Core R.B. at 10. In so doing, the carriers that are paying for termination of their traffic further the Commission's policy goals of encouraging appropriate cost-recovery and thwarting the artificial competitive advantage that arises through nonpayment. *See, Palmerton* at 46 (noting that nonpayment leads to "an anticompetitive environment that artificially and inimically transmits inaccurate price signals to end-user consumers..."); *and see, Material Question Order* at 11 ("nonpayment of appropriate intercarrier compensation from one CLEC to another CLEC cannot be condoned as a matter of law and sound regulatory policy.") Of course, AT&T's continuing refusal to pay only frustrates the Commission's goals.

In item #9, AT&T claims to exchange locally-dialed traffic with all other CLECs on a "bill-and-keep" basis. AT&T Exceptions at 5. However, the alleged bill-and-keep arrangements AT&T introduced into the record are incomplete snippets from larger intercarrier compensation agreements and do not provide any of the other terms negotiated between the parties. *See,* Core St. No. 1 at 24 and Exh. BLM-13. As such, all they show is that AT&T has convinced – or starved – other CLECs to enter into "bill-and-keep" arrangements for locally-dialed traffic, Core R.B. at 10, perhaps by committing to pay other forms of compensation in return. The undisputed record shows that AT&T possesses significantly greater market power and, therefore, the ability to utilize its substantial resources to strong-arm other carriers into arrangements that advantage AT&T. Core St. No. 1 at 3.

In item #10, AT&T points to the Commission's 2006 decision in another case to insinuate that the Commission has mandated bill-and-keep for CLEC-CLEC traffic. AT&T Exceptions at 6. However, the case AT&T references did not address the same issue presented by Core's complaint

nor does it any way negate Core's right to relief. Core M.B. at 31-33; *See generally,* AT&T Cross Ex. No. 4 at 1 (*Pennsylvania Public Utility Commission v. MCI metro Access Transmission Services, LLC. dba Verizon Access Transmission Service*, Pa. P.U.C. Docket No. R-00050799, 2006 WL 2051138 (Pa.P.U.C.)(Order adopted June 22, 2006)("*Verizon ATS*"). While the CLECs who participated in the *Verizon ATS* proceeding may each had bill-and-keep agreements with one another because their traffic was either minimal or roughly balanced, that is not the factual situation in this case. Moreover, Core did not participate in the *Verizon ATS* proceeding and, therefore, the advocacy of the CLECs participating in that proceeding cannot bind Core here.

In item #11, AT&T's attempts to characterize its pre-complaint dealings with Core as proactive and in good faith. AT&T Exceptions at 6. This characterization is misleading and not consistent with the record evidence. *See,* Core M.B. at 10-12. Most egregious is the claim that "AT&T engaged Core in discussions." AT&T Exceptions at 6. Nothing could be further from the truth. AT&T's first reaction to Core's bills was a form dispute letter citing the lack of "an agreement with your company regarding Intrastate rates..." Core M.B. at 10-11. After an email exchange, AT&T informed Core that AT&T's traffic was "primarily all local traffic and is bill and keep" and offered to "forward a draft" of a "standard switched access agreement." *Id.* at 11. However, AT&T never forwarded that "draft." *Id.* Core tried to follow up with AT&T, but AT&T refused to respond for several months. *Id.* AT&T only agreed to communicate *after* Core made clear that it saw no other choice but to file a complaint with the Commission to resolve the matter. *Id.* AT&T then refused Core's settlement offer, which was to enter into a traffic exchange agreement and rerate all of AT&T's traffic at the Commission-approved total elemental long-run incremental cost ("TELRIC") rate, but made no counter-offer of its own. *Id.* When Core reiterated its offer to settle at TELRIC rates and enter into a formal traffic exchange agreement, Core St. No. 1 at 22 and Exhibit BLM-11, AT&T once again declined to accept or make a counter

proposal. Far from engaging with Core to negotiate a mutually acceptable resolution, AT&T has repeatedly and stubbornly avoided resolution of its payment obligations *for years.*

In item #12, AT&T restates the amount demanded in Core's complaint, insinuating that the figure stated ("$7.5 million") and the rate applied ($0.14 per minute of use) are simply too high. AT&T Exceptions at 6. AT&T neglects to mention that Core has repeatedly offered to enter into a traffic exchange agreement which would rerate all of the AT&T Indirect Traffic at the Commission-approved TELRIC rate of $0.002439 per minute, which would result in a total liability of $1,425,512.38 as of last year. Core M.B. at 29.

