

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

**Petition of Core Communications, Inc. For
Arbitration of Interconnection Rates, Terms,
and Conditions Pursuant to 47 U.S.C. 252,
Subparagraph B with Windstream
Pennsylvania, LLC**

**Public Meeting held November 13, 2014
1198655-OSA
Docket No. A-310922F7004**

STATEMENT OF COMMISSIONER GLADYS M. BROWN

The recommendation in this matter repeats the erroneous conclusion that Core's replies and Windstream's attachments responding to our Secretarial Letter are beyond this proceeding. The Commission's October 4, 2012 Secretarial Letter asked the Parties to address the impact that the FCC's *ICC/USF Order* of November 2011 had on this case. The decision in this matter should include the aforementioned filings because they address the same issues discussed in the *ICC/USF Order*. Those issues include the Rating of Traffic (NXX and VNXX), Points of Interconnection (POI) or edges and interconnection, and VoIP.¹ Due process is not violated by considering the Parties' views on these issues given the years of protracted litigation.

Taking Core's and Windstream's comments under advisement also reduces the risk of legal error based on claims that this Commission is acting contrary to Pennsylvania precedent which prohibits the Commission from ignoring recent information and requiring the consideration of the latest available data. *Bell Telephone v. Pa. PUC*, 524 A.2d 1009, 1015 (Pa. Cmwlth. 1987) (*Bell*); *Duquesne Light v. Pa. PUC*, 99 A.2d 61, 64 (Superior Court 1953) (*Duquesne*).

Points of Interconnection. Staff's recommendation overlooks the fact that Windstream's network for purposes of interconnection must also include their facilities or arrangements at tandems, be it their own tandem or arrangements with Verizon's. Those are part of Windstream's network if Core has to pay Windstream for additional interconnection service costs consistent with precedent.² It makes no sense to impose a higher cost for connecting disconnected service territories when Windstream already has tandem facilities and arrangements in place already doing that for itself and for others.

The Rating of NXXs. Virtual NXX (VNXX) is a form of Virtual Foreign Exchange (VFX) service. Both services transform costs based on a long-distance call into costs based on a local call,

¹ See *In re: ICC/USF Reform*, Docket No. 10-90 (November 11, 2011), aff'd *In re: FCC*, Docket No. 11-9900 (10th Cir.) (May 23, 2014) on Rating of Traffic (paragraphs 934, 960, and 962 where the FCC observes that the -points of a call are not always geographic) and *In re: Virginia Arbitration Order*, FCC Docket No. 00-218 (July 27, 2002), Paragraphs 286-288 where the FCC concludes that NPA-NXX comparison (rating) not geographic location is adopted). See also *ICC/USF Reform*, Docket No. 10-90 (November 11, 2011), aff'd *In re: FCC*, Docket No. 11-9900 (10th Cir.) (May 23, 2014) on Points of Interconnection or edges and intercarrier compensation (Paragraphs 790, 776, and 1321 the states ' role in the transition includes interconnection as well as setting "edge" for bill-and-keep noting that, depending on how the edge is defined, in conjunction with how carriers physically interconnect, payments could still change hands even under a bill-and-keep regime"), and VoIP (paragraphs 933-975 establishing VoIP rates for toll and other PSTN-VoIP). Compare with staff recommendation on Rating of Traffic (Pages 21-22 wherein VNXX is at bill-and-keep), Points of Interconnection and edges or intercarrier compensation (Pages 38-39 where staff rejects Core's language on Section 1.2 and 2.2.2 addressing financial responsibility for facilities stationed between and connecting the Parties' networks) and VoIP (Pages 26-28 where staff does not dictate VoIP traffic compensation beyond noting that the FCC's VoIP rules will control if the parties cannot agree).

² *MCI v. Bell Atlantic*, 271 F.3d 491 (3rd Cir. 2001).

typically a lower cost. These services are similar to traditional Foreign Exchange service (FX) which large volume users traditionally bought from incumbents to reduce their long-distance calling costs.

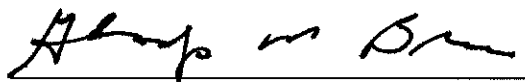
The FCC upheld these kinds of arrangements for wholesale interconnection between competitors in its *Arbitration Order* of 2002. The FCC held that it is the NXX's rating, not geographic location, which controls.³ Pennsylvania precedent does the same.⁴ This recommendation does not.

VoIP-PSTN Traffic. Staff's recommendation does not impose the FCC's rules for VoIP. As I explained earlier, the Parties addressed VoIP in response to our Secretarial Letter so we can, and should, impose those rules. That is appropriate because agency interpretations are entitled to deference unless plainly erroneous.⁵

Bill-and-Keep for Non-Local Dial-UP Traffic. The recommendation perpetuates an ill-advised bill-and-keep intercarrier compensation rate of zero for some, but not all, dial-up internet traffic. The FCC's latest statement on dial-up internet traffic is that *all* that carrier traffic is subject to the rate-cap rate of \$.0007 per MOU.⁶ The FCC's latest reform brings all carrier traffic within Section 251(b)(5) and subjects that traffic to a transition to a bill-and-keep rate of zero.⁷ Dial-up traffic is not excluded. While the current phase of these reforms is largely focused on moving termination rates to a bill-and-keep rate of zero, the FCC recognizes that forms of compensation other than zero may continue in force.⁸

Today's recommendation points to no provision in the *ISP Remand Order* or the *ICC/USF Order* for its results. We should rely on the FCC's interpretation as it is the most recent federal ruling and has been upheld on appeal. It is not logical to selectively impose a bill-and-keep rate of zero on one service by citing older precedent. For these reasons, I respectfully dissent.

November 13, 2014
Date


Gladys M. Brown, Commissioner

³ *Virginia Arbitration Order*, FCC Docket No. 00-218 (July 17, 21003), Paragraphs 286-288.

⁴ *Rural Telephone Company Coalition v. Pa. PUC*, 941 A.2d 751, 758 (Cmwlth. Ct. 2008).

⁵ *Riegel v. Medtronic*, 522 U.S. 312, 328 (2008); *Auer v. Robbins*, 519 U.S. 452, 461 (1999).

⁶ *Pac-West v. AT&T*, Docket No. 08-17030, *FCC Amicus Brief*, p. 18. (The compensation regimes applies when carriers collaborate to deliver calls to ISPs).

⁷ *In re: ICC/USF Reform*, Docket No. 10-90 (November 11, 2011), para. 736.

⁸ *In re: ICC/USF Reform*, Docket No. 10-90 November 11, 2011), paras. 776-777.