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August 11, 2014

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

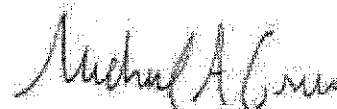
Dear Secretary Chiavetta:

Enclosed for filing please find Core Communication, Inc.'s Answer to Windstream's Petition for Reconsideration and Clarification in the above-captioned matter. Copies of the Answer were served in accordance with the attached Certificate of Service.

Thank you, and feel free to contact me if you have any questions or concerns.

Best regards,

STEVENS & LEE



Michael A. Gruin

cc: Certificate of Service
Cheryl Walker-Davis Director, Office of Special Assistants

Philadelphia • Reading • Valley Forge • Lehigh Valley • Harrisburg • Lancaster • Scranton
• Wilkes-Barre • Princeton • Cherry Hill • New York • Wilmington

A PROFESSIONAL CORPORATION

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Core Communications Inc. for	:	
Arbitration of Interconnection Rates, Terms	:	Docket No.: A-310922F7004
and Conditions Pursuant to 47 U.S.C. § 252	:	
with Windstream Pennsylvania, LLC	:	

**CORE COMMUNICATIONS, INC. ANSWER TO PETITION OF WINDSTREAM
PENNSYLVANIA, INC. FOR RECONSIDERATION AND CLARIFICATION**

Pursuant to Sections 703(f) of the Public Utility Code, 66 Pa. C.S.A. § 703(f), and 52 Pa. Code § 5.572(e), Core Communications, Inc. (“Core”) files this answer to the Petition of Windstream Pennsylvania, Inc. for Reconsideration and Clarification (“Windstream Recon Petition”) of the Commission’s July 9, 2014 Opinion and Order (“Order”) issued in the above-captioned proceeding.

I. Introduction and Background

1. This matter involves a Petition for Arbitration (“Arbitration Petition”) filed by Core on March 30, 2006, pursuant to Subsection 252(b) of the Federal Telecommunications Act of 1996 (TA 96), 47 U.S.C. § 252(b), and applicable Commission Orders, rules and regulations. The Petition is for the arbitration of unresolved issues related to the establishment of an Interconnection Agreement (“ICA”) between Core and Windstream Pennsylvania, LLC (“Windstream”).

2. Core’s Petition sought resolution of multiple interconnection issues that were in dispute between the parties.

3. The procedural history of this matter is set forth at length in the Order and in the January 9, 2008 Recommended Decision (“R.D.”) of Administrative Law Judge David Salapa.

4. The Order made rulings on each of the remaining disputed issues identified by the parties and ordered the parties to file an Interconnection Agreement consistent with the Commission's resolution of the disputed issues within thirty (30) days of the date the Order was entered (i.e., by August 11, 2014). Order, at 88-91.

II. Legal Standards

5. Section 703(g) of the Public Utility Code, 66 Pa. C.S.A § 703(g), authorizes the Commission to reopen the record in a proceeding to clarify or reconsider a prior Order.

6. Section 5.572 of the Commission's regulations, 52 Pa. Code § 5.572, sets forth the procedure for seeking clarification or reconsideration of an Order.

7. The well-established standards for granting reconsideration or clarification of a prior Commission Order are set forth in *Duick v. PG&W*, 56 Pa. P.U.C. 553 (1982) ("*Duick*"):

A petition for reconsideration, under the provisions of 66 Pa. C.S. §703(g), may properly raise any matters designed to convince the commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part.....What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.(*Duick*, at 59).

8. In this case, Windstream seeks reconsideration of the Commission's ruling on three issues: (1) the Commission's directive that Core is required interconnect at one, but only one, IP on Windstream's network in each LATA; (2) the Commission's rejection of both parties' proposed definitions of "IntraLATA Toll Traffic;" and (3) the Commission's rejection of certain language Windstream proposed with respect to NXX code assignment. Core opposes each of Windstream's requests for reconsideration, as set forth herein below.