III. REPLY TO AT&T'S EXCEPTIONS

A. AT&T's Exception No. 1 Must Be Rejected As The Commission Has Both The Authority And The Jurisdiction Necessary To Adjudicate Core's Complaint

1. AT&T's "Agreement" With The I.D. and FCC Staff's *Amicus* Brief Is Both Superfluous and Misleading

AT&T discusses at length its support for the I.D. and its reliance on the jurisdictional analysis set forth in FCC staff's *amicus* brief. Exceptions at 9-16. For the reasons set forth in Core's Exception Numbers 1 and 2, the ALJ erred in her decision to use FCC staff's *amicus* brief as grounds to overrule the Commission's *Material Question Order* and find that the Commission lacks subject matter jurisdiction to adjudicate Core's complaint pursuant to state law. Core Exceptions at 7-21. AT&T presents nothing persuasive or compelling in its dissertation in support of the ALJ's error on this point. Rather, AT&T makes clear that its self-interest is clearly served if the Commission simply adopts the I.D's recommendation and washes its hands of this complaint permitting AT&T to continue to use Core's services without paying for them. The Commission should summarily reject this effort and disregard AT&T's stated agreement with the FCC staff's *amicus* brief and the I.D.'s erred reliance on it.

Nonetheless, in summarizing the I.D. and the *amicus* brief, AT&T does make several inaccurate and misleading comments which merit correction and/or clarification. For example, AT&T argues that "100% of the traffic at issue in the instant case is jurisdictionally interstate," based on the FCC's "end-to-end" analysis. However, this simply rehashes the same unsuccessful arguments AT&T previously raised in connection with the *Material Question Order*. In that order, the Commission found that it "has jurisdiction in this matter because both Core and AT&T are facilities-based CLECs certified by the Commission to provide local exchange telecommunications services in Pennsylvania, and that AT&T, Core and Verizon operate the switches and other facilities used to support AT&T's Indirect Traffic, including the termination function provided by Core, within the state of Pennsylvania." *Material Question Order,* at 10. The Commission relied on case law from two federal circuit courts finding that, despite the FCC's "interstate" analysis, the *ISP Remand Order* does not apply indiscriminately to *all* ISP-bound traffic. *Material Question Order*, at 9 ("we decline to supplement our focus by application of the "end-to-end" analysis where doing so would effectively cede jurisdiction without legal basis and require applying that analysis to two Commission-certificated CLECs."); *see also*, *Global Naps, Inc. v. Verizon New England, Inc.*, 444 F.3d 59, 71 (1st Cir. 2006)("A matter may be *subject to* FCC jurisdiction, without the FCC having exercised that jurisdiction and preempted state regulation. The question before us is whether the FCC intended in the *ISP Remand Order* to exercise its jurisdiction over the precise issue here, to the exclusion of state regulation."), *citing, Qwest Corp. v. Scott,* 380 F.3d 367, 372 (8th Cir. 2004) ("There is no dispute in this case that the FCC has the *power* to preempt states from establishing standards and requiring reports relating to special access services. The fighting issue is whether the FCC actually intended to do so...."). Nothing has changed since the *Material Question Order*, and the Commission can safely rely on its previous analysis.

Knowing that the Commission has already disposed of the jurisdictional question, AT&T implies that FCC staff's *amicus* brief relies on the "interstate" nature of the ISP-bound traffic in order to deny the California Commission subject matter jurisdiction over CLEC-CLEC traffic. This is misleading on two fronts. *First,* the Ninth Circuit never asked the FCC to pontificate on the "interstate" nature of ISP-bound traffic. Rather, the court focused instead on the issue whether the *ISP Remand Order's* rules "apply so as to govern the compensation due..." one CLEC from another. AT&T Exceptions at 9. This focus on the application of the FCC's rules, and not their underlying jurisdictional basis, shows that the Court is approaching the issue as one of preemption, not subject matter jurisdiction.

Second, as noted in Core's exceptions, FCC staff also focused on preemption, not jurisdiction. *See*, Core Exceptions at 11, n. 1. The *amicus* brief does not challenge the California Commission's underlying subject matter jurisdiction over intrastate CLEC-CLEC ISP-bound traffic on the basis that such traffic is "interstate." Rather, staff appears to presume that the California Commission has jurisdiction, but that its resolution of CLEC-CLEC compensation issues was preempted by the *ISP Remand Order*. *See*, FCC Staff *Amicus* Brief, at 25 ("the FCC's rules cover CLEC-to-CLEC ISP-bound calls and thus govern the resolution of the dispute... [t]he question thus becomes whether [FCC] rules preempt the [California Commission] from relying on state law to set the rate..."). In sum, the *amicus* brief offers no new analysis or reason for the Commission to unilaterally surrender its jurisdiction over intrastate carriers, facilities and traffic.

