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August 8, 2007

VIA ELECTRONIC MAIL and US MAIL

Kimberly Bennett, Esq.
Windstream Pennsylvania, Inc.
One Allied Dr.
Little Rock, AR, 72202

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

Dear Kimberly:

Enclosed please find Core Communications, Inc.'s Answers to Windstream's Amended Set I Interrogatories in the above-captioned matter. A copy of Core's Answers are also being provided to Windstream's local counsel, Mark Thomas. However, the CD-Rom containing the information responsive to Interrogatory No. 1 (Core ICA's) is only included in the set of Answers being delivered to you. Please contact me if you have any questions.

Very truly yours,

KJR

STEVENS & LEE

Michael A. Gruin

Enclosure
cc: D. Mark Thomas, Esq.
Secretary James McNulty (Certificate of Service Only)

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of August, 2007 copies of the foregoing Answers to Interrogatories and have been served, 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.

VIA Electronic Mail and US Mail

Kimberly Bennett, Esq.
Windstream Pennsylvania, Inc.
One Allied Dr.
Little Rock, AR, 72202

VIA Electronic Mail and Hand Delivery

D. Mark Thomas, Esq.
Thomas, Thomas Armstrong & Niesen
212 Locust Street
PO Box 9500
Harrisburg, PA 17108-9500

Michael A. Gruin, Esq.
Stevens & Lee
Attorney ID No.: 78625
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Thomas, Thomas, Armstrong & Niesen
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D. MARK THOMAS

Direct Dial: (717) 255-7619
E-Mail: dmthomas@ttanlaw.com

CHARLES E. THOMAS
(1913 - 1998)

August 17, 2007

Honorable David A. Salapa
Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Judge Salapa:

Enclosed herewith on behalf of Windstream Pennsylvania, Inc., are two (2) copies of Windstream Pennsylvania, Inc. Statement No. 1, Direct Testimony of Scott A. Terry, in the above-referenced proceeding. Copies of the testimony are being today served upon Michael A. Gruin, counsel for Core Communications, Inc., by both email and hand delivery.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By

D. Mark Thomas

KJR

cc: Michael A. Gruin, Esquire (w/enclosure)
(via email and first class delivery)
Christopher Van de Verg, Esquire (w/enclosure)
(via email and first class delivery)
Kimberly K. Bennett, Esquire (w/enclosure)
Cesar Caballero, Esquire (w/enclosure)

070817-Salapa.wpd

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August 17, 2007

VIA ELECTRONIC MAIL and US MAIL

Kimberly Bennett, Esq.
Windstream Pennsylvania, Inc.
One Allied Dr.
Little Rock, AR, 72202

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

Dear Kimberly:

In accordance with 52 Pa. Code §5.412 and Pre-Arbitration Order #3 in the above-captioned matter, enclosed please find Core Communications, Inc.'s Statement 1.0 (Direct Testimony of Timothy Gates) and Statement 2.0 (Direct Testimony of Christopher Van de Verg). Also enclosed are Mr. Gates' and Mr. Van de Verg's executed Appendix A to the Protective Order. Please feel free to contact me if you have any questions.

Very truly yours,

KJR

STEVENS & LEE

Michael A. Gruin

KJR

Enclosure
cc: D. Mark Thomas, Esq.
ALJ David A. Salapa
Secretary James McNulty (Certificate of Service Only and Appendix A only)

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of August, 2007 copies of the foregoing Direct Testimony has been served 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.

VIA Electronic Mail and US Mail

Kimberly Bennett, Esq.
Windstream Pennsylvania, Inc.
One Allied Dr.
Little Rock, AR, 72202

VIA Electronic Mail and Hand Delivery

D. Mark Thomas, Esq.
Thomas, Thomas Armstrong & Niesen
212 Locust Street
PO Box 9500
Harrisburg, PA 17108-9500

VIA Electronic Mail and Hand Delivery

Administrative Law Judge David Salapa
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Michael A. Gruin, Esq.
Stevens & Lee
Attorney ID No.: 78625
17 N. 2nd St.
16th Floor
Harrisburg, PA 17101
Tel. (717) 255-7365

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of August, 2007 copies of the foregoing Direct Testimony has been served 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.

VIA Electronic Mail and US Mail

Kimberly Bennett, Esq.
Windstream Pennsylvania, Inc.
One Allied Dr.
Little Rock, AR, 72202

VIA Electronic Mail and Hand Delivery

D. Mark Thomas, Esq.
Thomas, Thomas Armstrong & Niesen
212 Locust Street
PO Box 9500
Harrisburg, PA 17108-9500

VIA Electronic Mail and Hand Delivery

Administrative Law Judge David Salapa
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Michael A. Gruin, Esq.
Stevens & Lee
Attorney ID No.: 78625
17 N. 2nd St.
16th Floor
Harrisburg, PA 17101
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APPENDIX A

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

TO WHOM IT MAY CONCERN:

The undersigned is an employee, officer or director of _____ or has been retained as a consultant or expert witness in connection with the above-referenced proceeding. The undersigned has read and understands the Protective Order in the above-referenced proceeding, which deals with the treatment of Proprietary and High Confidential Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Protective Order.

Timothy J Gates
Printed Name

Timothy J Gates
Signature

819 Huntington Drive
Address

Highlands Ranch, CO 80126
City, State, Zip

QSI Consulting, Inc.
Employer

Date: 8/10/07

APPENDIX A

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

TO WHOM IT MAY CONCERN:

The undersigned is an employee, officer or director of Core Communications or has been retained as a consultant or expert witness in connection with the above-referenced proceeding. The undersigned has read and understands the Protective Order in the above-referenced proceeding, which deals with the treatment of Proprietary and High Confidential Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Protective Order.

Christopher Van de Verg
Printed Name

Signature

209 West Street, #302
Address

Annapolis, MD 21401
City, State, Zip

Core Communications, Inc.
Employer

Date: 8/1/2007

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August 22, 2007

VIA ELECTRONIC MAIL ONLY

Kimberly Bennett, Esq.
Windstream Pennsylvania, Inc.
One Allied Dr.
Little Rock, AR, 72202

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

KJR

Dear Kimberly:

Enclosed please find Core Communications, Inc.'s Set II Interrogatories in the above-captioned matter. Per our discussion and past practice, these Interrogatories are being served on you by electronic mail only. I am sending a hard copy to Mark Thomas. Please contact me if you have any questions.

Very truly yours,

STEVENS & LEE

Michael A. Gruin

Enclosure
cc: Secretary James McNulty (Certificate of Service Only)
D. Mark Thomas, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of August, 2007 copies of the foregoing Interrogatories and Requests for Production of Documents have been served, via electronic 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.

Kimberly Bennett, Esq.
Windstream Pennsylvania, Inc.
One Allied Dr.
Little Rock, AR, 72202

D. Mark Thomas, Esq.
Thomas, Thomas Armstrong & Niesen
212 Locust Street
PO Box 9500
Harrisburg, PA 17108-9500

Michael A. Gruin, Esq.
Stevens & Lee
Attorney ID No.: 78625
17 N. 2nd St.
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Tel. (717) 255-7365

THOMAS, THOMAS,
ARMSTRONG & NIESEN
Attorneys and Counsellors at Law

JENNIFER M. SULTZABERGER
Direct Dial: 717.255.7236
jms@ttanlaw.com

August 23, 2007

ORIGINAL RJP

Via Federal Express

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary McNulty:

Enclosed please find Windstream Pennsylvania, Inc.'s Objections to Interrogatories and Requests for Production of Documents, Set II, propounded by Core Communications, Inc. in the above-referenced matter. Please contact me if you have any questions.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By Jennifer M. Sultzaberger

DOCUMENT FOLDER

Enclosure
cc: Honorable David Salapa
(Certificate of Service Only)
Kimberly K. Bennett (w/encl.)

070823-McNulty - Objections to Set II.wpd

RECEIVED
AUG 23 2007
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

80

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

WINDSTREAM PENNSYLVANIA, INC.'S OBJECTIONS TO CORE COMMUNICATIONS, INC.'S INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS, SET II

NOW COMES, Windstream Pennsylvania, Inc. ("Windstream"), pursuant to 52 Pa. Code §5.342, and files the following objections to the Interrogatories and Requests for Production of Documents propounded by Core Communications, Inc. ("Core"), Set II:

GENERAL OBJECTIONS

As a general matter, Windstream objects to those requests propounded by Core that seek information that already is publicly available to Core or that pertains to Windstream's legal analysis and conclusions in this arbitration proceeding. In general and as noted in Windstream's prior objections, discovery properly is to be used for the investigation of relevant and readily available factual material that may be in one party's possession and not otherwise available to the other party. Discovery may not be used properly by a requesting party to have the investigation of its case performed by the other party or by a requesting party to obtain access to the other party's legal analyses or case in chief. Therefore, Windstream objects to all requests that seek legal analyses, legal research, and answers to nonfactual or hypothetical questions. As Windstream's witness made clear in his Direct Testimony, legal issues will be addressed in detail by the parties in their briefs. Further, Windstream objects again to those requests that are irrelevant to any issues or sub-issues in this arbitration or that seek information already within Core's possession or control.

SPECIFIC OBJECTIONS

II-1. At pages four and five of Mr. Terry's testimony he states, "Windstream's proposals are consistent with industry standards or other agreements under which Core already operates in other ILEC territories in Pennsylvania." Please identify each Windstream proposal to which Mr. Terry is referring and provide the industry standard and/or the agreement to which he refers.

Objection: Windstream objects to this question to the extent that it seeks nondiscoverable information which is publicly available to and already within the possession of Core, including with respect to Core's own interconnection agreements.

Windstream representative sponsoring response: Scott A. Terry

II-2 At page five of his testimony Mr. Terry states, "For instance, Windstream's proposal regarding security deposits is standard in many interconnection agreements and also similar to deposit requirements already agreed to by Core with another ILEC in Pennsylvania."

a. Please identify the "ILEC in Pennsylvania" with which Core has an agreement that is similar to deposit requirements proposed by Windstream in this case.
b. Please identify and provide copies of the "many interconnection agreements" within which Windstream's security deposit proposal is "standard."

Objection: Windstream objects to this question to the extent that it seeks nondiscoverable information which is publicly available to and already within the possession of Core. Specifically as to (a), Core's own interconnection agreements already are within Core's possession. Specifically as to (b), Windstream's interconnection agreements are on file with the Commission or were provided to Core already in response to Set I, as amended, of the data requests.

Windstream representative sponsoring response: Scott A. Terry

II-3. At page five of his testimony Mr. Terry states, "Regarding network interconnection issues, Core's proposal allowing interconnection at dual points one of which may be outside of Windstream's network is contrary to law and inconsistent with other provisions agreed to by Core in other interconnection agreements."

a. Please provide all legal support for this statement;
b. Please specifically identify each and every "[inconsistency] with other provisions agreed to by Core in other interconnection agreements."
c. Is it Mr. Terry's position that every interconnection agreement entered into by a carrier must be consistent with every previous interconnection agreement executed by that carrier? If the answer is no, please explain how a change in position invalidates a position.

Objection: Windstream objects to this question to the extent that it seeks nondiscoverable information which is nonfactual and legal in nature, publicly available to and already within the possession of Core, or nonfactual and hypothetical in nature. Specifically as to (a), legal information is nonfactual, and in many circumstances privileged, and not subject to discovery. Core may perform its own legal research and investigation and is not entitled to seek access to Windstream's case in chief through the discovery process. Specifically as to (b), Core's own interconnection agreements already are within Core's possession, and any analysis with respect to Core's agreements as needed for Core's case in chief may be performed by Core. Specifically, with respect to (c), requests for answers to hypothetical scenarios are nonfactual and not subject to discovery. Further, to the extent that Windstream develops any such position, it may be set forth in testimony or contemplated in briefs.

Windstream representative sponsoring response: Scott A. Terry

II-4. At page five Mr. Terry states "Core's position to allow indirect interconnection without a DS1 volume threshold is unreasonable and inefficient."

a. Please provide references to sections of the federal Telecommunication Act of 1996 that requires the identification of and use of a volume threshold before carriers can engage in indirect interconnection;
b. Please provide any federal rules, guidelines, or FCC orders that require two parties to agree to the use of a DS1 volume threshold before indirect interconnection can be used to exchange traffic between carriers;
c. Please explain in detail why indirect interconnection without a DS1 volume threshold is "inefficient."
d. Please provide any and all traffic studies to support the contention that a DS1 volume of traffic is more "efficient" as the term is used by Mr. Terry, to exchange on a direct interconnection basis between Windstream and Core as opposed to indirect interconnection basis.

Objection: Windstream objects to this question to the extent that it seeks nondiscoverable information which is nonfactual, legal or hypothetical in nature, and publicly available. Specifically as to (a) and (b), legal information is nonfactual, and in many circumstances privileged, and not subject to discovery. Further, the referenced authorities are publicly available and should Core desire analysis of these authorities, Core may perform that legal analysis itself. Specifically, with respect to (c), requests for answers to hypothetical scenarios are nonfactual and not subject to discovery. Further, to the extent that Windstream develops any such explanation, it may be set forth in discovery responses to Core on August 29, 2007, addressed in testimony, or contemplated in briefs. With respect to (d), to the extent that Windstream maintains at this time any such traffic studies, it will provide those to Core with discovery responses on August 29, 2007.

Windstream representative sponsoring response: Scott A. Terry

II-5 At page 5 of Mr. Terry's testimony he makes a legal conclusion that jurisdiction and compensation for VNXX traffic was not the subject of negotiations and may not be arbitrated before the Commission.

a. Please provide all legal support for this claim.
b. Is it Mr. Terry's testimony that the potential routing and/or rating of each and every call must be negotiated? If not, please explain why Mr. Terry believes that VNXX call routing must be part of negotiations.