III. Argument

a. Commission and Federal Court Precedent Dictate that a CLEC Must Only Interconnect with an ILEC at One (1) POI In Each LATA

9. Windstream “takes issue” with the Commission’s directive that Core need only connect at the tandem level when traffic exchanged between the parties exceeds a DS1 level, Windstream Recon Petition, at ¶¶ 14-15; and that “Core does not need to directly interconnect to each Windstream end office subtending to a third party tandem if the level of traffic exceeds a DS1 threshold.” Windstream Recon Petition, at ¶ 15. Windstream alleges that “[b]oth directives are unrealistic and cost prohibitive, and, perhaps most importantly, it is technically infeasible for Core to establish only one POI per LATA given Windstream’s network architecture.” Windstream Recon Petition, at ¶ 15.

10. As the Commission ruled, however:

[I]t is important to address the Federal court precedent that, unless it otherwise agrees, *a CLEC must only establish interconnection with an ILEC’s network at one POI per LATA in which it wishes to exchange traffic.* Specifically, as noted by Core in its Exceptions, *the Third Circuit considered this matter in MCI v. BAPA, which overturned a Commission decision adopting Verizon’s proposal to require MCI to interconnect at multiple POIs in a LATA.* In doing so, the Third Circuit found that CLECs may choose at which location to connect on the ILEC’s network, subject only to concerns of technical feasibility. *The Third Circuit reasoned that the ILEC (Verizon) presented no evidence that interconnection was not technically feasible or that it was technically necessary for the CLEC (MCI) to interconnect at each tandem access serving area within the LATA.* At the same time, the Third Circuit found that if a CLEC’s decision on the location of an IP/POI causes an ILEC to incur expenses, the CLEC may be required to assume those related costs. *MCI v. BAPA*, 271 F.3d at 517 518. As indicated in the record, and outlined by Core in its Exceptions, Windstream PA operates in six LATAs and eleven service territories in Pennsylvania. Therefore, *based upon the above Federal precedent, we shall also instruct the Parties to adopt language in the ICA that clarifies that Core must only establish one technically feasible POI per LATA in which it*

plans to exchange traffic with Windstream PA. Order, at 30-31.
(Emphasis added).

11. As for the Commission's directive that "Core need only connect at the tandem level when traffic exchanged between the parties exceeds a DS1 level," Windstream Recon Petition, at 6, that directive is wholly consistent with what Windstream requested for NIA Issue 4. *See*, Order, at 32. ("Windstream PA proposes to allow indirect interconnection until the point at which traffic to a specific Windstream PA end office reaches a DS1 level of traffic, after which Core must establish a direct interconnection.").

12. As for the Commission's directive that "Core does not need to directly interconnect to each Windstream end office subtending to a third party tandem if the level of traffic exceeds a DS1 threshold," Windstream Recon Petition, at 7, such directive is, as the Commission fully explained, necessary to assure compliance with the Third Circuit's ruling that "[t]he decision where to interconnect and where not to interconnect must be left to [the CLEC], subject only to concerns of technical feasibility." *MCI Telecomm. Corp. v. Bell Atl. Pennsylvania*, 271 F.3d 491, 518 (3d Cir. 2001); *and see*, Order, at 30-31.

13. Windstream cites no record evidence for its assertion that "it is technically infeasible for Core to establish only one POI per LATA given Windstream's network architecture." Windstream Recon Petition, at ¶ 15.

14. In support of its conclusion that it would be technically infeasible for Core to interconnect at one POI per LATA, Windstream makes further factual averments without any citation to the record. *See*, Windstream Recon Petition, at ¶¶ 16-18.

15. Windstream points to an "Exhibit 2," Windstream Recon Petition, at ¶ 18, that "summarize[s]" the "following facts and issues" set forth in that paragraph. However, just like

the assertions made in the body of the Petition, there is no record evidence cited in support of the assertions made in Exhibit 2.

16. Windstream, it appears, would have the Commission grant reconsideration on this issue based on factual averments made in a petition for reconsideration after the close of the record. No other factual basis is provided for Windstream's assertion of technical infeasibility.