AT&T also mimics FCC staff's *amicus* brief to claim that the FCC's "rate cap" and "new market bar "rules apply to CLEC-CLEC traffic," AT&T Exceptions at 11 ("the FCC intended its new market and rate cap rules to apply to CLEC-to-CLEC traffic..."), *citing*, *FCC Amicus Brief* at 16-19, even as it admits implicitly that the "mirroring rule" only applies to ILEC-CLEC traffic. This claim runs afoul of the plain language of the *ISP Remand Order*, which *conditions*

application of the rate caps on an *incumbent* LEC's election to "opt-in" to the FCC's regime for ISP-bound traffic using the mirroring rule. *ISP Remand Order*, at ¶ 89 ("Because we are concerned about the superior bargaining power of *incumbent LECs*, we will not allow them to 'pick and choose' intercarrier compensation regimes, depending on the nature of the traffic exchanged with another carrier. The *rate caps* for ISP-bound traffic that we adopt here *apply*, therefore, *only if an incumbent LEC* offers to exchange all traffic subject to section 251(b)(5) at the same rate...")(Emphases added). Importantly, if the ILEC does not opt in, previous state commission rulings regarding ISP-bound traffic will continue to apply. *Id.* The mirroring rule and the rate caps are inextricably linked, and AT&T's post-hoc attempt to separate them is unavailing. This further demonstrates that the FCC only intended for the *ISP Remand Order* to encompass ILEC-CLEC traffic, not CLEC-CLEC traffic. *See generally,* Core Exceptions at 10-25.[2]

2. The Commission Should Reject AT&T's Exception To The I.D.'s Recommendation That The Commission Maintains Jurisdiction To Apply Federal Law

AT&T's only real dispute with the I.D. is its conclusion that the Commission maintains jurisdiction to apply federal law to determine compensation for ISP-bound traffic. AT&T Exceptions at 16-19. Even if the compensation scheme established by the *ISP Remand Order* applied here (which Core maintains it does not), the Commission would still have jurisdiction

---

[2] As for the "new market bar," it is difficult to conceive how *one* of the FCC's rules applies to CLEC-CLEC traffic, even *as all the others* explicitly reference an ILEC-CLEC relationship. AT&T claims in passing, AT&T Exceptions at 10, n. 5, that the new market bar applies to this case, so that AT&T and Core "are required to exchange ISP-bound traffic on a bill-and-keep basis." AT&T Exceptions at 10, n. 5. This is an egregious misstatement of the law, and AT&T knows it. The FCC forbeared from the new markets rule in 2004, and that rule is no longer enforceable by the FCC or a state commission. Order, *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Remand Order*, 19 F.C.C.R. 20179, 20186 (2004)("[T]he new markets rule is no longer in the public interest. This rule creates different rates for similar or identical functions.").

under the Telecommunications Act of 1996, 47 U.S.C. §§251-252 *et seq.* ("TA-96"), and its own enabling statute to enforce application of the FCC's rules as between two Commission-certificated carriers. TA-96 contemplates shared state and federal authority over all aspects of competition. *See, e.g., Global Naps, Inc. v. Verizon New England, Inc.*, 444 F.3d 59, 72 (1st Cir. 2006)(noting that TA-96 "divided authority among the FCC and the state commissions in an unusual regime of 'cooperative federalism,' with the intended effect of leaving state commissions free, where warranted, to reflect the policy choices made by their states... the goal of preserving a role for the state regulatory commissions is reflected in a number of provisions in the TCA.")(citations omitted). Of course, the Commission has already taken action to interpret the applicability of the compensation scheme of the *ISP Remand Order* as between ILECs and CLECs. *Eg.,* Opinion and Order, *Petition of Verizon Pennsylvania Inc for Resolution of Dispute Pursuant to the Abbreviated Dispute Resolution Process*, Docket No. A-310752F7000 (May 29, 2002). Nothing in Pennsylvania law, federal law or the *amicus* brief prevents it from doing so in the CLEC-CLEC context.[3]

As the California Commission noted in its *amicus* brief to the Ninth Circuit, ISP-bound traffic has local characteristics which give state commissions *at least* concurrent jurisdiction, even where (as with ILEC-CLEC traffic), the FCC has preempted state commission rulemaking. Response of Appellee and Defendant Commissioners of the California Public Utilities Commission to Amicus Brief of Federal Communications Commission, *AT&T v. Pac-West* (Feb. 22, 2011)("*California Commission Brief*"), at 13-14 ("[t]he calls at issue were in all respects

---

[3] AT&T attempts, half-heartedly, to explain why the FCC staff declined to answer the Ninth Circuit's question regarding state commission authority to enforce federal law. AT&T Exceptions at 17-19. Yet, FCC staff admits that the FCC "in its rules and orders has not directly spoken to the issue whether the [California Commission] would have jurisdiction to resolve this dispute applying federal law..."). *FCC Amicus Brief*, at 14. Despite AT&T's protestations, FCC staff effectively ceded state commission authority to enforce the *ISP Remand Order* as between two CLECs, since it could find no authority to the contrary.

