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February 15, 2013

**VIA FEDERAL EXPRESS OVERNIGHT**

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

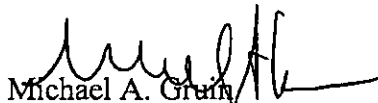
**Re: Petition of Core Communications, Inc. for Arbitration of Interconnection Rates, Terms and Conditions with Windstream Pennsylvania, Inc. f/k/a Alltel Pennsylvania, Inc. (now Windstream Pennsylvania LLC) Pursuant to 47 U.S.C. § 252(b)**  
**Docket No. A-310922F7004**

Dear Secretary Chiavetta:

In accordance with the Secretarial Letter issued on October 4, 2012 in the above-captioned matter, enclosed please find for filing PROPRIETARY and PUBLIC versions of the Supplemental Reply Brief and accompanying Technical Evidentiary Affidavit of Core Communications, Inc. in this matter. Copies have been served in accordance with the attached Certificate of Service. Please feel free to contact me if you any questions or concerns.

Best regards,

STEVENS & LEE

  
Michael A. Grain

cc: Certificate of Service  
Hon. Robert F. Powelson, Chairman (via first class US Mail)  
Hon. John F. Coleman, Jr., Vice-Chairman (via first class US Mail)

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Secretary Chiavetta  
February 15, 2013  
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Hon. James H. Cawley, Commissioner (via first class US Mail)  
Hon. Wayne E. Gardner, Commissioner (via first class US Mail)  
Hon. Pamela A. Witmer, Commissioner (via first class US Mail)  
Robert A. Marinko, Deputy Director – Technical, Office of Special Assistants

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**In re: Petition of** :  
**CORE COMMUNICATIONS, INC.** : **Docket No.: A-310922F7004**  
 :  
Petition of Core Communications Inc. for :  
Arbitration of Interconnection Rates, Terms :  
and Conditions with Windstream Pennsyl- :  
vania, Inc. pursuant to 47 U.S.C. § 252(b) :

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**SUPPLEMENTAL REPLY BRIEF  
OF  
CORE COMMUNICATIONS, INC.**

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**\*PUBLIC VERSION\***

Pursuant to the Secretarial Letter dated October 4, 2012 and subsequent extension letters dated October 19, 2012 and December 14, 2012, Core Communications, Inc. ("Core") hereby files its Supplemental Reply Brief and accompanying Technical Reply Affidavit in the above-captioned case. The discussion herein is organized around the seven points listed in the Commission's October 19 letter, and responds to the Supplemental Brief filed by Windstream Pennsylvania, Inc. ("Windstream") on January 11, 2013 ("Windstream Supp. Brief").

Windstream states that "[t]he FCC did not change the types of traffic that are subject to access or reciprocal compensation charges." Windstream Supp. Brief, at 2. This is incorrect, inasmuch as the FCC clarified carriers' obligation to pay intercarrier compensation (ICC) for "VOIP-PSTN" traffic. *See*, Core Supplemental Initial Brief ("Core Supp. Brief"), at 3-4.

Windstream states that "[t]he *Transformation Order* did not make any changes to the interconnection obligations of telecommunications carriers." Windstream Supp. Brief, at 2. using section 251(c)(2) interconnection arrangements to exchange VOIP traffic. This too is incorrect, inasmuch as the FCC has clarified that LECs may exchange VOIP-PSTN traffic

over section 251(c)(2) interconnection arrangements. *See*, Core Supp. Brief, at 4-5.

With respect to Windstream's request that "[w]ere any participant to seek to adduce new or additional facts, then the case should be remanded to the ALJ..." Windstream Supp. Brief, at 3, Core takes no position on whether a remand is legally required under the Commission's rules or FCC rules. Core only notes that this case has been pending for some time, and no doubt the Commission shares the parties' mutual desire to bring this litigation to a close without undue delay while at the same time respecting due process rights and the need to refresh the record in light of intervening events such as the *USF/ICC Transformation Order*. From a practical point of view, Core believes the Commission's chosen course of taking additional briefing and affidavits affords the parties ample opportunity to update the Commission and refresh the record.