Objection: Windstream objects to this question to the extent that it seeks nondiscoverable information which is nonfactual and legal or hypothetical in nature. Additionally, Windstream objects to the form of the question since the fact of whether an issue was discussed or not discussed by the parties during negotiations is not a legal conclusion. Specifically as to (a), legal information is nonfactual, and in many circumstances privileged, and not subject to discovery. Core may perform its own legal research and investigation and is not entitled to seek access to Windstream's case in chief through the discovery process. Specifically as to (b), requests for answers to hypothetical scenarios are nonfactual and not subject to discovery. To the extent that Windstream develops any such position or testimony, it may be set forth in testimony or contemplated in briefs.

Windstream representative sponsoring response: Scott A. Terry

II-6. Based on the testimony of Mr. Terry at page five, lines 18 through 20, is it Mr. Terry's position that the traffic exchanged between Windstream and Core will be "roughly balanced"? If not, please provide all support for the use of a bill-and-keep compensation arrangement.

Objection: Windstream objects to this question to the extent that it seeks nondiscoverable information which is nonfactual and legal or hypothetical in nature. To the extent "support" above is intended to seek legal analysis and research, such information is not discoverable. Specifically, Mr. Terry's direct testimony already speaks to the questions above, and to the extent that Windstream develops further explanation, it may be set forth in discovery responses on August 29, 2007, rebuttal testimony, or briefs.

Windstream representative sponsoring response: Scott A. Terry

II-7 At page 7 of his testimony, Mr. Terry states that "Windstream's proposal is not unlike the security deposit requirements that Core accepted when it adopted the interconnection agreement between Verizon Pennsylvania and Sprint Communications Company, L.P. on August 15, 2005." What are the specific "requirements" that Mr. Terry refers to in making this statement? Did Mr. Terry review any other ICA's security deposit provisions in connection with his testimony? If so, identify the ICA, the specific provisions relevant to Mr. Terry's review, and his conclusions with respect to those provisions.

Objection: Windstream objects to this question to the extent that it seeks nondiscoverable information which is nonfactual and legal in nature and publicly available to and already within the possession of Core. Specifically, any requirements and provisions set forth in Core's own interconnection agreements already are within Core's possession, and any analysis with respect to Core's agreements as needed for Core's case in chief may be performed by Core. Further, any preparation that Mr. Terry or other Windstream representatives may perform with respect to developing Windstream's case in chief is nonfactual, privileged, and not subject to discovery.

Windstream representative sponsoring response: Scott A. Terry

II-8 At page 9 of his testimony, Mr. Terry states that "Windstream's proposed language is similar to provisions by other companies requesting deposits from customers due to poor credit ratings or instances of financial instability such as insolvency or bankruptcy." Did Mr. Terry review, in connection with his testimony, Core's Dunn & Bradstreet credit rating as supplied by Core in response to a Windstream discovery request? Is it his position that Core has "a poor credit rating" or otherwise suffers from "financial instability"? If so, provide any information or documentation in support of such a position.

Objection: Windstream objects to this question to the extent that it seeks nondiscoverable information which is nonfactual, hypothetical, or privileged. Specifically, any preparation that Mr. Terry or other Windstream representatives may perform with respect to developing Windstream's case in chief is nonfactual, privileged, and not subject to discovery. Further, to the extent that Windstream develops any position with respect to Core's credit rating, it may be set forth in discovery responses on August 29, 2007 or rebuttal testimony or surmised in briefs.

Windstream representative sponsoring response: Scott A. Terry

II-9 At page 11 of his testimony, Mr. Terry states that "..the balance of traffic would be virtually all one-sided with Windstream customers originating dial-up ISP calls to Core but Core originating little to no traffic to Windstream." If the traffic patterns turn out to be as Mr. Terry suggests at page 11, is it Windstream's position that such traffic patterns are "roughly balanced" as proposed at page five of Mr. Terry's testimony?

Objection: Windstream objects to this question to the extent that it seeks nondiscoverable information which is nonfactual, hypothetical, and not subject to discovery. To the extent that Windstream develops any such position, it may be set forth in discovery responses on August 29, 2007 or rebuttal testimony or surmised in briefs.

Windstream representative sponsoring response: Scott A. Terry

II-10 Is it Mr. Terry's position that Core is "financially unstable" as he uses the phrase at page five, lines nine through 13? If so, please specifically define the term "financial instability" and provide all information, reports or other data used to reach this conclusion regarding Core.

Objection: Windstream objects to this question to the extent that it seeks nondiscoverable information which is nonfactual, hypothetical, and not subject to discovery. To the extent that Windstream develops any position or definition, it may be set forth in discovery responses on August 29, 2007 or rebuttal testimony or surmised in briefs.

Windstream representative sponsoring response: Scott A. Terry

II-11 To the best of Mr. Terry's knowledge, has Core ever received properly provisioned services from Windstream and then refused to pay for those services? If the answer is anything other than an unqualified "no", please provide all facts and information that support Windstream's position that Core has failed to pay for services, defaulted on a payment or has in some other way not paid Windstream for services received.

Objection: Windstream objects to this question to the extent that it seeks nondiscoverable information which is nonfactual, hypothetical, and not subject to discovery. Specifically, Windstream's witness will not testify with respect to what Core may have received. Additionally, to the extent that Windstream develops any position with respect to this issue, it may be set forth in discovery responses on August 29, 2007 or rebuttal testimony or surmised in briefs.

Windstream representative sponsoring response: Scott A. Terry

II-14 At page eight of his testimony Mr. Terry states "Windstream would use the deposit if a CLEC breaches the interconnection agreement, has undisputed charges that remain unpaid for thirty (30) days, or admits its inability to pay its debts." Please define specifically and completely what Mr. Terry means by "breaches the interconnection agreement." Please provide specific examples of circumstances in which Windstream would consider the CLEC to have breached the interconnection agreement.

Objection: Windstream objects to this question to the extent that it seeks nondiscoverable information which is nonfactual, hypothetical, or already within Core's possession. Specifically, any requirements with respect to the interconnection agreement are set forth in Windstream's agreement language previously provided to Core. Additionally, offering hypothetical circumstances are not proper subjects for discovery, and Windstream cannot surmise all the possible ways in which Core could possibly breach the interconnection agreement.

Windstream representative sponsoring response: Scott A. Terry

II-15. Mr. Terry states that reasonable security deposit requirements "are not barriers to entry" at page eight of his testimony. Does Mr. Terry agree that security deposits increase the cost of operations for the company paying the security deposit? If not, please explain in detail.

Objection: Windstream objects to this question to the extent that it seeks nondiscoverable information and is an improper request for admission. Specifically, Windstream witnesses cannot testify with respect to impacts to Core's cost of operations.

Windstream representative sponsoring response: Scott A. Terry

II-16 At page nine of his testimony Mr. Terry states that Windstream should be able "...to review the financial stability of the CLEC...."

a. Please describe in detail the process that Windstream will use to determine the "financial stability" of Core.
b. Please identify each and every item of information that Windstream will require to determine the "financial stability" of Core.
c. Would Windstream request any of the information identified in response to the questions immediately above ((a) and (b)) from Core? If not, please identify the company or agency from which each piece of information would be requested.

Objection: Windstream objects to (c) to the extent it seeks nonfactual and hypothetical information which is not subject to discovery.

Windstream representative sponsoring response: Scott A. Terry

II-18 Regarding Mr. Terry's opposition to Core's dual IP proposal at pages 10 and 11 of his testimony, is it Windstream's position that Core's proposal is not technically feasible? If so, please explain in detail how and why Core's proposal is not technically feasible.

Objection: Windstream objects to this question to the extent that it seeks nondiscoverable information which is nonfactual and legal in nature. To the extent that Windstream develops any such position, it may be set forth in discovery responses on August 29, 2007 or rebuttal testimony or surmised in briefs.

Windstream representative sponsoring response: Scott A. Terry

II-19 At page 11 of his testimony Mr. Terry states that Core's "dual POI" proposal is "...a non-standard and unlawful arrangement...." Please provide all legal support for this statement.

Objection: Windstream objects to this question to the extent that it seeks nondiscoverable information which is nonfactual and legal in nature. Specifically, legal information is nonfactual, and in many circumstances privileged, and not subject to discovery. Core may perform its own legal research and investigation and is not entitled to seek access to Windstream's case in chief through the discovery process.

Windstream representative sponsoring response: Scott A. Terry

II-20 Is it Windstream's position that wherever Core is currently utilizing the dual IP interconnection method that such use is "unlawful"? Please explain your answer in detail.

Objection: Windstream objects to this question to the extent that it seeks nondiscoverable information which is nonfactual and legal in nature. Specifically, legal information is nonfactual, and in many circumstances privileged, and not subject to discovery. Core may perform its own legal research and investigation and is not entitled to seek access to Windstream's case in chief through the discovery process. To the extent Windstream develops any such position, it may be set forth in briefs.

Windstream representative sponsoring response: Scott A. Terry

II-21 At page 14 of his testimony Mr. Terry states that the ICA between Core and Verizon Pennsylvania "contains as an integral part of the agreement an arrangement whereby each POI designated by Core and Verizon is located within Verizon's ILEC territory." Please identify the specific provision(s) and their location within that agreement that support or relate to Mr. Terry's statement.

Objection: Windstream objects to this question to the extent that it seeks nondiscoverable information which already is within Core's possession. Specifically, provisions within Core's own interconnection agreements are already within Core's possession, and Core may perform its own analysis with respect to those provisions.

Windstream representative sponsoring response: Scott A. Terry

II-22 At page 11 of his testimony Mr. Terry suggests at lines 19 through 23 that the balance of traffic impacts a carrier's ability to "...designate a POI location...." Please identify all public policy, legal or engineering support for such a claim.

Objection: Windstream objects to this question to the extent that it seeks nondiscoverable information which is nonfactual and legal in nature or publicly available to Core. Specifically, with respect to public policy, such information is available already to Core, including through its own experiences in the industry. Specifically, with respect to legal support, such information is not subject to discovery. Core may perform its own legal research and investigation and is not entitled to seek access to Windstream's case in chief through the discovery process. Any such engineering support that Windstream may have will be provided in response to discovery on August 29, 2007 or otherwise to the extent any such information is developed or made readily available to Windstream.

Windstream representative sponsoring response: Scott A. Terry

II-23 At page 17 of his testimony Mr. Terry argues that a DS1 threshold is "commonly used throughout the industry." Is it Mr. Terry's position that in every state there is a DS1 threshold for direct interconnection?

Objection: Windstream objects to this question to the extent that it seeks nondiscoverable information which is nonfactual and hypothetical in nature. To the extent that Windstream develops such a position, it may be set forth in discovery responses, rebuttal testimony, or briefs.

Windstream representative sponsoring response: Scott A. Terry

II-24 At page 17 of his testimony Mr. Terry claims that "Core asserts that the parties should be allowed to interconnect indirectly, without any volume limitation, via the use of a third-party tandem for delivery of traffic." Please identify all Core proposed language and testimony in this proceeding that supports Mr. Terry's claim.

Objection: Windstream objects to this question to the extent that it seeks nondiscoverable information which is available to Core. Specifically, Core's proposed language is already within Core's possession, and any analysis with respect to that language may be performed by Core.

Windstream representative sponsoring response: Scott A. Terry

II-27 In Mr. Terry's professional opinion, based on his experience in the industry, would it be "reasonable" to base the decision on direct versus indirect interconnection on a review of actual traffic studies and a comparison of the cost of direct interconnection for both carriers to the continued cost of indirect interconnection for both carriers on a quarterly basis? If your answer is anything other than an unqualified "yes", please explain your answer in detail.

Objection: Windstream objects to this question to the extent that it seeks nondiscoverable information which is nonfactual and hypothetical in nature. To the extent that Windstream develops any such opinion, it may be set forth subsequently in this proceeding.

Windstream representative sponsoring response: Scott A. Terry

II-28 On page 21 of his testimony, Mr. Terry refers to "Appendix 33 of Core's Petition for Arbitration." Did Mr. Terry review any other appendix to Core's petition in connection with his testimony? Did Mr. Terry specifically review Appendix 13 of Core's petition, which is Core's revised redline of Windstream's ICA proposal, dated 12/26/2005?

Objection: Windstream objects to this question to the extent that it seeks nondiscoverable information which is nonfactual and legal in nature. Specifically, any preparation that Windstream performs with respect to its case in chief is not subject to discovery.

Windstream representative sponsoring response: Scott A. Terry

II-29 On page 21 of his testimony, Mr. Terry states that VNXX codes "are central office codes that correspond to a particular rate center but are assigned to a customer located in a different rate center." Is it his position that Core assigns "central office codes" to a "customer"?

Objection: Windstream objects to this question to the extent that it seeks nondiscoverable information which is nonfactual and hypothetical in nature. To the extent that Windstream develops any such position, it may be set forth subsequently in this proceeding.

Windstream representative sponsoring response: Scott A. Terry

II-30. At page 22 of his testimony Mr. Terry states that "...various courts have decided this issue and determined that VNxx arrangements are subject to access compensation." Please provide the legal citations for all of the court decisions referred to by Mr. Terry.

Objection: Windstream objects to this question to the extent that it seeks nondiscoverable information which is legal in nature. For the reasons set forth herein, legal matters are not subject to discovery, and any such legal research or investigation may be performed by Core.

Windstream representative sponsoring response: Scott A. Terry

II-33 At page 25 of his testimony Mr. Terry states that "Windstream has not made any such election as of the date of this filing."

a. What factors does or will Windstream consider in determining whether or not to make "such election"?

b. Is it Windstream's position that it may litigate this proceeding and receive a final Commission order without making "such election," then subsequently decide to make "such election?" If so, would that subsequent election apply to the ICA to be executed in this proceeding between Windstream and Core?

b. Assuming that Windstream **does not** elect to participate in the *ISP Remand Order* compensation regime for ISP-bound traffic, what compensation would apply to ISP-bound traffic originated by Windstream customers and terminated by Core?

c. Assuming that Windstream **does** elect to participate in the *ISP Remand Order* compensation regime for ISP-bound traffic, what compensation would apply to ISP-bound traffic originated by Windstream customers and terminated by Core?