intrastate, except for the FCC's declaration that ISP-bound calls often have an "end-to-end" interstate character... Even if so federalized, however, the calls retain a local or intrastate character inasmuch as they are transported from AT&T's customers to PacWest's customers along local or intrastate lines, a duality recognized by the D.C. Circuit..."); *citing*, *Core Communications v. FCC*, 592 F.3d 139, 144 (D.C. Cir. 2010) ("Dial-up internet traffic is special because it involves interstate communications that are delivered through local calls"). As a result of these intrastate characteristics, the California Commission concluded that it retains authority to resolve a complaint involving two certificated CLECs in a fashion that is consistent with the terms of the *ISP Remand Order*. *Id.* at 14. ("Nothing in the *ISP Declaratory Ruling*..., the *ISP Remand Order*, or the *ISP Mandate Order* ousts the CPUC from its jurisdiction over the intrastate parties and traffic at issue here. As discussed further below, such an ouster would be a gross distortion of the 'cooperative federalism' envisioned in the 1996 Act."). Finally, the California Commission noted that AT&T's arguments against state commission authority to resolve intercarrier compensation disputes consistent with federal law would lead to "absurd results." *Id.* at 18 ("At this stage of the proceeding, the CPUC's primary goal is assuring that the two real parties in interest have access to some forum for the reasonably prompt, reasonably certain resolution of their dispute. Allowing ILECs to bring their ISP related disputes with other carriers to the CPUC, but denying CLECs access to a similar dispute resolution service for similar disputes with other CLECs, would not only lead to absurd results..., but would also contravene the 1996 Act's premises of competition and competitive neutrality."). For all these reasons as aptly explained by the California Commission, AT&T's Exception Number 1 should be denied as the Commission has the appropriate authority and jurisdiction necessary to adjudicate Core's complaint.

B. AT&T's Exception No. 2 Seeking Removal Of Findings Of Fact ## 6, 10, 13, 16-18, 22-23, 25-26, 30-34, and 42-43 Must Be Rejected As All Are Fully Supported By The Record And Consistent With State And Federal Law

AT&T excepts to the following Findings of Fact claiming that they are not supported by the record and/or "in some instances defeated by federal and/or state law." AT&T Exceptions at 19. As discussed below, all of the Findings of Fact challenged by AT&T are supported by the record and, therefore, AT&T's exceptions should be denied.

1. Finding of Fact 13

The ALJ found that "the only traffic at issue in this case is intrastate." FOF #13. This finding is buttressed by FOF #11 ("The AT&T Indirect Traffic consists entirely of intrastate calls, that is, calls that originate and terminate in Pennsylvania") and FOF #12 ("An intrastate call can be distinguished from an interstate call by comparing the calling party's phone number with the called party's phone number"), neither of which AT&T challenges. Further, the undisputed weight of record evidence is that all of the traffic at issue in this matter originates and terminates in Pennsylvania and is, therefore, intrastate. Core St. No. 1 at 4; AT&T St. No. 1 at 8 ("all of the traffic at issue in this case is non-toll traffic"). While the parties disagree about how the traffic should be compensated, there is no factual question that all the traffic in this proceeding is intrastate.

2. Findings of Fact 16 and 17

AT&T challenges the I.D.'s findings regarding the "retail concepts" of "local and toll dialing." AT&T Exceptions at 20-22. The ALJ found that "[t]he difference between locally dialed and 'toll' calls is that locally dialed calls are generally included with the consumer's flat-rate local service charge, whereas toll calls incur a per-minute charge or 'toll.'" FOF #16. She also found that "[l]ocal and toll dialing are retail concepts." FOF #17. These findings are supported by the record.

In addition to the written testimony cited in the I.D., Core witness Mingo testified at the hearing that the distinction between "toll" and "locally-dialed" calls is a retail distinction and not determinative of intercarrier compensation obligations. Tr. at 27-28. Accordingly, Core's Tariff does not distinguish between "toll" and "locally-dialed" calls because the distinction is not relevant to a carrier's switched access payment obligations pursuant to the terms of the Tariff. Rather, the Tariff applies because the AT&T Indirect Traffic constitutes intrastate "communications" originated by AT&T and terminated by Core within the plain meaning of the Tariff and because AT&T has never exercised its right to demand a section 251(b)(5) reciprocal compensation arrangement using TELRIC rates.[4]

3. Findings of Fact 30-34

AT&T challenges FOFs #30-34, in which the I.D. describes Core's efforts to discover the AT&T Indirect Traffic on its network, analyze the Verizon tandem call records, and properly invoice AT&T for that traffic, as well as the fact that AT&T never notified Core about the traffic it was sending. AT&T Exceptions at 22-24. These findings are supported by FOF #29, which explains *why* Core began sifting the Verizon call records *when* it did. ("In 2007, Core was preparing its network to provide wholesale telecommunications services on a large scale to VOIP customers. As part of its preparations, Core purchased special equipment and hired a consultant to 'read' an historical sampling of the records Verizon had been sending Core. Because Core knew that traffic to and from VOIP carriers would include a substantial proportion of toll calls, Core