In response to Windstream's note regarding the parties' ongoing negotiations, Windstream Supp. Brief, at 3, Core reviewed the information Windstream transmitted, as well as sought other information from other carriers, in an attempt to discover a competitive transport route into the Windstream tandems, similar to the routes Core was able to identify to the CenturyLink tandems. However, Core was unable to identify any competitive alternative to purchasing transport from Windstream at highly inflated, noncompetitive special access rates. Accordingly, Core is not in a position to make the same alternative proposal with respect to Windstream that it did make with respect to CenturyLink.

In its discussion of **NIA Issue No. 1 – Points of Interconnection**, Windstream cites to a passage from the R.D. in this case which states that "Core provides service for ISPs. Its customers do not originate any traffic." Windstream Supp. Brief, at 4 and note 8. As the technical affidavit Core filed with its Supplemental Initial Brief indicates, Core's services are

no longer restricted to ISPs; Core now serves voice customers and handles outbound traffic. Technical Affidavit of Bret L. Mingo (“Core Tech. Aff.”), at ¶¶ 2-8. As a result, Core will *definitely need for Windstream to designate an IP on its network in each LATA, to which Core will bring its originating traffic to Windstream for termination, pursuant to Core’s dual-IP interconnection proposal.* Further, with respect to Windstream’s argument that federal law requires that each interconnection point be located on the incumbent LEC’s network, Windstream Supp. Brief, at 5, the fact that Core is in fact originating traffic in Pennsylvania means that Core will need to establish an IP on Windstream’s network in each LATA, pursuant to its own proposal.

With respect to **ICC Issue No. 1 - VNXX Call Rating**, Windstream states that it “is not aware of any court or state commission decisions that address this specific issue.”

(Windstream Brief, at 11). Although Windstream was likely simply reporting that there are no *new* cases involving VNXX, Core feels constrained to note that, in 2008, the Commonwealth Court affirmed *this Commission’s* 2006 decision that VNXX traffic is “local.”<sup>1</sup>

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<sup>1</sup> *RTCC v. Pennsylvania P.U.C.*, 941 A.2d 751, 758-59 (“*RTCC*”) (“Under Chapter 30 of the Code, a local exchange carrier must offer the transmission of messages or communications that originate and terminate within a prescribed local calling area for a fee to the public. Petitioners contend that this is not what Core does, nor is it what Core contemplates doing in the territories of the RLECs. Petitioners admit that Core currently owns and operates five switch equivalents (they do not admit that they are switches), all located in the territory of Verizon. Core leases capacity on other carrier’s transmission lines to connect its ISP customers to Core’s switch equivalents. Core provides no connections from end users to Core’s ISP customers, but relies on the use of VNXX to permit its ISP customers to make a “local” telephone number available which uses the RLEC’s facilities to connect the end user with the ISP. Therefore, Core offers its ISP customers to arrange for their end user customers to make a “local” call from Allentown to Philadelphia, a call that is not normally local. This transmission does not “originate and terminate within a prescribed local calling area.” Thus, Petitioners contend Core does not meet the definition of a “local exchange telecommunications company,” a term considered synonymous with “local exchange carrier.” Petitioners believe that dial-up calls to a fixed point to access the internet using local numbers outside a prescribed local calling area is beyond the Commission’s jurisdiction.

Core, on the other hand, considers dial-up calls to a fixed point located outside a prescribed local calling area but within a LATA to constitute a local call so long as the NXX combination is properly rated as a local call. The Commission found that classification of the NXX, not the physical location of the NXX, is the basis used for determining if a call is local or long-distance. Thus, Core’s placement of its NXXs within a LATA, but outside of the rural carrier’s local calling area, would still be a local call. Based on the above, the Commission properly determined that Core was a local exchange service.”). A copy of this decision is attached hereto as **Tab A**.

Windstream states that “[n]either Windstream nor any of its ILEC or CLEC affiliates have at any time used VNXX arrangements to establish a toll call as a local call for intercarrier compensation purposes.” Windstream Supp. Brief, at 11. Neither has Core. Core’s position has always been that toll calls dialed on a 1+ basis are toll calls, period. However, as the Commission has already determined, locally-dialed calls which fall within Windstream’s definition of “VNXX” are local calls, not “interexchange” or “toll.” Indeed, Core has a traffic exchange agreement (“TEA”) with one of Windstream’s CLEC affiliates to this effect. Technical Reply Affidavit of Bret L. Mingo (“Core R. Tech. Aff.”), ¶¶ 2-5.