Objection: Windstream objects to this question to the extent that it seeks nondiscoverable information which is nonfactual, legal and hypothetical in nature. Specifically with respect to (a), such information is legal, privileged, irrelevant, and not subject to discovery. Specifically with respect to the first (b), such information is legal and privileged. Additionally, the authorities on which Windstream may base any such decision are publicly available to Core, and Core may perform its own analysis with respect to those authorities. Specifically with respect to the second (b) and (c), such information is nonfactual and hypothetical and not subject to discovery.

Windstream representative sponsoring response: Scott A. Terry

II-35. At page 26 of his testimony Mr. Terry claims that "...Core proposes to rate center an NPA-Nxx of 501-743 in multiple locations (here, Exchanges A and B)." Is it Mr. Terry's belief that Core would assign numbers associated with an NPA-NXX from one rate center in another rate center? If so, what is the basis of that belief? If not, please explain in more detail how Windstream thinks Core is assigning numbering resources.

Objection: Windstream objects to this question to the extent that it seeks nondiscoverable information which is nonfactual and hypothetical in nature. To the extent that Windstream develops any such belief, it may be set forth subsequently in this proceeding.

Windstream representative sponsoring response: Scott A. Terry

II-36 At page 27 of his testimony Mr. Terry states that "Windstream's attachment conforms to the law...." Please provide all legal support for this claim relied upon by Mr. Terry.

Objection: Windstream objects to this question to the extent that it seeks nondiscoverable information which is nonfactual and legal in nature. Again, legal support is not subject to discovery and may be addressed in Windstream's briefs. To the extent that Core wishes to perform such legal research and analysis to develop its case in chief, it may do so itself. Windstream is not required through discovery processes to perform this legal function on behalf of Core.

Windstream representative sponsoring response: Scott A. Terry

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of August, 2007 a copy of the foregoing has been served, via electronic mail, upon the person listed below:

Michael A. Gruin, Esq.
Stevens & Lee
17 N. 2nd St.
16th Floor
Harrisburg, PA 17101

Kimberly K. Bennett
Attorney for Windstream Pennsylvania, Inc.
4001 Rodney Parham Road
Little Rock, AR, 72212

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D. MARK THOMAS

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CHARLES E. THOMAS
(1913 - 1998)

August 29, 2007

Michael A. Gruin, Esquire
Stevens & Lee
16th Floor
17 North Second Street
Harrisburg, PA 170101

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

Dear Mr. Gruin:

Enclosed please find two copies of Windstream Pennsylvania, Inc.'s Answers to Core Communications, Inc.'s Interrogatories and Requests for Production of Documents, Set II, in the above-referenced arbitration proceeding.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By

D. Mark Thomas

Enclosure
cc: Secretary James J. McNulty
(Certificate of Service Only)
Cesar Caballero, Esquire
Kimberly K. Bennett, Esquire

F:\CLIENTS\UTILITY\AP\Core Arbitration-API-0594\AMENDED Petition for Arbitration\Letters\070829-Gruin.wpd

RJP

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Honorable David A. Salapa
Administrative Law Judge, Presiding

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

CERTIFICATE OF SERVICE

I hereby certify that I have this 29th day of August, 2007, served a true and correct copy of Windstream Pennsylvania, Inc.'s Answers to Core Communications, Inc.'s Interrogatories and Requests for Production of Documents, Set II, in the above arbitration proceeding, upon the person and in the manner set forth below:

HAND DELIVERY

Michael A. Gruin, Esquire
Stevens & Lee
16th Floor
17 North Second Street
Harrisburg, PA 17101

D. Mark Thomas
PA Attorney ID No. 15611

DOCUMENT FOLDER

Thomas, Thomas, Armstrong & Niesen
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CHARLES E. THOMAS
(1913 - 1998)

September 5, 2007

Michael A. Gruin, Esquire
Stevens & Lee
16th Floor
17 North Second Street
Harrisburg, PA 170101

RJP

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

Dear Mr. Gruin:

Enclosed please find two copies of Windstream Pennsylvania, Inc.'s Supplemental Responses and Continuing Objections to Core's Set II Interrogatories and Requests for Production of Documents in the above-referenced arbitration proceeding. As shown in the Certificate of Service, these Responses were also electronically served upon you yesterday.

If you have any questions concerning these Supplemental Responses, please advise.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By

D. Mark Thomas

Enclosures
cc: Secretary James J. McNulty
(Certificate of Service Only)
Cesar Caballero, Esquire
Kimberly K. Bennett, Esquire

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of September, 2007 copies of the foregoing have been served, via electronic mail, upon the person listed below:

Michael A. Gruin, Esq.
Stevens & Lee
17 N. 2nd St.
16th Floor
Harrisburg, PA 17101

Kimberly K. Bennett

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Honorable David A. Salapa
Administrative Law Judge, Presiding

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

CERTIFICATE OF SERVICE

I hereby certify that I have this 5th day of September, 2007, served a true and correct copy of Windstream Pennsylvania, Inc.'s Supplemental Responses and Continuing Objections to Core Communications, Inc.'s Interrogatories and Requests for Production of Documents, Set II, in the above arbitration proceeding, upon the person and in the manner set forth below:

Email and First Class Mail

Michael A. Gruin, Esquire
Stevens & Lee
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(Emailed 09-04-07)

D. Mark Thomas
PA Attorney ID No. 15611

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CHARLES E. THOMAS
(1913 - 1998)

September 6, 2007

Honorable David A. Salapa
Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Judge Salapa:

Enclosed herewith on behalf of Windstream Pennsylvania, Inc., are two (2) copies of Windstream Pennsylvania, Inc. Statement No. 1-R, Rebuttal Testimony of Scott A. Terry, in the above-referenced proceeding. Copies of the rebuttal testimony are being today served upon Michael A. Gruin, counsel for Core Communications, Inc., by both email and first class mail.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By Jennifer M. Sultzaberger
Jennifer M. Sultzaberger

cc: Michael A. Gruin, Esquire (w/enclosure)
(via email and first class mail)
Christopher Van de Verg, Esquire (w/enclosure)
(via email and first class mail)
Kimberly K. Bennett, Esquire (w/enclosure)
Cesar Caballero, Esquire (w/enclosure)

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September 6, 2007

VIA ELECTRONIC MAIL and HAND DELIVERY

Honorable David A. Salapa
Administrative Law Judge
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
Harrisburg, PA 17120

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

Dear ALJ Salapa:

In accordance with 52 Pa. Code §5.412 and Pre-Arbitration Order #3 in the above-captioned matter, enclosed please find Core Communications, Inc.'s Statement 1.1 -Rebuttal Testimony of Timothy Gates (Proprietary and Public Versions) and Statement 2.1-Rebuttal Testimony of Christopher Van de Verg. Please feel free to contact me if you have any questions.

Very truly yours,

STEVENS & LEE

Michael A. Gruin

Enclosure
cc: D. Mark Thomas, Esq.
Kimberly Bennett, Esq.
Secretary James McNulty (Certificates of Service Only)

STEVENS & LEE
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September 10, 2007

VIA ELECTRONIC MAIL and REGULAR US MAIL

Honorable David A. Salapa
Administrative Law Judge
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
Harrisburg, PA 17120

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

Dear ALJ Salapa:

In accordance with the Pre-Arbitration Order #3 in the above-captioned matter, enclosed please find Core Communications, Inc.'s Best Offer. Please feel free to contact me if you have any questions.

Very truly yours,

STEVENS & LEE

Michael A. Gruin

Enclosure
cc: D. Mark Thomas, Esq.
Kimberly Bennett, Esq.

OALJ Hearing Report

Please Check Those Blocks Which Apply

Docket No.:	A-310922F7004
Case Name:	Petition of Core Communications, , Inc.
Location:	HBG
Date:	September 20, 2007
ALJ:	David Salapa
Reporting Firm:	Sargents Court Reporting

	YES	NO
Prehearing Held:	☐	☒
Hearing Held:	☒	☐
Testimony Taken:	☒	☐
Transcript Due: 9/27/07	☒	☐
Hearing Concluded:	☒	☐
Further Hearing Needed:	☐	☒
Estimated Add'l Days:		
RECORD CLOSED:	☒	☐
DATE:	11/9/07	
Briefs to be Filed:	☑	☐
DATE:	10/25/07 11/9/07	
Bench Decision:	☐	☒

REMARKS: Hearing concluded
Main Briefs 10/25/07
Reply Briefs 11/9/07
Record close 11/9/07

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SECRETARY'S BUREAU

RJP

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Name and Telephone Number	Address	Who are you representing?
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Telephone: 717-255-7600	E-mail Address: dmthomas@ttanlaw.com	Fax Number: 717-236-8278
Mike Gruin Stevens & Lee	17 N. 2nd St. City: Hbg State: PA Zip: 17101	Core Communications, Inc.
Telephone:	E-mail Address: mgg@stevenslee.com	Fax Number: 610-988-0852
	City: State: Zip:	DOCUMENT FOLDER
Telephone:	E-mail Address:	Fax Number:

☐ Check this box if additional parties or attendees appear on back of form.

Reporter's Signature

Note: Completion of this form does not constitute an entry of appearance, see 52 Pa. Code §§1.24 and 1.25.

#194070 rev 11/05

Name and Telephone Number	Address			Who are you representing?
	City	State	Zip	
Telephone:	E-mail Address:			Fax Number:
	City	State	Zip	
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	City	State	Zip	
Telephone:	E-mail Address:			Fax Number:
	City	State	Zip	
Telephone:	E-mail Address:			Fax Number:
	City	State	Zip	
Telephone:	E-mail Address:			Fax Number:
	City	State	Zip	
Telephone:	E-mail Address:			Fax Number:
	City	State	Zip	
Telephone:	E-mail Address:			Fax Number:
	City	State	Zip	
Telephone:	E-mail Address:			Fax Number:

Note: Completion of this form does not constitute an entry of appearance, see 52 Pa. Code §§1.24 and 1.25.

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THOMAS, THOMAS,
ARMSTRONG & NIESEN
Attorneys and Counsellors at Law

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October 24, 2007

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OCT 25 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Sir:

Enclosed for filing on behalf of Windstream Pennsylvania, Inc., are an original and nine (9) copies of its Main Brief in the above-referenced matter. A Certificate of Service is attached.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By

D. Mark Thomas

DOCUMENT FOLDER

Enclosures
cc: Certificate of Service (w/enclosure)
Kimberly K. Bennett (w/enclosure)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Administrative Law Judge
David A. Salapa, Presiding

Petition of Core Communications, Inc., for Arbitration of Certain Terms and Conditions of the Proposed Agreement with Windstream Pennsylvania, Inc., Pursuant to the Communications Act of 1934, as amended by the Telecommunications Act of 1996	**No. A-310922F7004**

MAIN BRIEF OF WINDSTREAM PENNSYLVANIA, INC.

THOMAS, THOMAS, ARMSTRONG & NIESEN
212 Locust Street
P.O. Box 9500
Harrisburg, PA 17108-9500
(717) 255-7600

and

Kimberly Bennett
Cesar Caballero
Attorneys for Windstream
4001 Rodney Parham Road
Mailstop 1170-B1F03-53A
Little Rock, AR 72212
(501) 748-6374

Dated: October 25, 2007

TABLE OF CONTENTS

TABLE OF CITATIONS

CASES AND ADMINISTRATIVE OPINIONS:

STATUTES AND TARIFFS:

I. STATEMENT OF THE CASE

Windstream Pennsylvania, Inc. ("Windstream") is an incumbent local exchange carrier ("ILEC") certified by the Pennsylvania Public Service Commission ("Commission") to serve and operate in only certain exchanges in the Commonwealth. Windstream is not a Bell Operating Company and, therefore, does not provide services throughout the entire Local Access and Transport Area ("LATA"). As an ILEC, Windstream has certain obligations under the Communications Act of 1934, as amended in 1996 ("the Act"), to interconnect its network with requesting telecommunications carriers.

Core Communications, Inc. ("Core") was found by the Commission to be a competitive local exchange carrier ("CLEC") authorized to operate in Windstream's certificated service area. Core's primary business plan is to serve as an aggregator of Internet service provider traffic ("ISP-bound traffic") whereby Windstream customers using dial-up Internet service will access their ISPs by dialing phone numbers supported by Core. As a result, although the parties have not yet begun exchanging traffic, it is anticipated that the exchange of traffic between the parties will be one-way traffic originating with Windstream's end users calling dial-up ISPs supported by Core.

On or around October 21, 2005, Core requested to enter into negotiations for an interconnection agreement with Windstream ("Interconnection Agreement"). Core and Windstream initiated negotiations but were unable to resolve all of their language disputes through negotiations. Consequently, the parties' negotiations culminated in Core filing a Petition for Arbitration dated March 30, 2006 ("Arbitration Petition"). In its Arbitration Petition, Core identified twenty-five issues for consideration by the Commission. At the time that Core filed its

Arbitration Petition, however, Core had not been certified yet as a CLEC in Windstream's certificated service territory. Thus, there remained issues concerning whether Core could and would provide a qualifying service (specifically, local exchange service). During the time that the threshold issues pertaining to Core's CLEC certification remained pending before the Commission, the arbitration between Windstream and Core was stayed on May 11, 2006 in the Order Staying Proceeding in this docket. Although general issues with respect to Core's ability to be certified as a CLEC remain pending before the Commonwealth Court of Pennsylvania,[1] the Commission in the interim certified Core to operate as a CLEC in Windstream's certificated service territory on December 4, 2006 at Docket Nos. A-310922F0002, AmA and A-310922F0002, AmB. As a result, the arbitration between Core and Windstream resumed following the parties' pre-arbitration conference on January 26, 2007 and pursuant to Pre-Arbitration Order #2 dated January 29, 2007.