17. The Commission, in the very Order for which Windstream seeks reconsideration, acted on Windstream's February 15, 2013 Motion to Strike and rejected certain factual averments made by Core in its supplemental filings with the Commission in response to the October 12, 2012 Secretarial Letter in this case. The Commission noted that "Windstream PA claims that Core is attempting to insert new, unproven facts in support of its arguments..." and ordered that "[w]e shall strike the remainder of the Mingo Affidavit [submitted by Core] because it includes information which is not responsive to the directives of the Secretarial Letter," Order, at 14, and because "these types of speculative statements were not contemplated in the *Secretarial Letter* because they are testimonial in nature and not subject to verification." *Id.*

18. Accordingly, there can be no valid, record basis for the Commission to lend credence to the unsupported statements of technical infeasibility set forth in the Windstream Recon Petition, or to find that it would be technically infeasible for Core to interconnect with Windstream at one POI per LATA.

19. Even accepting Windstream's non record-based assertions at face value, they do not establish that it would be technically infeasible for Core to interconnect at one point on Windstream's network in each LATA.

20. Technical feasibility has a precise meaning in the Telecommunications Act of 1996, 47 U.S.C. §§ 251-252 *et seq.*, ("TA-96") and the FCC's implementing rules.

21. FCC rules state that “[a]n incumbent LEC that denies a request for interconnection at a particular point must prove to the state commission that interconnection at that point is not technically feasible.” 47 C.F.R. § 51.305(e).

22. In promulgating this rule, the FCC found “that [TA-96] bars consideration of costs in determining technically feasible points of interconnection or access.” *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 F.C.C. Rcd. 15499 (1996)(“Local Competition Order”), at ¶ 199.

23. The FCC also found that “it is reasonable to interpret Congress's use of the term “feasible” in sections 251(c)(2) and 251(c)(3) as encompassing more than what is merely “practical” or similar to what is ordinarily done. That is, use of the term “feasible” implies that interconnecting or providing access to a LEC network element may be feasible at a particular point even if such interconnection or access requires a novel use of, or some modification to, incumbent LEC equipment.” Local Competition Order, at ¶ 202.

24. Finally, the FCC found that “with regard to network reliability and security, to justify a refusal to provide interconnection or access at a point requested by another carrier, incumbent LECs must prove to the state commission, with clear and convincing evidence, that specific and significant adverse impacts would result from the requested interconnection or access.” Local Competition Order, at ¶ 203.

25. In *MCI*, the court noted that “Verizon has not presented evidence that it is not technically feasible for Worldcom to interconnect at only one point within a LATA. Nor has Verizon shown that it is technically necessary for Worldcom to interconnect at each access tandem serving area.” *MCI*, 271 F.3d, at 518.

26. Here, as in MCI, the ILEC has simply not provided the necessary facts to meet the substantial “clear and convincing evidence” burden to prove technical infeasibility.

27. Windstream admits that it uses technically feasible means, such as “rout[ing] calls to an IXC or Verizon in order for calls to be exchanged between customers from one Windstream office to another.” Windstream Recon Petition, at ¶ 16.

28. At best, Windstream can only assert that “direct interconnection” (i.e., by Core, at Core’s expense, and at multiple POIs in each LATA) “is more efficient” for Windstream. Windstream Recon Petition, at ¶ 20.

29. Core has no control over Windstream’s network, or its decision whether or not to isolate various service territories within a LATA from one another. Core cannot be held responsible, pursuant to TA-96 or any other rational competition framework, to duplicate Windstream’s “swiss cheese” network throughout the Commonwealth.

30. Finally, the Commission should reject Windstream’s attempt to foist a concession upon Core which Core voluntarily agreed to in the CenturyLink case.¹ *See*, Windstream Recon Petition, at ¶ 19. In that case, Core’s concession on the one-POI-per-LATA issue was a carefully measured response to the specific configuration of CenturyLink’s network (just one LATA in which two tandems exist) and the fact the CenturyLink had previously made concessions on the issue of bill-and-keep for all traffic in that same case.² The Commission considered and accepted

¹ Opinion & Order, *Petition of Core Communications, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions with The United Telephone Company of Pennsylvania d/b/a CenturyLink*, Pa. P.U.C. Docket No. A-310922F7002 (December 19, 2013) (“CenturyLink ICA Order”).