Windstream claims that the FCC’s definition of “Non-Access Telecommunications Traffic” excludes “interstate or intrastate exchange access,” including “VNXX traffic.” Windstream Supp. Brief, at 14. But in Pennsylvania, “VNXX traffic” has never been found to be exchange access traffic—indeed the Commission has found it to be “local,” as demonstrated herein, above.

Windstream’s discussion of federal cases, Windstream Supp. Brief, at 14-16, adds little that is new to the discussion of VNXX issues which began in the parties’ briefs and continued through exceptions and Supplemental Comments filed in 2009.

In *Global NAPs, Inc. v. Verizon New England Inc.*, 603 F.3d 71 (1<sup>st</sup> Cir. 2010) (“*Global NAPs*”), the First Circuit simply repeated its previous findings that the *ISP Remand Order* is limited in scope to “local” traffic. The court reviewed the FCC’s 2008 *ISP Mandamus Order*, and found (wrongly in Core’s view), that its “conclusion that the FCC preempted only state regulation of *local* ISP traffic remains untouched.” *Global NAPs*, at 83. To reiterate, Core’s position is that the FCC has repeatedly stated, most recently in the *ICC Transformation Order*, that reciprocal compensation and the *ISP Remand Order* are not limited to “local” traffic. Core

Supp. Brief, at 2.

In *Level 3 Communications, Inc. v. Public Utility Com'n of Oregon*, 855 F.Supp.2d 1179 (D.Ore. 2012)(“*Level 3*”), a federal district court found that “state commissions have the authority to determine what geographic areas should be considered “local areas”” for reciprocal compensation purposes. *Level 3*, at 1188. The court noted that the Oregon commission “has banned VNXX arrangements within the state...” *Id.*, at 1183. The Commission, however, has taken a very different regulatory course, and has approved the use of VNXX arrangements as a local exchange service.<sup>2</sup> The only significance of *Level 3* is its recognition that each state commission ultimately has the authority to resolve the VNXX issue on its own terms, a proposition with which Core generally agrees.<sup>3</sup>

In response to Windstream’s discussion, Windstream Supp. Brief, at 19, Core’s definition of “Section 251(b)(5) Traffic” is fully supported by the *ICC Transformation Order*. See, Core Supp. Brief, at 2-4. Further, Windstream’s statement that is “does not have 251(b)(5) Traffic defined in any interconnection agreement,” Windstream Supp. Brief, at 20, is incorrect, or at least incomplete. Core’s TEA with a Windstream CLEC affiliate operating in Pennsylvania **begin confidential**

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<sup>2</sup> *RTCC v. Pennsylvania P.U.C.*, 941 A.2d 751, 758-59. (Quoted at length above, at note 1).

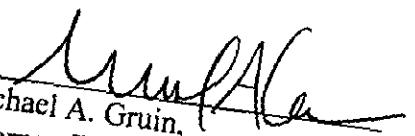
<sup>3</sup> As noted herein, above, Core’s position with respect to *ISP-bound* VNXX traffic is that such traffic was fully considered and recognized by the FCC as coming within the ambit of the 2001 *ISP Remand Order*, and that the FCC has stated repeatedly that whether or not a call is “local” does not determine whether or not that call is subject to reciprocal compensation. However, Core also recognizes that the Commission may have a different position on this issue. See, Opinion & Order, *Core Communications, Inc. v. AT&T Communications of Pennsylvania, LLC and TCG Pittsburgh, Inc.*, Pa. P.U.C. Dockets C-2009-2108186 & C-2009-2108239, at 79-80. Core states that, in view of the Commission’s recognition that VNXX traffic is considered “local” under Pennsylvania law, *RTCC*, at 758-59, the issue of whether the *ISP Remand Order* encompasses VNXX traffic may be moot.