Upon the arbitration schedule in this matter being resumed, the parties filed revised discovery but shortly thereafter, on March 19, 2007, requested that the procedural schedule again be stayed pending continued negotiations. Accordingly, Order #2 Staying Proceeding was issued on March 26, 2007. Following those continued negotiations, which resulted in agreement by the parties on certain issues including pricing, the parties requested on June 22, 2007 to resume the procedural schedule, which request was reflected in Pre-Arbitration Order #3 on June 26, 2007. Subsequently, the parties exchanged amended discovery and responses to the amended discovery. Core served additional discovery on Windstream, and Windstream responded to those requests. The parties' discovery exchanges were entered on the record in this proceeding on September 20, 2007 as Complainant's No. 2 and Respondent's Nos. 2, 3, and 4.

[1] Rural Telephone Company Coalition (No. 6 C.D. 2007) and The Pennsylvania Telephone Association (No. 7 C.D. 2007) v. Pennsylvania Public Utility Commission.

The parties also filed direct testimony and rebuttal testimony in support of their respective positions on the remaining issues in this proceeding. On August 17, 2007, Core submitted the direct testimony of Timothy Gates and Christopher Van de Verg (Complainant's No. 1.0 and 2.0). Also on August 17, 2007, Windstream submitted the direct testimony of Scott A. Terry (Respondent's No. 1). Thereafter, on September 6, 2007, Core's witnesses filed rebuttal testimony (Complainant's No. 1.1 and 2.1), and Windstream's witness filed rebuttal testimony (Respondent No.1R). Due to the legal nature of certain issues and the extensive prefiled testimony by the parties, the parties waived cross examination of witnesses and agreed to submit the issues for decision based on the record in this proceeding. Counsel for the parties appeared at the hearing on September 20, 2007 for purposes of entering the foregoing documents into the record.

Through the parties' continued negotiations in this matter, all but nine of the issues set forth in Core's Arbitration Petition have been resolved. The issues remaining in dispute pertain to the parties' disagreement about which language should be included in the Interconnection Agreement regarding security deposit requirements, acceptable points and methods of interconnection, volume limitations for indirect interconnection, third-party tandem services, virtual Nxx ("VNxx") compensation and jurisdiction, applicability of reciprocal compensation to roughly balanced local traffic, applicability of the Federal Communications Commission's ("FCC") *ISP Remand Order*,[2] application of Nxx codes, and various definitions. The parties' consolidated issues list reflecting each of the issues and the parties' respective positions was entered on the record as Joint No. 1. Resolution of the issues in a reasonable and lawful manner

is important since the resulting Interconnection Agreement executed between Core and Windstream may be adopted by other CLECs desiring to interconnect with Windstream.

The record in this proceeding is scheduled to close on November 9, 2007 with the filing of reply briefs by the parties. This main brief is submitted on behalf of Windstream.

[2] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic, 16 FCC Rcd. 9151, CC Docket Nos. 96-98 and 99-68, Order on Remand and Report and Order (released April 27, 2001) ("ISP Remand Order").

II. PROPOSED FINDINGS OF FACTS

1. Windstream is an ILEC certified by the Commission to operate only within certain exchanges in the Commonwealth. (See, *e.g.*, Commission's Final Order in Docket Nos. A-310325F0006 and A-312050F0006.)

2. Windstream is not a Bell Operating Company as that term is defined in the Act and, therefore, does not provide service LATA-wide. (*See*, 47 U.S.C. §153(4).)

3. On December 4, 2006, the Commission certified Core to operate as a CLEC in Windstream's certificated service territory. (Commission's Final Order at Docket Nos. A-310922F0002, AmA and A-310922F0002, AmB.)

4. Core's primary business plan is to serve as an aggregator of ISP-bound traffic. (*See*, Complainant's No. 1.0 in its entirety that discusses Core's role only as a service provider for ISPs; *e.g.* at 10, lines 214-217. Respondent's No. 1 at 11, lines 2-5.)

5. ISP-bound traffic is virtually all one-way traffic whereby customers of Windstream will place calls to phone numbers supported by Core in order to access dial-up ISPs. (Complainant's No. 1.0 at 21, lines 454-456; Respondent's No. 1 at 11, lines 2-5.)

6. At the time of this arbitration proceeding, the parties have not begun exchanging traffic, and Core has not identified the amount or type of services it anticipates order from Windstream. (Respondent's No. 1R at 4, lines 8-9.)

7. At the time of the filing of main briefs by the parties in this matter, Core maintains a CLEC certificate to operate in Windstream's certificated service territory. (Commission's Final Order on December at Docket Nos. A-310922F0002, AmA and A-310922F0002, AmB.)

8. On or around October 21, 2005, Core sent a request to Windstream to initiate negotiations for an interconnection agreement. (Respondent's No. 1 at 3, lines 11-12.)

9. The negotiations between Core and Windstream culminated in Core filing its Arbitration Petition dated March 30, 2006. (*See*, Core's Arbitration Petition in this docket.)

10. Windstream filed its Response to the Arbitration Petition on April 24, 2006. (*See*, Windstream's Response to Arbitration Petition in this docket.)

11. The parties waived the statutory deadline in 47 U.S.C. §252 and their right to petition the FCC under 47 U.S.C. §252(e)(5) for failure by the Commission to issue a decision in the arbitration within the federal statutory deadline. (Order Staying Proceeding in this docket issued on May 11, 2007 at ¶7.)

12. The procedural schedule in this matter was stayed until after Core received its CLEC authority in Windstream's certificated service territory on December 4, 2006 and thereafter as the parties continued negotiations. (Commission's Final Order on December 4, 2006 at Docket Nos. A-310922F0002, AmA and A-310922F0002, AmB. Pre-Arbitration Order #2 dated January 29, 2007 in this proceeding. Letter by Windstream and Core dated March 19, 2007 and Order #2 Staying Proceeding issued on March 26, 2007.)

13. After the procedural schedule in this matter was resumed on June 26, 2007, the parties served amended initial sets of discovery requests on the other and responded to the requests. (Pre-Arbitration Order #3 dated June 26, 2007. TR at 3-4, referencing Complainant's No. 2 and Respondent's Nos. 2, 3, and 4.)

14. On August 17, 2007 date, Core submitted the prefiled direct testimony of Timothy Gates and Christopher Van de Verg. (TR at 3, referencing Complainant's No. 1.0 and 2.0.)

15. Also on August 17, 2007, Windstream submitted the prefiled direct testimony of Scott A. Terry. (TR at 3, referencing Respondent's No. 1.)

16. On September 6, 2007, Core submitted the prefiled rebuttal testimony of Timothy Gates and Christopher Van de Verg. (TR at 3, referencing Complainant's No. 1.1 and 2.1.)

17. Also on September 6, 2007, Windstream submitted the prefiled rebuttal testimony of Scott A. Terry. (TR at 3, referencing Respondent's No. 1R.)

18. The parties waived cross examination of the witnesses, and counsel for the parties appeared at the hearing on September 20, 2007 for purposes of entering the identified documents into the record. (TR at 5, lines 20-23.)

19. The record in this proceeding is scheduled to close on November 9, 2007 with the filing of reply briefs by the parties. (TR at 13, line 23.)

20. The parties' continued negotiations throughout this proceeding resulted in many issues being resolved. (TR at 4, referencing Joint No. 1.)

21. There are nine issues remaining in dispute as set forth in the parties' consolidated issues list. (TR at 4, referencing Joint No. 1.)

22. The first issue remaining is General Terms and Conditions Issue No. 3 pertaining to security deposits. (Joint No. 1.)

    a. Core accepted all of Windstream's proposed language in Section 8.0 of the Interconnection Agreement pertaining to security deposits except for subsections 8.1.2, 8.1.4, and 8.1.5. (Complainant No. 2.0 at 1, lines 25-26. Core's Best Offer at 2-3.)

    b. The idea that a security deposit must be paid in advance of service activation is standard in the telecommunications industry and across many companies.

(Respondent No. 1 at 7, lines 9-16 and at 8, lines 19-24. Respondent No. 1R at 3-4.)

c. Core accepted similar security deposit requirements to those proposed by Windstream in Core's interconnection agreement with Verizon Pennsylvania. (Section 24.11.4 of the interconnection agreement between Verizon Pennsylvania and Sprint Communications Company, L.P. adopted by Core on August 15, 2005.)

d. Parties providing security deposits are in control of the factors giving rise to security deposits including their own financial performance, timely invoice payments, and performance to avoid instances of breach. (Respondent No. 1 at pages 8-9.)

e. Windstream has assessed advanced security deposits from other entities in Pennsylvania, and security deposits may not be considered barriers to a CLEC's entry into the marketplace. (Respondent No. 1R at 3, lines 13-19 and pages 3-4.)

23. The second issue remaining is Network Interconnection Architecture Issue No. 1 pertaining to acceptable points and methods of interconnection. (Joint No. 1.)

a. Attachment 4 pertains to the manner in which CLECs operating under the Interconnection Agreement will interconnect with Windstream's network. (Respondent No. 1 at 9, lines 12-13.)

b. Windstream's proposed language in Attachment 4 of the Interconnection Agreement clarifies that interconnection must occur at any technically feasible point(s) within Windstream's network, although Core's proposed language

provides only that interconnection must be at any technically feasible point(s). (Appendix 33 to the Arbitration Petition. Core's Best Offer at 4.)

c. Windstream does not maintain network and is not authorized to operate beyond its certificated ILEC service territory. (Respondent No. 1 at 12, lines 8-12.)

d. Windstream's proposed language in Attachment 4 of the Interconnection Agreement does not preclude and Windstream does not oppose establishment of dual points of interconnection provided that any points occur at any technically feasible point within Windstream's network. (Appendix 33 of the Arbitration Petition. Respondent No. 1 at 14, lines 15-16.)

e. Section 251 of the Act states that ILECs are subject to obligations in 251(c) and that interconnection must occur "at any technically feasible point within the carrier's network." (47 U.S.C §251(c)(2)(B).)

f. FCC rules implementing the Act state that an ILEC "shall provide for the facilities and equipment of any requesting telecommunications carrier...[a]t any technically feasible point within the incumbent LEC's network..." (47 C.F.R. §51.305(a)(2).)

g. Core has not identified in this proceeding where it proposes to interconnect with Windstream. (Respondent No. 1 at 14, line 4.)

h. Core's suggested language in Attachment 4 suggests that interconnection could be at "the switch location" of Core or at any POI/IP designated by Core. (Complainant No. 2.0 at 4, lines 19-20 lines 22-23.)

i. Core currently maintains a switch in Verizon Pennsylvania's territory which is outside of Windstream's network and service territory. (Respondent No. 1R at 6, lines 4-6.)

j. Core's proposal would allow Core to establish a POI or IP outside of Windstream's network, Pennsylvania, or even the United States. (Respondent No. 1R at 5, lines 13-19.)

k. Core agreed in its interconnection with Verizon Pennsylvania that the POIs/IPs must be located within Verizon's ILEC network. (Verizon Pennsylvania, Inc. interconnection agreement with Core dated March 31, 2000.)

l. Pursuant to Core's data request responses, Core's IP arrangements with Verizon Pennsylvania are all located within Verizon's ILEC network. (Response of Core to Windstream Interrogatory No. 2 - Amended Set I.)

m. Core's proposal for interconnection outside of Windstream's network is not consistent with standard industry practice or Core's own interconnection arrangements with Verizon Pennsylvania. (*Supra.*)

n. Windstream does not have an interconnection agreement providing for interconnection outside of its network and certificated service territory. (*See*, generally, Windstream's interconnection agreements on file with the Commission and entered on the record in this proceeding.)

24. The third issue remaining is Network Interconnection Architecture Issue No. 4 pertaining to volume limitations for indirect interconnection. (Joint No. 1.)

a. Windstream's proposes to exchange indirect traffic up to a volume threshold of a DS1 at which point direct interconnection would be required. (Appendix 33 of Arbitration Petition.)

b. A DS1 volume limitation is a standard unit of network capacity and an efficient network design. (Respondent No. 1 at 19, lines 1-12. Respondent No. 1R at 10, lines 13-14.)

c. A DS1 threshold has been upheld by this Commission. (*In the Matter of Petition of Cellco Partnership d/b/a Verizon Wireless for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Alltel Pennsylvania, Inc.*, Opinion and Order, Docket No. A-310489F70004 at 81.) ("Alltel Order")

25. The fourth issue remaining is Network Interconnection Architecture Issue No. 5 pertaining to third-party tandem services. (Joint No. 1.)

a. The Interconnection Agreement is a contractual arrangement between two parties. (Respondent No.1 at 20, lines 7-8.)

b. This Commission has determined that an interconnection agreement between two parties should not contain payment obligations with respect to third-party tandem providers. (Alltel Order at 53.)

26. The fifth issue remaining is Intercarrier Compensation Issue No. 1 pertaining to VNxx compensation and jurisdiction. (Joint No. 1.)

a. The issue of VNxx traffic was not negotiated between Core and Windstream. (Appendix 33 of Arbitration Petition, containing no reference to discussions or language pertaining to VNxx.)

b. This Commission has determined that it cannot determine compensation for NVxx traffic until the FCC rules on the proper jurisdiction and compensation of VNxx traffic. (Commission Docket No. I-00040105.)

c. The FCC at this time has not made a determination with respect to VNxx traffic. (Respondent No. 1 at 22, lines 6-8.)

d. Virtual Nxx codes are central office codes that correspond to a particular rate center but are assigned to a customer located in a different rate center. (Respondent No. 1 at 21, lines 11-13. Complainant No. 1.0 at 4, lines 82-84.)

e. Windstream does not provision service to its retail customers through the use of VNxx arrangements. (Respondent No. 1 at 22, lines 11-13.)

f. VNxx arrangements are not comparable to FX service since customers using FX service pay for a dedicated transmission path or transport costs. (Respondent SAT-1R.)

g. VNxx arrangements are not comparable to EAS service which, like FX service, involves establishment of a dedicated transmission path and mechanism through which additional transport costs are recovered. (Respondent No. 1R at pages 18-19.)

h. VNxx arrangements are not comparable to remote call forwarding service except that customers utilizing remote call forwarding service are responsible for toll charges incurred for calls between the forwarding and terminating numbers. (*Id.* *See*, also, Section S8.2(B)(15) of Windstream's tariff PA P.U.C. No. 7.)

i. VNxx traffic is not local traffic subject to reciprocal compensation. (Respondent No. 1R at pages 15-16.)

j. With VNxx arrangements, Core does not provide any transmission path or dedicated facility and instead rate centers a telephone number to appear as if a

customer in a different geographic location is physically located in Windstream's exchange. (Respondent No. 1R at 19, lines 18-22.)

k. Jurisdiction of calls should be determined based on the location of the calling and called parties instead of the NPA-Nxx which may conceal that actual physical location of the customers. (Respondent No. 1R at pages 19-20.)