---

[4] Confusingly, AT&T appears to think that the I.D. found otherwise, i.e., that these "retail concepts" *do* determine intercarrier compensation obligations, and then attempts to *disprove the opposite* of what the I.D. found. See, e.g., AT&T Exceptions, at 22 ("whether a call is rated local for intercarrier compensation purposes depends not on how the CLEC charges the retail customer..."). AT&T's arguments should be viewed as superfluous, since they merely support the I.D.'s findings, and therefore do not constitute exceptions under the Commission's rules.

wanted to understand the CABS format, the information provided in the CABS records, and generally how to both audit and invoice CABS bills."). AT&T does not challenge this finding.

Further, FOFs #30-34 are fully supported by record evidence showing that, prior to its 2007 audit of the call records, Core did not know about, and had no reason to be aware of, the substantial volumes of telecommunications originated by AT&T and delivered to Core via Verizon's tandem switches. Core M.B. at 10. Since Core's customers were traditionally limited to dial-up ISPs, and this traffic was, to Core's knowledge, generated by Verizon end users, Core did not expect that CLECs would originate any substantial volume of traffic that would be captured in CABS records. *Id.* Instead, Core found that AT&T, since at least 2004, has been sending Core substantial volumes of traffic. *Id.* Once Core found evidence of AT&T and other CLEC indirect traffic, it embarked on a larger project of systematically processing several years' worth of magnetic tapes, in order to get a complete picture of this traffic. *Id.* As these efforts progressed Core began to invoice AT&T for the AT&T Indirect Traffic. *Id.* Prior to Core's analysis of the Verizon CABS records, AT&T never notified Core that it was sending the AT&T Indirect Traffic to Core for termination to Core's end users. *Id.* As a result, other than reading the magnetic tapes which Core reasonably believed contained only trace usage, Core had no way of knowing that the Respondents were sending the AT&T Indirect Traffic to Core for many years. *Id.*

AT&T's claim that it somehow "did tell Core" that it was sending traffic to Core, supposedly by transmitting traffic to the Verizon tandem, AT&T Exceptions at 22, is not credible. AT&T's interconnection agreement ("ICA") with Verizon, and common sense, requires AT&T to do much more. In the ICA, AT&T agreed to "exercise all reasonable efforts to enter into a reciprocal local traffic exchange arrangement (either via written agreement or mutual tariffs) with any wireless carrier, ITC, CLEC, or other LEC to which it sends, or from which it receives, local

traffic that transits the other Party's facilities over Traffic Exchange Trunks..." Core M.B. at 8; Core St. No. 1 at 7. Far from "exercis[ing] all reasonable efforts" to enter into a traffic exchange agreement with Core, AT&T made every effort, reasonable and unreasonable, to avoid resolution of its payment obligations *for years*.

4. Findings of Fact 10, 18, 22-23

The I.D. found: (1) that "AT&T's customers compensate AT&T for the use of its local exchange services, but AT&T is refusing to pay Core for completing the calls originated by AT&T's customers," FOF #10; (2) that "[f]rom June, 2004 through September, 2009, AT&T end users using the TCG network (CIC 0292) originated 406,102,334 MOUs for termination on Core's network, which AT&T has not paid," FOF #18; (3) that "[p]ursuant to this ICA and the intrastate access tariff referenced therein, AT&T pays Verizon at a tandem switched transport rate of $0.000983/MOU, a tandem transport rate of $0.000195/MOU and another tandem transport rate of $0.000045/MOU/mile," FOF #22; and, (4) that "AT&T paid some intercarrier compensation on the AT&T Indirect Traffic, but that compensation went only to Verizon for the use of its network; not to Core for its services to transport and terminate the traffic." FOF #23. All of these finding are accurate, and the I.D. cites unrebutted record evidence for each.

AT&T challenges these findings to the extent they "suggest that by not paying Core's bills AT&T somehow acted unlawfully or in bad faith." AT&T Exceptions at 24. However, that is exactly what AT&T did by adamantly disavowing *any* payment responsibility and hiding behind a myriad of tenuous and outlandish theories to try to justify its unjustifiable position that it owes Core nothing. Neither federal nor state law or policy supports AT&T's refusal to pay Core anything. Core M.B. at 29-37, Core R.B. at 4-8. Indeed, because the record supports the fact that AT&T's refusal to pay for services rendered was completely unjustifiable, unreasonable and done

only in bad faith, Core's Exception No. 9 objects to the I.D.'s failure to impose a reasonable civil penalty on AT&T and should be granted. Core Exceptions at 38-39.