**end confidential**

Respectfully Submitted,

STEVENS & LEE

BY

  
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Fax (610) 988-0852  
*Attorney for Core Communications, Inc.*

February 15, 2013



BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Petition of :  
CORE COMMUNICATIONS, INC. : Docket No.: A-310922F7004  
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Petition of Core Communications Inc. for :  
Arbitration of Interconnection Rates, Terms :  
and Conditions with Windstream Pennsyl- :  
vania, Inc. pursuant to 47 U.S.C. § 252(b) :

TECHNICAL REPLY AFFIDAVIT OF BRET L. MINGO

\*PUBLIC VERSION\*

Bret L. Mingo, being duly sworn, states as follows upon personal knowledge:

- 1. I am President and CEO of Core Communications, Inc. ("Core").
- 2. In my affidavit dated January 11, 2013, I stated that:

“14. Over the past three years, Core has negotiated three (3) traffic exchange agreements (“TEAs”) with other CLECs also operating in Pennsylvania, as well as neighboring states.

15. In each of these TEAs, Core and the other CLEC have agreed to determine the jurisdiction of each call that passes between them based upon the NPA-NXX of the calling and called parties. The parties have further agreed to determine whether each call should be rated as local or toll based upon the NPA-NXX of the calling and called parties.”

- 3. One of these TEAs is between Core and a CLEC affiliate of Windstream—

**begin confidential**

**end confidential.** At the time this TEA was

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entered into, this CLEC was not owned by Windstream, but was subsequently acquired by Windstream. This TEA remain in effect today.

4. The TEA referenced in the preceding paragraph includes the following definition:

**begin confidential**

**end confidential**

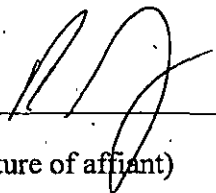
5. The same TEA also provides:

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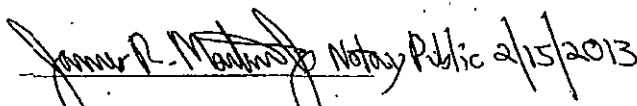
**end confidential**

6. This concludes my affidavit.

I, Bret Mingo, (Affiant) being duly sworn according to law, depose and say that I am authorized to make this affidavit on behalf of Core Communications, Inc., being the holder of the office of President with that corporation, and that, I am an employee or agent of Core Communications, Inc., and that the facts above set forth are true and correct to the best of my knowledge, information, and belief.

  
\_\_\_\_\_  
(Signature of affiant)

Sworn and subscribed before me this 15<sup>th</sup> day of February, 2013

  
\_\_\_\_\_  
(Signature of official administering oath)



James R. Martin, Jr.  
Notary Public Of Maryland  
Anne Arundel County  
My Commission Expires Nov. 30, 2013

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**In re: Petition of** :  
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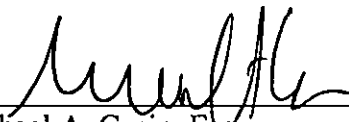
**CERTIFICATE OF SERVICE**

I hereby certify that on this 15th day of February, 2013 copies of the foregoing Supplemental Reply Brief have been served, via electronic mail and U.S. Mail, upon the persons listed below in accordance with the requirements of 52 Pa Code Sections 1.54 and 1.55 of the Commission's rules.

Cesar Caballero, Esq.,  
Windstream  
4001 Rodney Parham Rd.,  
Little Rock, AR, 72212

Norman Kennard, Esq.  
Thomas, Long, Niesen & Kennard  
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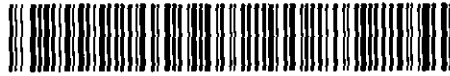
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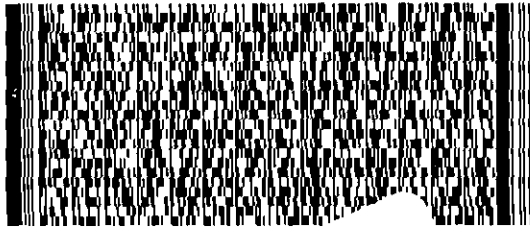
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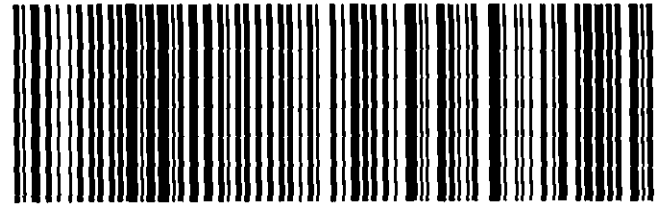
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