27. The sixth issue remaining is Intercarrier Compensation Issue No. 3 pertaining to the applicability of reciprocal compensation to roughly balanced local traffic. (Joint No. 1.)

a. Bill and keep is an efficient compensation method for the exchange of local traffic that is roughly balanced between two parties. (Respondent No. 1R at 21, lines 5-11.)

b. Windstream's proposed language in Attachment 12 of the Interconnection Agreement provides for reciprocal compensation for local traffic this is not roughly balanced and for bill and keep for local traffic that is roughly balanced. (Appendix 33 to the Arbitration Petition.)

c. Core's proposed language in Attachment 12 does not include bill and keep as an alternative for local traffic that is roughly balanced. (Core's Best Offer at 9.)

d. Core's proposed language in Attachment 12 applies reciprocal compensation to "Section 251(b)(5) traffic" instead of clarifying "local traffic." (Core's Best Offer at 9.)

28. The seventh issue remaining is Intercarrier Compensation Issue No. 4 pertaining to the applicability of the FCC's *ISP Remand Order*. (Joint No. 1.)

29. The eighth issue remaining is Intercarrier Compensation Issue No. 5 pertaining to the application of Nxx codes. (Joint No. 1.)

30. The ninth issue remaining pertains to definitions for exchange services, intraLATA toll traffic, interconnection point, and Section 251(b)(5) traffic. (Joint No. 1.)

31. The resulting Interconnection Agreement between Windstream and Core may be adopted by CLECs in Pennsylvania desiring to interconnect with Windstream's network. (47 C.F.R. Section 51.809.)

III. STATEMENT OF THE ISSUES

1. Should Windstream be permitted to require Core to post a security deposit prior to Windstream providing service or processing orders and to increase said deposit if circumstances warrant or forfeit same in the event of breach by Core?
Answer: Yes.

2. Should Windstream be required to interconnect with Core at dual points of interconnection, one of which would be a point outside of Windstream's existing network, and further, should the parties be required to bear the cost to deliver originating interconnection traffic to one another at each other's designated switch location?
Answer: No.

3. Should Core be permitted to indirectly interconnect with Windstream without volume limitations that would necessitate direct interconnection?
Answer: No.

4. Should the Interconnection Agreement require each Party to arrange and pay for third-party tandem services relative to its own originating traffic?
Answer: No.

5. How should the jurisdiction of VNxx traffic be determined, and what compensation should apply?
Answer: Issues with respect to jurisdiction and compensation of VNxx traffic were not in dispute between the parties during negotiations and are not properly the subject of this arbitration. Further, VNxx traffic is not local traffic subject to reciprocal compensation and is subject to applicable access compensation.

6. Should reciprocal compensation apply to local traffic that is roughly balanced?
Answer: No.

7. Does the FCC's *ISP Remand Order* apply to the parties and facts in this proceeding?
Answer: No.

8. Should Windstream or Core determine for which Nxx codes Core may apply?
Answer: The use of a single NPA-Nxx for multiple locations allows Core or any CLEC operating under the Interconnection Agreement to mask the actual location of its customers and avoid payment of appropriate compensation due to Windstream. Further, Core's proposal on this issue precludes Windstream from complying with dialing parity rules.

9. How should "Exchange Services," "Intra-LATA Toll Traffic," "Interconnection Point," and "Section 251(b)(5) Traffic" be defined in the Interconnection Agreement?
Answer: Windstream's definitions should be included in the Interconnection Agreement.

IV. SUMMARY OF THE ARGUMENT

Windstream's positions on the nine remaining issues are lawful, reasonable, and consistent with standard practice (including Core's own practice in its interconnection agreement with Verizon Pennsylvania. Accordingly, Windstream's positions and proposed language should be adopted for inclusion in the resulting Interconnection Agreement. First, Windstream's proposed language pertaining to security deposits in Section 8.0 should be included in its entirety in the Interconnection Agreement as the language is reasonable, consistent with standard practice, and consistent with language previously adopted by Core in another interconnection agreement.

Second, Windstream's language in Attachment 4 pertaining to POIs/IPs should be included in the Interconnection Agreement as it is consistent with legal requirements that interconnection occur at any technically feasible point(s) within the ILEC's network. Accordingly, any POI(s) / IP(s) established by Core with Windstream must be within Windstream's network and certificated ILEC service territory. As Windstream is not a Bell Operating Company, such interconnection does not include establishment of one POI/IP per LATA.

Third, Windstream's language in Attachment 4 should be adopted providing for indirect interconnection between the parties up to a DS1 volume threshold at which point direct interconnection will be required to the particular Windstream end office exceeding that threshold. This position is reasonable, efficient, and consistent with Commission precedent.

Fourth, the Interconnection Agreement between Windstream and Core may not set forth payment obligations with respect to third-party tandem providers, and Windstream's language pertaining to NIA Issue No. 3, therefore, should be adopted.

Fifth, the issue of NVxx traffic is not ripe for consideration in this arbitration proceeding or by this Commission at this time. Further, Core's attempts to establish VNxx traffic as local traffic

subject to reciprocal compensation are misguided. Until such time as the FCC definitively rules on the issue, VNxx traffic should continue to be subject to applicable access compensation.

Sixth, Windstream's language in Attachment 12 is reasonable, consistent with standard practice, and should be adopted as it is the only option that provides compensation mechanisms both for instances where local traffic is roughly balanced (subject to bill and keep) and where local traffic is not roughly balanced (subject to reciprocal compensation).

Seventh, the FCC's *ISP Remand Order* on its own terms does not apply to the facts and parties in this proceeding and does not address ISP-bound traffic delivered through the use of VNxx arrangements.

Eighth, Windstream's proposals on the remaining disputed definitions are most reasonable and consistent with law and should be adopted to ensure consistency with the proposals particularly with respect to VNxx arrangements.

V. ARGUMENT

Core's Arbitration Petition identified 25 issues remaining in dispute between the parties. Since the filing of the Arbitration Petition, however, the parties continued negotiations and resolved all but nine of the issues. As discussed below, Windstream's position and language with respect to each of the remaining issues is reasonable, lawful, consistent with industry practice, and more appropriate for inclusion in the parties' Interconnection Agreement. In several instances, Windstream's position and proposed language is consistent with language that Core has accepted in interconnection agreements with other ILECs.

A. General Terms and Conditions Issue No. 3 – Security Deposits should be resolved in favor of Windstream's position that the Interconnection Agreement should include language providing for reasonable security deposits in advance of provision of service.

General Terms and Conditions Issue No. 3 ("GTC Issue No. 3) pertains to the section of the parties' Interconnection Agreement which contains general provisions governing the parties' relationship. (Respondent No. 1 at page 6, lines 17-19.) Specifically at issue in this section of the Interconnection Agreement is language that would permit Windstream to require Core (or any other CLEC electing to operate under the Interconnection Agreement) to post a security deposit prior to Windstream providing service or processing orders and to increase any such deposit if circumstances warrant. The issue also includes language that would allow Windstream to use any such security deposit to cover outstanding charges in the event of a breach of the Interconnection Agreement by Core or any other CLEC electing to operate thereunder. (*Id.* at lines 20-23.)

Windstream's proposed language on GTC Issue No. 3 is as follows:[3]

8.0 Payment of Rates and Late Payment Charges

[3] At the time that the parties exchanged proposed drafts of the Interconnection Agreement, Windstream operated under its former name of Alltel Pennsylvania, Inc. Therefore, the provisions cited contain the name "Alltel" which will need to be updated to reflect Windstream's current name in the final executed Interconnection Agreement.

8.1 Alltel, at its discretion may require "CLEC ACRONYM TXT" to provide Alltel a security deposit to ensure payment of "CLEC ACRONYM TXT"'s account. The security deposit must be an amount equal to three (3) months anticipated charges (including, but not limited to, recurring, non-recurring, termination charges and advance payments), as reasonably determined by Alltel, for the interconnection, resale services, network elements, collocation or any other functions, facilities, products or services to be furnished by Alltel under this Agreement.

8.1.1 Such security deposit shall be a cash deposit or other form of security acceptable to Alltel. Any such security deposit may be held during the continuance of the service as security for the payment of any and all amounts accruing for the service.

8.1.2 *If a security deposit is required, such security deposit shall be made prior to the activation of service.*

8.1.3 The fact that a security deposit has been provided in no relieves "CLEC ACRONYM TXT" from complying with Alltel's regulations as to advance payments and the prompt payment of bills on presentation nor does it constitute a waiver or modification of the regular practices of Alltel providing for the discontinuance of service for non-payment of any sums due Alltel.

8.1.4 *Alltel reserves the right to increase the security deposit requirements when, in its sole judgment, circumstances so warrant and/or gross monthly billing has increased beyond the level initially used to determine the security deposit.*

8.1.5 *In the event that "CLEC ACRONYM TXT" is in breach of this Agreement, service to "CLEC ACRONYM TXT" may be terminated by Alltel; any security deposit applied to its account and Alltel may pursue any other remedies available at law or equity.*

8.1.6 In the case of a cash deposit, interest at a rate as set forth in the appropriate Alltel tariff shall be paid to "CLEC ACRONYM TXT" during the possession of the security deposit by Alltel. Interest on a security deposit shall accrue annually and, if requested, shall be annually credited to "CLEC ACRONYM TXT" by the accrual date.

8.2 Alltel may, but is not obligated to, draw on the cash deposit, as applicable, upon the occurrence of any one of the following events.

8.2.1 "CLEC ACRONYM TXT" owes Alltel undisputed charges under this Agreement that are more than thirty (30) calendar days past due; or

8.2.2 "CLEC ACRONYM TXT" admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had an involuntary case commenced against it) under the U.S. Bankruptcy Code or any other law relating to insolvency, reorganization, wind-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or, is subject to a receivership or similar proceeding; or

8.2.3 The expiration or termination of this Agreement.

8.3 If Alltel draws on the security deposit, upon request by Alltel, "CLEC ACRONYM TXT" will provide a replacement deposit conforming to the requirements of Section 8.1.

8.4 Except as otherwise specifically provided elsewhere in this Agreement, the Parties will pay all rates and charges due and owing under this Agreement within thirty (30) days of the invoice date in immediately available funds. The Parties represent and covenant to each other that all invoices will be promptly processed and mailed in accordance with the Parties' regular procedures and billing systems.

8.4.1 If the payment due date falls on a Sunday or a Holiday which is observed on a Monday, the payment due date shall be the first non-Holiday following such Sunday or Holiday. If the payment due date falls on a Saturday or on a Holiday which is observed

on Tuesday, Wednesday, Thursday, or Friday, the payment due date shall be the last non-Holiday preceding such Saturday or Holiday. If payment is not received by the payment due date, a late penalty, as set forth in §8.5 below, will be assessed.

8.5 If the amount billed is received by the billing Party after the payment due date or if any portion of the payment is received by the billing Party in funds which are not immediately available to the billing Party, then a late payment charge will apply to the unpaid balance.

8.6 Except as otherwise specifically provided in this Agreement interest on overdue invoices will apply at the lesser of the highest interest rate (in decimal value) which may be levied by law for commercial transactions, compounded daily and applied for each month or portion thereof that an outstanding balance remains, or shall not exceed 0.0004930% compounded daily and applied for each month or portion thereof that an outstanding balance remains.

(*See*, Appendix 33 to the Arbitration Petition. Emphasis added.) Although Core suggests that Windstream's language in Section 8 "imposes fairly onerous security deposit requirements upon Core," Core's Best Offer submitted in this matter on September 10, 2007 accepted all of Windstream's proposed language above except for three subsections (8.1.2, 8.1.4, 8.1.5). (Complainant No. 2.0 at 1, lines 25-26; Core's Best Offer at 2-3.) Core's acceptance of the majority of the language in Section 8.0 also is reflected in Appendix 33 of Core's Arbitration Petition which set forth deletions only to the three specific subsections.

To begin, Core opposes subsection 8.1.2 which merely clarifies that a security deposit, to the extent any is required, must be paid prior to service activation. The idea that a security deposit must be paid in advance of service activation is a standard concept both in the telecommunications industry and across many companies including electric and water utilities, gas companies, cable providers, wireless service providers, and communications and entertainment providers. (Respondent No. 1 at 8, lines 19-24.) Indeed, Windstream's security deposit proposal is not unlike the security deposit requirements that Core accepted when it adopted the interconnection agreement between Verizon Pennsylvania and Sprint Communications Company, L.P. on August 15, 2005. (*See*, Section 24.11.4 Assurance of Payment in the Adopted Sprint Agreement.) Therefore, Core's suggestion that "[t]ying

performance under the ICA specifically to payment of a security deposit raises significant competitive issues" (Complainant No. 2.0 at 2, lines 10-11) is curious given Core's acceptance of similar deposit requirements with Verizon Pennsylvania.[4] Additionally, Core's opposition to Section 8.1.2 is confusing given Core's agreement to include Sections 8.1 and 8.1.3 in the Interconnection Agreement. Sections 8.1 and 8.1.3 state that security deposits are for "anticipated charges" and are without regard to regulations as to any "advance payments" which is consistent with Windstream's proposed language in 8.1.2.