² *See*, CenturyLink ICA Order, at 86 (“CTL states that it is amenable to implementing a bill and keep compensation arrangement for all ISP-bound and local voice traffic that is exchanged if the Commission adopts its position and proposed language related to Issue No. 2...”).

both parties' concessions in that case.³ Here, Windstream wants the benefit of Core's concession in the CenturyLink case, but without making *any* concession of its own.

b. Operational Definition for IntraLATA Toll Traffic

31. Windstream's second issue is that it claims that the Order "overlooks the impact of its failure to adopt a definition [for IntraLATA Toll Traffic] and fails to recognize that not all Intra-LATA toll traffic consists of VNXX-enabled ISP-bound traffic." Windstream Recon Petition, at ¶ 23. Windstream's concern is to avoid "compensation issues and disputes once the parties begin exchanging traffic under the ICA." Windstream Recon Petition, at ¶ 24.

32. Core's position is that the agreed-to provisions of the ICA, Attachment 12 ("Intercarrier Compensation")⁴ are sufficiently clear with respect to all forms of traffic, including intraLATA toll traffic, without the need for any additional terms.

33. Agreed-to section 1.3 of Attachment 12 states:

Traffic, other than Section 251(b)(5) Traffic, shall be terminated to a Party subject to each Party's applicable tariffed access charges.

34. Agreed-to section 1.4 of Attachment 12 states:

The Parties agree that all traffic, other than 251(b)(5) Traffic, that is terminated on the public switched network, regardless of the technology used to originate or transport such traffic, including but not limited to Voice Over Internet Protocol (VoIP), will be assessed either intrastate or interstate terminating charges at the rates provided in the applicable Windstream access tariff.

35. Agreed-to section 3.2 of Attachment 12 states:

³ See, CenturyLink ICA Order, at 88 ("we shall modify the ALJ's Recommendation as set forth below and adopt CTL's alternative bill and keep proposal"); *and see, id.*, at 22 ("Core has offered to interconnect at *both* of CTL's tandems in LATA 226, thereby voluntarily agreeing to establish more than one POI in this LATA. Therefore, consistent with the forgoing analysis, we are of the opinion that CTL's proposal to have Core interconnect at each of its tandems is consistent with applicable law, and should be adopted.").

⁴ The agreed-to provisions of Attachment 12 to the ICA are set forth in Exhibit 1 to the Windstream Recon Petition, at pp. 85-88. Although the parties do have language differences relating to the IP/POI issues, there are no current language differences with respect to Attachment 12 or intercarrier compensation, pending Commission resolution of matters on reconsideration.

The Parties agree to reciprocally exchange 251(b)(5) Traffic between their networks. Each Party shall bill the other for such traffic at Windstream's then current interstate access tariffed rates which are in conformity with the FCC's ICC Order (FCC 11-161)...

36. Agreed-to section 3.4 of Attachment 12 states:

3.4 With the exception of VNXX ISP-Bound Traffic, any intercarrier telecommunications traffic utilizing the Public Switched Telephone Network, regardless of transport protocol method, where the originating and terminating points, end-to-end points, are in different LATAs, *or in different local calling areas as defined by the originating Party* and delivered to the terminating Party using switched access services *shall be considered Switched Access Traffic*. (Emphasis added).

37. Agreed-to section 4.1 of Attachment 12 states:

The Parties agree to reciprocally exchange VNXX ISP-Bound Traffic between their networks on a bill-and-keep basis.

