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March 7, 2013

**VIA ELECTRONIC FILING**

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:

Please accept this letter as the response of Core Communications, Inc. to the Motion to Strike filed on February 15, 2013 by Windstream Pennsylvania, Inc. in this matter. For the reasons set forth below, Windstream's motion should be summarily rejected.

On October 4, 2012, the Commission reopened the record in the above-styled case *sua sponte* to take account of developments in telecommunications regulation, and in the industry, since the record was closed several years ago. The Commission found:

The Commission believes that the timely and comprehensive disposition of this matter requires that the evidentiary record of this proceeding be reopened for the very limited purpose of submitting supplemental initial and reply briefs that can correspondingly be accompanied by appropriately executed technical evidentiary affidavits. Secretarial Letter dated Oct. 4, 2012, at 1.

With respect to the use of technical affidavits to help refresh the record, the Commission specifically found:

The Commission has recently utilized this process in order to update the record of pending telecommunications case adjudications and gauge the impact of relevant

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developments in the federal regulatory arena. *See generally, Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund, et al.*, Docket Nos. I-00040105, C-2009-2098380 *et al.*, M-2012-2291824 (Order entered March 20, 2012).

Neither at the time the Secretarial Letter was issued, nor at any point since, did any party file any challenge to the use of technical affidavits to refresh the record. For example, no party filed a petition asking the Commission to reconsider the use of technical affidavits, or requesting a modification to the Commission-ordered procedure. Notably, in this period, the Commission extended the deadline for supplemental briefs on two occasions at the joint request of the parties. When the parties requested an extension of the briefing deadlines, neither party noted any concern with or objection to the use of technical evidentiary affidavits. .

On February 15, 2013, Windstream filed a document titled “Motion of Windstream to Strike Affidavit Containing Information Not of Record.” Having waited for Core to file two technical affidavits pursuant to the Secretarial Letter, Windstream now complains that it “does not agree with and objects to the procedure of employing untested affidavits in substitution of the process of testimony, discovery and cross examination that was used to develop the record in this case.” Windstream Motion, at 4. The motion appears to rely upon analogies from Pennsylvania state civil practice for support, but ignores the reasons that the Commission itself articulated for using affidavits to refresh the record in this case. The motion (which is unverified) continues by challenging the assertions made in Core’s technical affidavits—challenges which, ironically, Windstream could have made in its own technical affidavits. Whatever the merits of Windstream’s motion, the Commission has set forth a procedure, Windstream failed to challenge that procedure, both parties followed that procedure, and Core (at least) relied upon the availability of that procedure in responding to the Commission’s directive to refresh the record.

If Windstream objected to the procedure ordered by the Commission to refresh the record in the case, the time to file a motion would have been at the time the Commission issued its original Secretarial Letter in October 2012, not five months later after both parties had filed their technical affidavits and supplemental briefs. By failing to do so, Windstream should be deemed to have waived its rights to object to the process. The Commission should reject Windstream’s motion on any or all of these grounds.

Best regards,

STEVENS & LEE



Michael A. Gruin

cc: Certificate of Service  
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 Pennsylv- :  
ania, Inc. pursuant to 47 U.S.C. § 252(b) :

**CERTIFICATE OF SERVICE**

I hereby certify that on this 7<sup>th</sup> day of March, 2013 copies of the foregoing Reply to Motion 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.

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