Core also opposes inclusion of subsections 8.1.4 and 8.1.5. Subsection 8.1.4 allows Windstream to increase a deposit if circumstances warrant and/or gross monthly billings have increased beyond the level used to determine the deposit. Subsection 8.1.5 provides for termination of service and application of the deposit in cases of breach of the interconnection agreement. With respect to these subsections, Core states that it "should not be required to operate under these circumstances" (Complainant No. 2.0 at 2, lines 17-18) and that the "language goes far beyond any reasonable security deposit requirements." (*Id.* at lines 21-22.) Again, Windstream's language in these subsections is intended merely to clarify other provisions in Section 8.0 which Core already has accepted and is consistent with similar deposit requirements Core accepted in its interconnection agreement with Verizon Pennsylvania. (*Supra.*) Most significantly, Core's stated concerns about these provisions overlook the fact that the CLECs like Core control the factors giving rise to security deposits – *e.g.*, a CLEC's control over its own financial performance, timely invoice payments, and performance under the Interconnection Agreement to avoid instances of breach. (Respondent No. 1 at pages 8-9.)

[4] Despite Core's testimony that Windstream's language is "unilateral" and "unconstrained" (Complainant No. 2 at 2, line 8), Core did not suggest alternative security deposit language and instead proposed to accept all of Windstream's proposed Section 8.0 with the exception of subsections 8.1.2, 8.14, and 8.1.5. (Appendix 33 of the Arbitration Petition.)

For these reasons, Windstream's language in Subsections 8.1.2, 8.1.4, and 8.1.5 should be included in the Interconnection Agreement. Security deposit provisions are common across many industries and in fact have been accepted by Core in its interconnection agreement with Verizon Pennsylvania.[5] Windstream, like other companies should be allowed to request a reasonable deposit to ensure payment of outstanding charges. Contrary to Core's suggestion, security deposits do not raise "competitive issues" as imposition of a reasonable security deposit is hardly a barrier to entry. As noted by the United States Supreme Court, additional costs and, therefore, lower profits does not necessarily mean that the CLEC has been impaired from providing any services. [6] GTC Issue No. 3 should be resolved consistent with Windstream's stated position.

B. Network Interconnection Architecture Issue No. 1 – Points of Interconnection between Windstream and Core, by law, must be established within Windstream's network and certificated service territory.

Provisions pertaining to network interconnection architecture ("NIA") are found in Attachment 4 of the parties' Interconnection Agreement and pertain to the manner in which any CLEC operating under the Interconnection Agreement will interconnect with Windstream's network. (Respondent No. 1 at 9, lines 12-13.) NIA Issue No. 1 is one of three remaining NIA issues and relates to whether Windstream should be required to establish dual points of interconnection ("POIs") one of which would be a point outside of Windstream's existing network and certificated service territory and whether the parties should be required to bear the

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[5] Windstream has assessed advanced security deposits from entities in Pennsylvania in the manner in which Core opposes. For example, Windstream collected a $300 deposit from a reseller, about a $3,500 deposit from an ISP who subsequently was disconnected for nonpayment, and a $960 deposit from another ISP who also was disconnected for nonpayment (and the deposit was applied to the outstanding balance). (Respondent No. 1R at 3, lines 13-19.)

[6] *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (U.S. 1999) at 389. (The Court's analysis in this case relates to whether a CLEC would be impaired without access to a network element if not having access to such network

cost of delivering originating interconnection traffic to one another at each other's designated switch location.

Windstream's proposed language in Attachment 4 of the Interconnection Agreement is as follows:

> **1.0 Scope.**
>
> 1.1 Each Party shall provide interconnection to the other Party, in accordance with this Agreement, and in accordance with the standards and requirements governing interconnection set forth in 47 U.S.C. §251, FCC implementing regulations, and state law governing interconnection, *at (i) any technically feasible Point(s) of Interconnection on Alltel's interconnected network within the LATA* and/or (ii) a fiber meet point to which the Parties mutually agree under the terms of this Agreement, for the transmission and routing of Local Traffic, ISP-Bound Traffic, IntraLATA Traffic, and InterLATA Traffic. It is "CLEC ACRONYM TXT's" responsibility to establish interconnection *within Alltel's interconnected network within each LATA*. In each Alltel Exchange Area where the Parties interconnect their networks, the Parties will utilize the interconnection method as specified below unless otherwise mutually agreed to in writing by the Parties. Traffic originated by a third party, not subject to this Agreement, delivered to one of the Parties, regardless of whether such traffic is delivered to the Party's End User, is not considered to be originating on that Party's network and may not be routed through direct interconnection.
>
> 1.2 Each Party is responsible for the appropriate sizing, operation, and maintenance of the facilities on its side of each IP. *Each IP must be located within Alltel's serving territory in the LATA* in which traffic is originating. *An IP determines the point up to which the originating Party shall be responsible for providing at its own expense, the call transport with respect to its local-traffic and intraLATA toll traffic.*
>
> 1.3 An Interconnection Point ("IP"), as defined in §2.0 of this Attachment will be designated for each interconnection arrangement established pursuant to this Agreement. Street address and/or Vertical and Horizontal (V&H) Coordinates will be provided to identify each IP.
>
> 1.4 This Attachment is based on the network configuration and capabilities of the Parties as they exist on the date of this Agreement. If those factors change (*i.e.*, Alltel deploys a new tandem office or becomes an E-911 provider), the Parties will negotiate in good faith to modify this Agreement in order to accommodate the changes and to provide the services made possible by such additional capabilities to "CLEC ACRONYM TXT".

(*See*, Appendix 33 to the Arbitration Petition. Emphasis added.) Most critically, Windstream's proposed language clarifies that the point(s) of interconnection or interconnection point(s) ("POIs" or "IPs") between the parties must be within Windstream's network and that each party is responsible for its traffic up to the POI(s) or IP(s).

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element resulted in higher cost of entry. The Court concluded that it did not. Here, a reasonable security deposit is nothing more than a cost of doing business which does not impair the ability of Core to provide service).

In its Best Offer, Core proposed to replace Windstream's language with the following:

1.1 Each Party shall provide interconnection to the other Party, in accordance with this Agreement, and in accordance with the standards and requirements governing interconnection set forth in 47 U.S.C. §251, FCC implementing regulations, and state law governing interconnection, *at (i) any technically feasible point* and/or (ii) a fiber meet point to which the Parties mutually agree under the terms of this Agreement, for the transmission and routing of Section 251(b)(5) Traffic, ISP-Bound Traffic, IntraLATA Toll Traffic, and InterLATA Toll Traffic.

1.2 ***CLEC ACRONYM TXT*** shall have the sole right and discretion to initiate interconnection in each LATA by submitting a written request to Alltel designating the following:

(a) a CLLI code for ***CLEC ACRONYM TXT***'s designated interconnection point ("IP"); and
(b) a proposed IP for the delivery of ***CLEC ACRONYM TXT***'s originating interconnection traffic to Alltel.

Within ten (10) days of ***CLEC ACRONYM TXT***'s written request, Alltel shall provide ***CLEC ACRONYM TXT*** with the CLLI code of Alltel's designated IP.

1.3 Pursuant to ***CLEC ACRONYM TXT***'s written *request for interconnection in each LATA*, each party shall designate an Interconnection Point ("IP") *on its own network* at which the designating party shall arrange to receive the other party's originating interconnection traffic. *Each party shall have a duty to provide for the transport and delivery of interconnection traffic to the other party at the other party's IP.*

(Core's Best Offer at 4. Emphasis added.) In sharp contrast to Windstream's proposed language, Core's suggested language for Attachment 4 would allow establishment of POIs or IPs outside of Windstream's network and certificated service territory. Further, Core attempts to place the burden of transporting traffic to such a distant POI or IP location on Windstream.

In addressing NIA Issue No. 1 and the reasons why Core's proposed language is unacceptable, it is important to understand two threshold concerns. First, Windstream is an ILEC certified to operate only within its designated exchanges (or certificated service territory) in Pennsylvania. Windstream does not maintain network or provide service beyond the boundaries of its certificated service territory. (Respondent No. 1 at 12, lines 8-12.) Second, it is important to understand that Core intends to function primarily as an aggregator of dial-up ISP-bound traffic. Therefore, while Core asserts that its language avoids Core bearing "the cost of bringing Windstream's originating traffic from Windstream's switch...to Core's switch" (Complainant

No. 2 at 4, lines 20-21), Core's position fails to address the pertinent fact that such originating traffic arises as a result of Windstream end users calling numbers supported by Core in order to access dial-up ISPs served by Core. Particularly in light of these concerns, it is imperative that the Interconnection Agreement contain language properly providing for establishment of reasonable and lawful POIs and IPs and associated compensation.

As a general matter, Core's testimony on NIA Issue No. 1 confuses the issue by implying that the issue is one of whether Core is being required to establish a "single" POI or IP. (Complainant No. 2.0 at 4.) This contention is a red herring. Windstream's proposed language included above does not mandate establishment of a single POI or IP and instead allows for establishment of multiple POIs or IPs. Windstream's direct testimony confirmed that Windstream does not oppose any effort by Core to establish dual POIs or IPs.[7] (Appendix 33 of the Arbitration Petition. Respondent No. 1 at 14, lines 15-16) The issue, more accurately, is that any POI or IP established by Core with Windstream must be *within* Windstream's network.

The law on this point is clear. The unambiguous language of §251 of the Act states ILECs have a duty to provide for interconnection "at any technically feasible point *within* the carrier's network." (47 U.S.C. §251(c)(2)(B). Emphasis added.) By the Act's express terms, this subsection applies only to the additional obligations of ILECs such as Windstream and, therefore, cannot be interpreted as applying to interconnection within a CLEC's network. Similarly, the FCC's rules implementing this section of the Act are equally as clear. Specifically, FCC Rule 51.305 (Interconnection) states that an ILEC "shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent

[7] As long as the IP/POI is within Windstream's network, Windstream does not oppose the designation of dual POIs/IPs. Windstream's position is evidenced by the interconnection agreement of Windstream's ILEC affiliate in Georgia (which is a matter of public record on file with the Georgia Public Service Commission as an agreement

LEC's network...[a]t *any technically feasible point within the incumbent LEC's network....*" (47 C.F.R. §51.305(a)(2). Emphasis added.) Therefore, as a matter of law, a requesting carrier such as Core must establish a POI or IP with Windstream *within Windstream's network.*

Contrary to these clear and unambiguous federal requirements, Core's proposed language on NIA Issue No. 1 and its prefiled testimony purport to allow Core (and any CLEC adopting the Interconnection Agreement) to establish a POI or IP outside of Windstream's network and to require Windstream to deliver traffic to Core "to the switch location" of Core (Complainant No. 2.0 at 4, lines 19-20) or "to the IP designated by" Core (Complainant No. 2.0 at 4, lines 22-23). Consequently, although Core has not identified in this proceeding exactly where it proposes to interconnect with Windstream (Respondent No. 1 at 14, line 4), Core's proposal would allow Core to establish a POI or IP outside of Windstream's network, outside of Pennsylvania, or even outside the United States to which point Windstream would deliver traffic to Core.[8] (Respondent No. 1R at 5, lines 13-19.) Such a result is clearly beyond the mandates of the Act and the FCC's rules.

Despite its assertions in this proceeding with Windstream, Core itself agreed in its interconnection with Verizon Pennsylvania that dual POIs / IPs must be located within the ILEC's network. Particularly, the Verizon Pennsylvania Inc., f/k/a Bell Atlantic – Pennsylvania interconnection agreement as executed by Core on March 31, 2000 sets forth an arrangement

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between Alltel Georgia Communications Corporation and Al-Call, Inc.) providing for a dual IP within Windstream's ILEC network and service territory. (Respondent No. 1R at 5, lines 4-9.)

[8] It is conceivable that a CLEC may maintain its switch outside of the United States, although that fact does not change the requirement that the CLEC must establish a POI or IP within the ILEC's network. For example, Windstream's ILEC affiliates in Texas have an interconnection agreement on file with the Texas Public Utility Commission as a matter of public record with Clearwire Telecommunications Services, LLC. Clearwire's switch is located in Canada, although its interconnection agreement provides for establishment of the IP/POI within the Windstream ILEC network, with Clearwire being responsible for transport costs from the IP/POI back to Clearwire's switch location. Thus, it is reasonable that Core (or any other carrier adopting the resulting Interconnection Agreement) maintain a distant switch location, but it is wholly unreasonable for Core to suggest that Windstream should bear all responsibility for delivering traffic to such a distant location outside of Windstream's service territory. (Respondent No. 1R at 6, lines 9-19.)

whereby each POI/IP designated by Core and Verizon is located *within* Verizon's ILEC territory. This fact is further evidenced by Core's data request responses on this issue which confirm that Core's IP arrangements with Verizon Pennsylvania all are located *within* Verizon's territory. (Core's Response to Windstream's Interrogatory No. 2 - Amended Set I.) Thus, contrary to Core's assertion, dual POIs/IPs outside of an ILEC's network can hardly be considered "consistent with industry standard practice" (Complainant No. 2.0 at 7, lines 2-3) given that such an assertion is not consistent with even Core's establishment of IPs/POIs with Verizon in Pennsylvania. Likewise, in the sixteen states in which Windstream's ILEC affiliates operate, Windstream is unaware of any instance where the Windstream ILECs have established or been required to establish IPs/POIs outside of their certificated ILEC service territories. (Respondent No. 1R at 9, lines 10-13.)