5. Finding of Fact 25, 42 and 43

The ALJ found: (1) that "AT&T has not sought to enter into a TEA with Core," FOF # 25; (2) that "Core... conducted two or three brief calls with Mr. Cammarota, but was never able to engage in a discussion about AT&T's continuing refusal to pay for the AT&T Indirect Traffic...," FOF #42; and, (3) that "[b]etween roughly, August, 2008 and March, 2009, Mr. Mingo attempted to reach Mr. Cammarota at least twenty (20) times, but he never responded. Once Core wrote a formal demand letter to Mr. Cammarota, with a copy to AT&T's local counsel, Mr. Cammarota became responsive." FOF #43. All of these findings are accurate, and the I.D. cites unrebutted record evidence for each. As demonstrated more fully above (pp. 7-8), far from engaging Core, AT&T has repeatedly and stubbornly avoided resolution of its payment obligations *for years.* While AT&T claims that it "offered to forward a draft of a switched access agreement," AT&T Exceptions at 26, the record shows that it never actually followed through with that commitment. Core M.B. at 11. As far as "the possibility of establishing a rate," AT&T Exceptions at 26, the only rate AT&T has ever offered to pay is $0.00, Core R.B. at 1, even though it continues to *collect* $0.002814 per minute for its termination of locally-dialed ISP-bound traffic in Pennsylvania. *Id.* at 18.

6. Finding of Fact 26

The I.D. found that "Core does not have as a recourse for failure to receive payment to discontinue terminating AT&T's calls because federal and state law require Core to terminate all the calls it receives, and if it is not compensated for its termination service, Core must seek payment through the regulatory complaint process." FOF #26. The undeniable accuracy of finding is painfully evident and has been throughout this proceeding.

AT&T claims Core had options beyond pursuing this litigation to address AT&T's nonpayment for services rendered. AT&T Exceptions at 27. Yet the only "option" suggested by AT&T – to file an additional tariff specifically for the termination of locally-dialed ISP-bound traffic – is simultaneously attacked by AT&T as not possible through the unsubstantiated claim that all CLECs operate under untariffed and often unwritten "bill-and-keep" arrangements, *Id.* at 6, such as the one AT&T allegedly has with Core. AT&T offers no other "options" that Core supposedly could have pursued. To the contrary, the Commission has already correctly concluded that "[w]e also find without merit AT&T's contention that because these Parties do not have an interconnection agreement, in as much as CLECs cannot compel other CLECs to negotiate interconnection agreements under the 1996 Telecommunications Act, 47 U.S.C. §§151 et seq., as amended, Core is somehow precluded from making its Complaint before this Commission." *Material Question Order*, at 10, n. 5.

AT&T also tries to minimize the impact to Core of the well-established law 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. Opinion and Order, *Palmerton Telephone Company v. Global NAPs South, Inc., Global NAPs Pennsylvania, Inc., Global NAPs, Inc. and Other Affiliates*, Docket No. C-2009-2093336 at 7-8 (May 5, 2009).

According to AT&T, this inability to block traffic "was essentially a non-issue" due to the decrease in traffic flow from AT&T over the years. AT&T Exceptions at 28. This ridiculous self-serving argument can be restated as saying that because one stole four million widgets in the past but now only steals one thousand the owner of the widgets is unharmed. The undisputed fact, which is consistent with FOF #6, is that AT&T has sent large volumes of telecommunications traffic to Core and continues to send traffic to Core and that Core has incurred and continues to

incur costs to provide this service. Core St. No. 1 at 14; Core St. No. 1SR at 2. Also undisputed is the fact that AT&T has never paid and continues to refuse to pay for Core's services rendered. As Core is forced to continue to provide the services and AT&T refuses to negotiate any good faith and reasonable arrangement requiring it to pay for these services, Core has been left with no choice but to seek assistance from the Commission.

C. AT&T's Exception No. 3 Must Be Rejected As A Proper Application Of Controlling State Law To Core's Complaint Results In Granting Core All The Relief Requested

1. The Relief Sought By Core Does Not Violate Pennsylvania State Law

According to AT&T, application of Core's Tariff to the AT&T Indirect Traffic would violate Pennsylvania state law because: (1) Core never filed a tariff establishing a specific rate for "locally-dialed, ISP-bound traffic" under 66 Pa.C.S. § 1302; (2) applying the Tariff Core did file would result in a discriminatory rate under 66 Pa.C.S. § 1304; (3) AT&T is required to receive the most advantageous rate offered by Core under 66 Pa.C.S. § 1303, (4) applying the tariff would require the Commission to engage in retroactive ratemaking; and, (5) all other CLECs utilize a "bill-and-keep" compensation arrangement. AT&T Exceptions at 29-32. None of these arguments have any merit and all should be rejected.