38. Taken together, sections 1.3, 1.4, 3.2, 3.4 and 4.1 establish that: (1) Section 251(b)(5) Traffic is subject to reciprocal compensation; except that (2) VNXX ISP-Bound Traffic is subject to bill-and-keep; and (3) all other traffic, including specifically, traffic that originates and terminates in different local calling areas (i.e., intraLATA toll traffic) is subject to applicable switched access tariffs. These provisions are clear and concise, and conform with the Commission's directives. Therefore, Windstream's request to add a specific definition for "IntraLATA Traffic" is unnecessary.

c. NXX Code Assignment

39. Windstream's third request attempts to resolve a problem that does not exist. Windstream wants the Commission to clarify that "a CLEC, like Core, operating under an ICA with an ILEC, like Windstream, should be required to establish codes within the ILEC's territory." Windstream Recon Petition, at ¶ 27.

40. Core has no plans to “establish a single block of 1,000 numbers for the Commonwealth, or, at a minimum, for each LATA.” *See*, Windstream Recon Petition, at ¶ 28. Core does not have any basis to believe that such a practice is feasible, or would in any way benefit the carrier that attempted to carry out such a practice.

41. To the extent Core offers telephone numbers to handle Windstream traffic, Core will apply for NPA-NXX codes or, more likely, thousands blocks (whenever available) for each rate center, just as Core has applied for, and received, numerous NPA-NXX codes and thousand blocks in Pennsylvania rate centers.⁵

42. Core has no plans to have “the same 1,000 block of numbers [] split between two Windstream rate centers.” Windstream Recon Petition, at ¶ 31. Again, Core does not even know how such practice could possibly work, or to what end.

43. Core fully agrees that “[t]he rate center of an NPA/NXX has long been used to determine the jurisdiction of both originating and terminating traffic and determines what compensation may be owed to the originating and/or terminating party.” Windstream Recon Petition, at ¶ 32. However, Windstream fails to explain how the Commission’s Order threatens this practice.

44. If the Commission gave “Core a benefit which is not available to other carriers,” Windstream Recon Petition, at ¶ 32, Core is not cognizant of any such benefit.

45. Core fully agrees that “industry standard practice [requires] carriers to establish one block of numbers associated with *each* rate center in which they want local calling.” Windstream Recon Petition, at ¶ 32. Windstream asserts that the Order “ignores” this practice, *id.*, but never

⁵ Searching for NPA-NXX code assignments in Pennsylvania at <http://www.nanpa.com/enas/coCodeReportUnsecured.do?reportType=7> results in 205 entries for “Core Communications.”

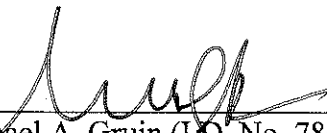
explains *how* it did so. In any event, Core has always abided by this practice, and will continue to do so.

46. Windstream asks the Commission to order Core (but not Windstream) “to require adherence to industry practices regarding rate centering of numbers...” Windstream Recon Petition, at ¶ 16, but the Commission already ordered Core to “follow all applicable rule for procuring numbers as set forth in the NANPA Central Office Code Assignment Guidelines.” Order, at 13.

IV. Conclusion

47. For all the foregoing reasons, Core respectfully requests that the Commission deny the relief requested in Windstream’s Recon Petition.

Respectfully Submitted,



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August 11, 2014

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Core Communications Inc. for	:	
Arbitration of Interconnection Rates, Terms	:	Docket No.: A-310922F7004
and Conditions Pursuant to 47 U.S.C. § 252	:	
with Windstream Pennsylvania, LLC	:	

VERIFICATION

I, Christopher F. Van de Verg, General Counsel of Core Communications, Inc., verify that the statements and the factual allegations contained in the foregoing Answer to Petition are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.

8/11/2014
Date



Christopher F. Van de Verg

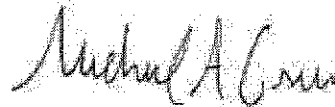
**BEFORE THE
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In re: Petition of :
CORE COMMUNICATIONS, INC. : **Docket No.: A-310922F7004**
: :
Petition of Core Communications Inc. for :
Arbitration of Interconnection Rates, Terms :
and Conditions with Windstream Pennsyl- :
vania, Inc. pursuant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

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of August, 2014 copies of the foregoing Answer to Petition 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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