As noted previously, Core has not identified in this proceeding exactly where it proposes to interconnect with Windstream. Nevertheless, Core's testimony suggests that Core may seek to establish a POI or IP at its switch location. Core presently maintains a switch in Verizon Pennsylvania's territory. (Respondent No. 1R at 6, lines 4-6.) Thus, Core appears to be seeking establishment of a POI or IP at Core's switch location which currently is located in Verizon Pennsylvania' territory and outside of Windstream's certificated service territory. (Again, Windstream does not maintain network beyond its certificated service territory.) Despite the fact that Core's position is unlawful as it seeks to establish interconnection outside of Windstream's network, that result does not force Core to install another switch in Windstream's territory. (Respondent No. 1R at 7, lines 9-15.) Instead, subject to appropriate volume limitations for indirect interconnection, Core could use its existing switch location in Verizon's service territory to indirectly interconnect with Windstream through Verizon Pennsylvania's tandem. (*Id.*) In this

example of indirect interconnection, Core would establish the POI/IP at Windstream's exchange boundary. (Respondent No. 1R at 13, lines 5-6.) However, unlike Core's unlawful proposal to establish interconnection at a distant POI or IP outside of an ILEC's network, the alternative of indirect interconnection through the Verizon tandem provides a lawful means for Core to interconnect with Windstream and at the same time utilize Core's existing switch location in Verizon Pennsylvania's service territory. Indeed, Core could still use its existing switch location and establish direct interconnection with Windstream at any technically feasible point within Windstream's network.

Core's proposal to establish POIs/IPs at locations outside of Windstream's network merely is means for Core to force Windstream to bear all costs associated with delivering traffic to some distant location selected by Core.[9] Again, it is critical to note that although the traffic in this instance is originating on Windstream's network, it is originating as a result of Windstream's end user customers calling numbers to access dial-up ISPs served by Core.

In support of its contention that it is entitled to establish a POI/IP outside of Windstream's network and to force Windstream to bear all associated costs of Core's POI/IP designation, Core states that this Commission previously authorized such an arrangement between Windstream (then operating under the name of Alltel Pennsylvania, Inc.) and Verizon Wireless. (Complainant No. 2.1 at 6, lines 5-20.) However, Core fails to discuss the Commission's full determination in that proceeding. In the Verizon Wireless proceeding, Verizon Wireless was seeking interconnection to a specific location, unlike Core who has failed throughout the course of this instant proceeding to identify where it proposes to interconnect

[9] Because Core has not identified exactly how it proposes to interconnect with Windstream and the parties have not begun exchanging traffic, the particular costs associated with specific facilities arrangements cannot be quantified at this time. Nevertheless, under Core's version of a "dual POI" arrangement, all associated transport costs would be borne by Windstream's customers with Windstream potentially having to deploy facilities unlawfully outside of its

with Windstream. More importantly, the Verizon Wireless proceeding involved disputes as to interconnection within what is deemed the local calling scope for wireless companies ("MTA") – a concept which is wholly inapplicable to Core. *Most significantly, the Administrative Law Judge's Recommended Decision (adopted in full by the Commission) allowed Windstream to assess a fee to Windstream's customers placing calls to Verizon Wireless customers in order for Windstream to recover the costs associated with the delivery of those calls to the distant location*. The Commission recognized in the case of interconnection with Verizon Wireless that there were additional costs incurred by Windstream beyond those being recovered from Windstream's end users.[10] Despite the Commission's determination, Windstream and Verizon Wireless executed an interconnection agreement that is on file with the Commission and which does not provide for establishment of an IP or POI outside of Windstream's network.

For all of the reasons set forth above, namely that the Act and FCC rules expressly require interconnection to occur within the ILEC's network, Core's proposed language on NIA Issue No. 1 must be rejected. Not only is Core's proposed language contrary to law and this Commission's prior determination in Verizon Wireless, but it is also inconsistent with standard industry practice and Core's own arrangement with Verizon Pennsylvania. Windstream's language in Attachment 4 of the Interconnection Agreement is consistent with law and standard industry practice and should be adopted.

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certificated service territory. Again, this result is particularly alarming given that other CLECs may adopt the Interconnection Agreement. (Respondent No. 1 at 14, lines 2-11.)

[10] Core further attempts to support its proposal for establishment of a POI/IP outside of Windstream's network and for Windstream to bear all associated costs, with the notion that the FCC has ruled that a "LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network". (Complainant No. 2.0 at 5, lines 1-24.) However, Core's suggestion is misguided as the determination by the FCC was directed specifically to Section 251(b)(5) traffic only, and not to access traffic. With respect to interexchange traffic, FCC rules specifically allow a carrier to charge another carrier for traffic that originates on that carrier's network. Notwithstanding, it is critical to the discussion that such "originating traffic" about which Core complains results from end users in Windstream's service territory calling dial-up ISPs served by Core.

C. NIA Issue No. 4 – It is reasonable and consistent with commission precedent and standard practice that indirect interconnection between parties be subject to a traffic volume threshold (DS1) after which point the parties must establish direct interconnection.

NIA Issue No. 4 pertains to whether the Parties' Interconnection Agreement should contain a volume limitation on indirect interconnection at which point direct interconnection would be required. Specifically, indirect interconnection occurs most frequently through the use of a third party tandem, and Windstream's proposal is to allow indirect interconnection until the point that traffic to a specific Windstream end office reaches a DS1 level.

Windstream's proposed language in Attachment 4 of the Interconnection Agreement is as follows:

> **12. Indirect Traffic**
> 12.1 For purposes of exchange Indirect Traffic there is no physical or direct point of interconnection between the Parties, therefore neither Party is required to construct new facilities or make mid-span meet arrangements available to the other Party for Indirect Traffic. Where indirect traffic exceeds or is forecasted to exceed *a single DS1 of traffic per month*, then the Parties shall install and retain direct end office facilities, pursuant to Section 2.0 of this Attachment, sufficient to handle such traffic volumes. Indirect interconnection shall only be allowed to the extent each party is interconnected at a tandem which ***RLEC ACRONYM TXT***'s end office subtends.

(*See*, Appendix 33 to the Arbitration Petition. Emphasis added.) In contrast, Core's Best Offer omits any language pertaining to the DS1 threshold.

Core suggests that placing a volume limitation on indirect traffic "arbitrarily" limits Core's interconnection options. (Complainant No. 2.0 at 11, lines 19-20.) This assertion is without merit. A DS1 threshold is a standard unit of network capacity (or 257,000 minutes of use), is an efficient network design, and is generally acceptable to most parties with whom Windstream interconnects. (Respondent No. 1 at 19, lines 1-12. Respondent No. 1R at 10, lines 13-14.) Once the parties exceed the DS1 threshold, they are exchanging significant volumes of traffic. Thus, at such levels, direct interconnection is more efficient and allows the parties to control the facilities and to increase capacity of those facilities instead of relying on a third-party

tandem provider to ensure that sufficient facilities capacity is provided and that the parties' customers are not impacted negatively by network congestion. Indeed, a DS1 volume limitation on indirect interconnection has been upheld by this Commission (Alltel Order at 81).

Windstream's proposal does not deny Core's ability to utilize indirect interconnection and instead provides merely that in those cases where traffic volumes rise to a significant level that Core (or any CLEC operating under the Interconnection Agreement) be willing to directly connect to the applicable Windstream end office to which the traffic in question is being exchanged. Likewise, Windstream's proposal does not require Core to establish direct facilities with every Windstream end office. (Complainant No. 2 at 12, lines 25-27.) To the contrary, Windstream's proposal would require direct interconnection only to the particular Windstream end office(s) to which indirect traffic volumes between Core and Windstream exceeded a DS1 threshold. Further, Core's suggestion that it is "generally more efficient for Core to interconnect with Windstream at the Windstream tandem" (*Id.* at lines 23-24) overlooks the fact that not all of Windstream's end offices subtend one of Windstream's tandems. Core is equally misguided in its references to "Windstream's tandem in the LATA." (*Id.* at lines 12-13.) Unlike Bell Operating Companies like Verizon, Windstream's ILEC service territory extends only to the boundaries of its certificated service territory and does not encompass the entire LATA. Similarly, unlike Verizon, Windstream is not the LATA tandem provider.

Indirect interconnection is an acceptable method of interconnection and, as explained above, is not arbitrarily restricted by imposing a DS1 volume limitation at which point direct interconnection would be required. Contrary to Core's suggested language on NIA Issue No. 4, indirect interconnection is intended to be used and, in fact, is used typically between carriers exchanging small volumes of traffic in cases where the costs of direct interconnection and

dedicated facilities may not be feasible financially. Using a DS1 level as a threshold between indirect and direct interconnection allows parties to ensure the quality of service to their end users and avoid tandem exhaust. Thus, while indirect interconnection is intended as an interim arrangement until such time as parties exchange levels of traffic to an end office that warrant direct interconnection to that end office, indirect interconnection is not intended to be utilized as a permanent solution for parties to exchange significant volumes of traffic merely because one party determines that indirect interconnection is the best alternative from a cost perspective. (refuting, Complainant No. 2.0 at 11, lines 17-19.) For these reasons, Windstream's proposed language on NIA Issue No. 4 is reasonable and consistent with established precedent and standard industry practice and should be adopted.

D. NIA Issue No. 5 – It is improper for the Interconnection Agreement between Windstream and Core, which is a contractual arrangement between only two parties, to establish payment obligations of either Windstream or Core to third-party tandem providers who are not parties thereto.

NIA Issue No. 5 pertains to whether the Interconnection Agreement between Windstream and Core should require each Party to arrange and pay for third-party tandem services for that Party's originating traffic. Although the difference in the parties' positions on this issue is subtle, it is an important distinction.

Windstream's language in Section 12.2.3 of Attachment 4 of the Interconnection Agreement acknowledges that each party is responsible for its own arrangements with third parties. (*See*, Appendix 33 to the Arbitration Petition.) Core's proposed language on Section 12.2.3 expands this language and includes an obligation that each party "is responsible for the payment of transit charges assessed by the transiting party." (Core's Best Offer at 7.) Windstream disagrees that the details of compensation or other obligations as to third-party arrangements should be included in the Interconnection Agreement between Core and

Windstream. In other words, Core seeks to address any payment obligations that Core or Windstream may have to third-party tandem providers within the context of the Interconnection Agreement which is a contractual arrangement between only Core and Windstream. (Respondent No. 1 at 20, lines 7-8.) The third-party tandem providers are not parties to the Interconnection Agreement.

In short, the Interconnection Agreement is between only two parties (here, Core and Windstream). The Interconnection Agreement fairly may contain language stating that each Core and Windstream is responsible for making its own arrangements with a third party transiting provider. However, the Interconnection Agreement between Core and Windstream should not address any payment obligations of either Core or Windstream with respect to that third party transiting provider. This is consistent with the Commission's determination in the Alltel Order holding that "the terms and conditions of the agreement between the party choosing to interconnect indirectly and the third party transiting provider are legally immaterial to the interconnection agreement between Alltel and Verizon Wireless." (Alltel Order at 53.) Core's attempt, therefore, to expand a contractual arrangement between two parties to provide payment obligations with respect to third parties is improper and should be rejected.

E. Intercarrier Compensation Issue No. 1 – The issue of NVxx traffic is not ripe for consideration in this arbitration or by the Commission, and Core's attempts otherwise to establish VNxx traffic as local traffic subject to reciprocal compensation are fatally flawed.

There are four remaining issues in dispute regarding Intercarrier Compensation ("ICC"). The ICC issues are set forth in Attachment 12 of the Interconnection Agreement and pertain generally to the manner in which the parties will compensate each other for the exchange of various types of traffic provided for under the Interconnection Agreement. The most significant

of the issues is ICC Issue No. 1 which pertains to the proper jurisdiction of and compensation applicable to VNxx traffic.

As a threshold concern, ICC Issue No. 1 may not properly be considered within the context of this arbitration. Significantly, Appendix 33 attached to the Arbitration Petition sets forth the last redlined draft Interconnection Agreement exchanged between the parties during negotiations. Although Core cites to Attachment 12, Sections 1.1 and 3.4 for this issue, Appendix 33 contains no reference to VNxx traffic. In fact, the parties did not undertake any negotiations with respect to whether VNxx traffic would be exchanged or how it would be compensated. As the issues of jurisdiction and compensation of VNxx traffic were not raised by Core during negotiations and accordingly were not negotiated by the parties, the issues may not now be submitted for consideration by the Commission in the context of this arbitration. (47 U.S.C. §252(b)(2)(A)(i) requiring that the party petitioning for arbitration submits with its petition all relevant documentation regarding the unresolved issues.) On this basis alone, Core's proposal with respect to ICC Issue No. 1 should be rejected. Moreover, even if ICC Issue No. 1 had been negotiated between the parties, it still is not ripe for consideration as the Commission has established a policy that compensation of VNxx traffic cannot be determined until the FCC rules on the proper jurisdiction and compensation with respect to VNXX traffic. (Commission Docket No. I-00040105.) As of the date of this filing, the FCC has not made any such determination with respect to VNxx. (Respondent No. 1 at 22, lines 6-8.) Therefore, for these reasons, Windstream's position on ICC Issue No. 1 should be adopted.

Notwithstanding these considerations, Core's attempt to make a factual case for treating VNxx traffic as local traffic subject to reciprocal compensation is in error. To understand the deficiencies of Core's arguments on this issue, a background of Nxx and VNxx issues is helpful.

Telephone numbers consist of ten digits in the form NPA-Nxx-xxxx. The first three digits (or "NPA") refer to the area code. The second three digits (or "Nxx") refer to the central office code. Pursuant to standard industry practice, an Nxx code generally corresponds to a particular geographic area (or "rate center") served by a local exchange carrier. By contrast, virtual Nxx (or "VNxx") codes are central office codes that correspond to a particular rate center but are assigned to a customer located in a different rate center. (Respondent No. 1 at 21, lines 11-13. Complainant No. 1.0 at 4, lines 82-84.) Windstream does not provision service to its retail customers through the use of VNxx arrangements. (Respondent No. 1 at 22, lines 11-13.)