(a) Applying Core's Tariff Will Not Result In A Violation Of State Tariffing Laws

Core has demonstrated that the plain language of its Tariff can and should be applied to the AT&T Indirect Traffic at issue in this case.[5] *See,* Core Exceptions at 28-32; *and,* Core M.B. at 17-

---

[5] In a footnote, AT&T claims that "Core has emphatically and categorically maintained that locally dialed, ISP bound traffic is not and cannot be access traffic – which means that it is not and cannot be subject to switched access charges." AT&T exceptions at 29, n.10. For support AT&T relies on its contorted view of Core's advocacy in its interconnection arbitration with Embarq. The context in which Core's statements arose was the issue of so-called "VNXX traffic," calls which are locally dialed and which originate and terminate in the same LATA, although in different exchange areas. See, Core M.B. at 28. In the Embarq case, Core argued (correctly) that the ISP Remand Order applied equally to VNXX traffic and to "local" traffic that physically

25. Indeed, Core has shown that 66 Pa. §§1302-1303 and the filed-rate doctrine *mandate* Commission enforcement of Core's Tariff, unless and until the Tariff is modified prospectively. *Id.* at 31. The fact that Core has no written agreement with AT&T only reinforces the importance of enforcing the filed-rate doctrine, unless and until AT&T enters into a traffic exchange agreement with Core. AT&T's real quibble is that Core did not file a rate specifically applicable to "locally dialed, ISP-bound traffic." AT&T Exceptions at 30. Here, AT&T is demanding a level of specificity which the statute, the filed-rate doctrine, and Commission precedent simply do not require. Core's Tariff applies equally to all intrastate "communications." Core M. Br. at 19. And, the Commission has found that the *ISP Remand Order* does not apply to CLEC-CLEC traffic. Thus, Core is under no obligation to file a separate rate for "locally dialed, ISP-bound traffic." Moreover, AT&T never filed a complaint or initiated any other proceeding challenging Core's tariff.

AT&T's rate discrimination and "most advantageous rate" claims, AT&T Exceptions at 30-31, are preposterous. *First*, Core's Tariff *does* contain a rate, and enforcement of that rate is in no way discriminatory, especially considering that Core has filed complaints against CLECs other than AT&T. *Second,* Core does not *control* the rates it is permitted to charge other carriers, and therefore is powerless to discriminate. Due to the FCC's implementation of TA-96, including the *ISP Remand Order*, different rates apply to the termination of traffic depending on what carriers are involved and the jurisdiction of the traffic, Core M.B. at 42-43; Core R.B. at 18, even though the termination function is the same regardless of these regulatory classifications. *Third*, AT&T

---

originates and terminates in the same exchange area. See, id. When Core stated, in that case, that the ISP Remand Order applies to "all" ISP-bound traffic, it clearly intended "all" to mean both "VNXX" and "local." In addition, the Embarq case is an ILEC-CLEC interconnection arbitration, in which the ISP Remand Order clearly applies, see Tr. at 109, and not a CLEC-CLEC dispute, in which the *ISP Remand Order* has no application. See *Material Question Order.*

itself collects the "discriminatory" rate of $0.002814/MOU for the termination of locally-dialed ISP-bound traffic on its Pennsylvania network, even though AT&T pays Core nothing for its termination of the same traffic, Core R.B. at 18, and even though the *ISP Remand Order* rate for ISP-bound traffic from ILECs is capped at $0.0007. Apparently, AT&T's argument really is simply that it would be discriminatory *to require AT&T to pay anything*, because it would prefer not to do so.

Perhaps the most ludicrous argument of all is the claim of "discriminatory rates" based on the notion that "no one else pays" so AT&T should not have to pay either. AT&T Exceptions 31. *First,* under this reasoning, the Commission should not require any ratepayer to pay his or her utility bill because some other ratepayers do not pay their bills. This would be a ridiculous result. AT&T should not be permitted to rely on the bad behavior of some as support for its position that it should be legally permitted to engage in the same bad behavior. *Second,* undisputed record evidence shows that four Commission-certificated CLECs *do* pay Core for the termination of their locally-dialed traffic, either pursuant to the Tariff, or a traffic exchange agreement. Core Hearing Exhibit No. 5; Tr. at 50-54. *Finally,* and setting aside AT&T's strained interpretations of Pennsylvania law, the bottom line is that Core performed a service for AT&T and Core deserves to be paid for that service. Core R.B. at 19.

AT&T's claim that "the Commission would have to create a new rate" in order to grant the relief Core seeks, AT&T Exceptions at 31-32, also has no merit. Core is asking the Commission to require AT&T to comply with Core's existing Tariff and, therefore, it is not seeking a "new rate" to apply retroactively. Core M.B. at 17-25. Further, if Core's alternate request is granted and the TELRIC rate of $0.002439 per minute is applied, AT&T would not be "harmed" by the application of that rate because it is many times less than the tariffed access rate. Core M.B. at 25-29. AT&T's implicit request that the Commission apply an effective rate of $0.00 per minute

(under the euphemism of "bill-and-keep") is no more or less "retroactive" than Core's position in this case. AT&T should not be heard to complain about possible retroactive effects when it has done nothing to help the Commission resolve compensation for the AT&T Indirect Traffic. Core R.B. at 17-19. Finally, to the extent the Commission concludes Core should have filed a different rate, such as TELRIC, case law precedent maintains that the Commission retains discretion, and indeed, the obligation, to address that concern in way that does not deprive Core of payment for services rendered. Core R.B. at 17, *citing, Columbia Gas v. Pennsylvania Pub. Util. Comm'n,* 613 A.2d 74, 80 (Pa. Commw. 1992)("[T]he Commission ordered Columbia to adopt billing and termination procedures that ultimately created increasingly large arrearages and at the same time prevented Columbia from terminating service and writing them off as uncollectible... The money Columbia seeks to recover now as an expense definitely became owing in the past; however, under the peculiar circumstances of this case, the present rate proceeding is the first time that Columbia had an opportunity or a reason to seek recovery of that money in rates.")(citations omitted).

(b) Requiring AT&T To Pay Core For Services Rendered Will Not Upset Other Carriers' Legitimate Bill-And-Keep Arrangements

AT&T's exaggerated claims about potential ramifications of adopting Core's position here are also nonsensical. AT&T Exceptions at 32. Core is not seeking a declaratory order or asking the Commission to set forth a default reciprocal compensation arrangement applicable to all CLECs as a result of this proceeding. Rather, Core has filed a complaint, pursuant to its tariff, against one carrier and is asking the Commission to require that carrier to pay as required by the tariff. Core is not asking the Commission to disrupt CLEC-to-CLEC arrangements governing the traffic of non-parties to this case as those arrangements would remain unchanged by the outcome of this case. In other words, the reciprocal compensation scheme covering traffic exchanged by other CLECs, whether it is bill-and-keep or something else, would remain in place

notwithstanding the decision in this proceeding. Core R.B. at 11. AT&T's scare tactics regarding the potential ramifications of award Core relief in this case are simply not credible.

2. The Commission's Decision in *Palmerton v. Global NAPs* is Applicable

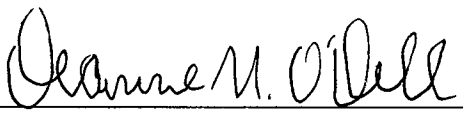
Predictably, AT&T attempts to distinguish its "refusal to pay for services rendered" behavior here from Global NAPs' refusal to pay Palmerton for services rendered. AT&T Exceptions at 33. None of these arguments are convincing. AT&T is exactly like Global NAPs. In *Palmerton*, the Commission noted with disapproval that "following the receipt of Palmerton's billing invoices, GNAPs could have approached Palmerton in order to initiate good faith negotiations for a traffic exchange agreement encompassing the subject of IP enabled traffic. This has not happened." *Palmerton*, at 35. Like Global NAPs, AT&T utilized Core's services for years without payment and then, when Core approached AT&T to address its nonpayment, AT&T refused and continues to refuse to pay anything for services rendered. Core St. No. 1 at 10-12. AT&T's defense that "Core was not regularly billing AT&T" is not compelling nor does it address the fact that even with Core's regular billing of AT&T, AT&T still refuses to pay for services rendered. Finally, as discussed above in the previous section, requiring AT&T to pay for services rendered would not lead to a discriminatory result. On the contrary, it would be consistent with this Commission's clear and reasonable position that carriers must pay a reasonable rate for services rendered.

IV. CONCLUSION

For all the reasons set forth above, the Commission should deny the exceptions of AT&T and grant the exceptions of Core. Upon doing so, AT&T should be directed to pay Core for the termination of past traffic pursuant to Core's intrastate access tariff, Pa. P.U.C. Tariff No. 4. If, however, the Commission decides not to apply Core's Tariff to the previously terminated traffic (which it should), Core requests in the alternative that AT&T be directed to pay Core at the

Commission-approved tandem termination rate of $0.002439 per minute as determined using the TELRIC model. To ensure payment for future traffic, Core also requests that the Commission direct AT&T to negotiate in good faith with Core to reach a mutually acceptable reciprocal compensation arrangement governing payment. Finally, Core requests that – due to the circumstances in this case – the Commission issue an appropriate civil penalty on AT&T to address its prior actions in refusing to compensate Core for its substantial use of Core's network and to ensure future good faith performance. As AT&T's behavior clearly shows, it will simply continue to engage in its brand of lawless gamesmanship at the expense of Core and the public until ordered to do otherwise.

Respectfully submitted,



Deanne M. O'Dell, Esq.
Attorney I.D. # 81064
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Floor
Harrisburg, PA 17101
717.237.6000
Of Counsel:

Christopher Van de Verg, Esq.
General Counsel
Core Communications, Inc.
209 West Street, Suite 302
Annapolis, Maryland 21401
(410) 216-9865

Dated June 23, 2011

Attorneys for Core Communications, Inc.