Based on its testimony in this proceeding, Core intends to use VNxx arrangements to exchange ISP-bound traffic with *Windstream* and suggests incorrectly that VNxx traffic is local subject to reciprocal compensation by Windstream to Core. Core asserts that VNxx arrangements may be considered "local" and compared to Foreign Exchange ("FX") service, remote call forwarding, and extended area service ("EAS"). (Complainant No. 1.0 at 4 for FX service; page 20 for remote call forwarding; and Footnote 1 on page 5 and page 20 for EAS service.) Significantly, Core admits that VNxx service "provides a virtual local presence for a customer in a rate center" where "that customer does not have a physical presence." (Complainant No. 1R at 4, lines 82-84.) Despite Core's admission that VNxx traffic clearly is not purely "local" traffic exchanged between customers in the same rate center or exchange, the crux of Core's position on this issue, nevertheless, is that traffic exchanged via VNxx arrangements may be labeled merely as "local" and treated as such without any consideration of the additional cost components that differentiate true FX and EAS service arrangements from VNxx arrangements or without consideration of the fact that remote call forwarding is not available in the manner in which Core

suggests. Core's attempt to classify VNxx traffic as "local" traffic subject to reciprocal compensation is fundamentally flawed in all key respects.

First, VNxx arrangements are not fairly likened to FX service despite Core's unsubstantiated claims to the contrary. (Complainant No. 1.0 at 4, lines 85-95.) Core attempts to classify VNxx arrangements as local and compare them to FX service in order to avoid application of access charges to VNxx traffic. Yet, Core necessarily stops short of actually stating that VNxx arrangements are identical to FX service and instead labels VNxx arrangements as "FX-like" services. (*Id.* at 4, lines 94-95.) For good reason, the two services are not identical, and the compensation components under each scenario are critically different although Core fails to discuss these considerations anywhere on the record in this proceeding.

As set forth in Windstream's tariff Section S4 Extensions and Foreign Exchange Service, FX is a service that allows a caller in one exchange who sends or receives toll calls from callers in another exchange to have the jurisdiction and rating of those calls treated as local by *paying for a dedicated transmission path (or certain transport costs).* (*See*, Respondent SAT-1R and also on file with the Commission as a matter of public record.) Section S4 of Windstream's tariff clarifies that a customer subscribing to FX service will be billed for all applicable charges, including but certainly not limited to, inter-exchange mileage charges. (Windstream Tariff - Telephone PA P.U.C. No. 7.) Windstream's tariff further clarifies that FX Service is not a customary form of telephone service and that it is limited to trunk lines extending from one exchange to another between which toll charges are applicable. (*Id.*) *Very simply, calls under an FX arrangement may be an alternative for a traditional toll arrangement but are not just "billed as local" as Core implies.* (See, *e.g.*, Complainant No. 1.0 at 4, lines 82 through 90.) To the contrary, a subscribing FX customer is responsible for compensation with respect to the

dedicated transmission path (or transport costs). This scenario is similar to an arrangement whereby a long distance company may pay on a flat-rated basis for dedicated facilities to a Windstream end office instead of incurring per-minute access charges. (Respondent No. 1R at 15, lines 15-17.)

Despite these obvious dissimilarities between FX service and VNxx arrangements, Core fails to address the fact that FX service (unlike Core's proposal for VNxx arrangements) provides compensation for the transmission path and associated transport. Instead, Core appears to justify its proposal for VNxx arrangements based merely on the fact that FX service allows a subscriber to "minimize what would otherwise be a large toll expense". (Complainant No. 1.0 at 5, lines 123-126.) Core's position seems to be that FX service simply converts toll calls to local calls to avoid access charges and suggests that VNxx arrangements should be subject to a similar process. Likewise, Core states that access charges are not applicable to FX calls (*Id.* at 6), but this statement is equally misleading as Core fails to discuss the fact that true FX subscribers are responsible for payment to Windstream of the dedicated transmission path and transport costs in lieu of per minute toll charges.[11]

With its proposed "FX-like" service (*i.e.*, VNxx), Core fails to acknowledge any transport responsibilities and seeks instead merely to avoid access charges while at the same time shifting the responsibility of providing the transmission path and associated transport costs from Core to Windstream. In other words, by providing VNxx as described by Core, Core would be providing no facilities, yet Windstream would be routing the calls and providing the transport service without due compensation for providing those services. At the same time, Core would expect

[11] For example, originating access charges typically apply to such toll traffic between customers in different exchanges and provide recovery of Windstream's costs, including transport, of delivering such calls. In contrast, when a Windstream customer subscribes to Windstream's FX service, the call no longer may be treated as a toll call,

Windstream to pay to Core reciprocal compensation on these interexchange calls. In other words, according to Core's theory of VNxx traffic, Windstream would not be compensated at all and instead would pay twice for the same traffic – once for the transmission facility/transport costs and twice in the form of reciprocal compensation to Core for a call that is actually an interexchange call. (Respondent No. 1R at 18, lines 12-19.)

Second, VNxx arrangements are not fairly likened to EAS arrangements. Much like the case of FX service, companies seeking to establish EAS service establish and maintain a dedicated transmission path. EAS service, like FX service, provides for a mechanism through which the additional transport costs, including the dedicated transmission path, are recovered. This mechanism is typically in the form of a rate additive. In other words, customers in two exchanges with EAS service may have "local" calling between those exchanges but will pay an additional monthly fee for that service. Again, Core omits any discussion of these critical factors when it attempts to compare EAS arrangements to VNxx arrangements. (Respondent No. 1R at pages 18-19.)

Third, VNxx arrangements are not fairly likened to remote call forwarding service. Remote call forwarding service is not available to provide the function Core suggests. However, remote call forwarding may be compared to VNxx arrangements in one respect since customers utilizing remote call forwarding are responsible for "any toll charges incurred for calls between the forwarding number and the terminating number." (Telephone PA P.U.C. No. 7; Section S8.2(B)(15).)

Again, as Core fails to address the critical compensation factors identified above, its attempt to construe VNxx service as local service subject to reciprocal compensation must be

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but the customer establishing the FX service is responsible for paying the transport costs in accordance with Windstream's local tariff. (Respondent No. 1R at 17, lines 3-9.)

rejected. Indeed, the United States Court of Appeals for the Second Circuit addressed this issue directly in its July 5, 2006 decision in Global Naps, Inc. v. Verizon New England, Inc. et. al. (454 F.3d 91) and reached a conclusion consistent with Windstream's position:

> Even if prohibiting virtual NXX would be fatal to Global, it is not clear to us that Global's view must prevail. *Global wants to use virtual NXX to disguise the nature of its calls – that is, to offer its customers local telephone numbers that cross Verizon's exchanges instead of the traditional long-distance numbers attached to such calls.* Virtual NXX is not the only way to accomplish this end although in light of economic realities, it may be the only practical way. *But where a company does not own the infrastructure and is not willing to pay for using another company's infrastructure, we see no reason for judicial intervention. Congress opened up the local telephone markets to promote competition, not to provide opportunities for entrepreneurs unwilling to pay the cost of doing business*.
>
> *Global also argues that virtual NXX is functionally equivalent to FX service* and must be treated identically under the North American Numbering Plan (NANPA). Under 47 C.F.R. §52.9(a), when a state does not authorized numbering resources, it may do so only in a manner that does not discriminate again carriers or technologies or block interstate access. But, although virtual NXX and FX share some similarities, there is one fundamental difference: retail customers using FX service purchase a foreign exchange line, paying the costs both of installation of the line and of transportation of bulk traffic between the two points of communication. *Virtual NXX customers, on the other hand, do not purchase any lines or pay transportation costs, but rely on the terminating carrier to provide the service without cost. The prohibition of virtual NXX does not necessarily prevent users from obtaining nongeographically correlated numbers; the ban simply requires that someone pay Verizon for use of its infrastructure*.

(*Id.* at 31-32.) [12]

Similarly, Core has not put forth any evidence demonstrating how it will provide or compensate Windstream for the dedicated transmission path or associated transport costs with respect to Core's proposed VNxx arrangements. More accurately, Core will not provide any

[12] In *S. New Eng. Tel. Co. v. MCI WorldCom Communs., Inc.*, 2006 U.S. Dist. LEXIS 81298 (D. Conn. 2006), the United States District Court for the District of Connecticut agreed that the FCC has not disturbed the states' authority to establish local calling scopes and, therefore, the state's finding that VNxx traffic is interexchange rather than local is sound. However, the District Court concluded that the language of the ISP Remand Order is sufficiently broad to encompass all ISP-bound traffic within the compensation regime established therein.

facilities or transmission path in Windstream's territory but will merely rate center a telephone number (assigned to a customer in a different geographic location) to appear as if that number were a local number in Windstream's exchange. (Respondent No. 1R at 19, lines 18-22.) Core would then use the NPA-Nxx associated with that number to identify (incorrectly) the call as local. (Complainant No. 1.0 at 8-9.) The result of basing the jurisdiction of the call on the NPA-Nxx instead of the location of the calling and called parties, the wrong party (here Core) is compensated, and the party providing all of the network functionality (here Windstream) is not compensated, but should be compensated, for the use of its network consistent with the Second Circuit Court of Appeals decision above. (See, also, Respondent No. 1R at pages 19-20.) (See also *Global NAPs, Inc. v. Verizon New Eng. Inc.*, 444 F.3d 59 (1st Cir. 2006).)

To prevent the distorted results above, the Commission should ensure that the jurisdiction of VNxx traffic, and all traffic, is determined based on the end points of the calling and called parties (which appropriately identifies the physical location of the parties). Indeed, given schemes such as VNxx as proposed by Core, using the physical locations of the parties (or end points of the call) is the best way to determine the true jurisdiction of the call and to ensure that a party is not disguising that jurisdiction and avoiding application of lawful access compensation. (Respondent No. 1R at pages 19-20.) For the reasons explained above, ICC Issue No. 1 should be resolved consistent with Windstream's position.

F. ICC Issue No. 3 – The Interconnection Agreement should provide compensation mechanisms both for instances where local traffic is roughly balanced (subject to bill and keep) and where local traffic is not roughly balanced (subject to reciprocal compensation).

ICC Issue No. 3 pertains to whether reciprocal compensation should apply to local traffic that is roughly balanced. In short, when local traffic is roughly balanced between two parties, the most appropriate and efficient compensation method is bill and keep pursuant to 47 C.F.R.

§§51.705(a)(3) and 51.713(b). For example, if Party A originates one million local minutes that terminate to Party B and Party B originates one million three thousand local minutes that terminate to Party A, then in the absence of a bill-and-keep arrangement, each party would have to track the minutes and render billing to each other that would be for almost the same amounts. Thus, each party would generate a monthly receivable and receive a monthly payable in approximately the same amount. This process is inefficient and results in each party preparing monthly bills, reviewing monthly bills, verifying the accuracy of each bill, and rendering monthly payments in amounts that closely approximate the billed amounts it receives from the other party. With a bill-and-keep arrangement, the parties avoid these inefficiencies and wasted resources. (Respondent No. 1 at 23, lines 1-13.)

With these considerations in mind, Windstream proposed language on this issue in Section 3.0 of Attachment 12 of the Interconnection Agreement as follows:

> **3.0 Reciprocal Compensation for Termination of Local Traffic**
> 3.1 Each Party will be compensated for the exchange of Local Traffic, as defined in §1.2 of this Attachment, in accordance with the provisions of §3.0.
> 3.2 The Parties agree to reciprocally exchange Local Traffic between their networks. Each Party shall bill its end users for such traffic and will be entitled to retain all revenues from such traffic without payment of further compensation to the other Party.
> 3.3 Upon data submitted by one of the Parties, and agreed to by the other Party, supporting the level of traffic exchanged between the Parties is out of balance using a ratio 60%/40% for three (3) consecutive months (one Party originates 60% or more of the traffic exchanged), the parties agree to a reciprocal compensation minute of use rate of [$___].

(Appendix 33 of the Arbitration Petition.) Thus, pursuant to the language above, the parties would compensate local traffic on a bill-and-keep basis until such time as either party demonstrated an imbalance for three consecutive months. Core's proposed language on this issue, however, expands the scope from local traffic to "Section 251(b)(5) traffic" and seeks to have all applicable traffic subject to reciprocal compensation. (Core's Best Offer at 9.)

Core's language is less efficient that Windstream's language and is very problematic with respect to CLECs adopting to operate under the same Interconnection Agreement. By not providing for bill-and-keep in the case of roughly balanced traffic, Core's language overlooks the fact that CLECs who do not serve primarily as an ISP aggregator may have roughly balanced traffic and desire to avoid the burden of tracking minutes of use, rendering bills, reviewing bills, and remitting compensation in similar amounts to Windstream. Further, to the extent that Core seeks to include VNxx traffic within the scope of its term "Section 251(b)(5) traffic," Core's language is unacceptable as it could have the result of charging Windstream reciprocal compensation with respect to VNxx traffic. VNxx traffic is not reasonably considered local traffic subject to reciprocal compensation. Again, although VNxx was not negotiated between the parties and may not be considered in this arbitration, Core's use of the term "Section 251(b)(5) traffic" instead of "local traffic" appears to be an attempt to apply reciprocal compensation to VNxx traffic. As discussed above, VNxx traffic is not local traffic, and curiously, if Core's support for its position on this issue was as clear as Core suggests, then there would be no reason for Core to use any term other than "local traffic" to clarify what traffic is subject to reciprocal compensation under the Interconnection Agreement.

Core's proposed language on ICC Issue No. 3, very simply, makes little sense and overlooks the fact that Windstream's language provides both for reciprocal compensation in instances where traffic is not roughly balanced as well as bill-and-keep in cases where traffic is roughly balanced. Windstream's language does not mandate that local traffic between the parties be roughly balanced nor does Windstream's language preclude reciprocal compensation in instances where the local traffic is not roughly balanced. (Refuting Complainants No. 1.0 at pages 17-18 asserting "no compensation.") Instead, Windstream's language provides alternative compensation

mechanisms in either scenario and is most reasonable and should be adopted in the Interconnection Agreement.

G. ICC Issue No. 4 – The FCC's *ISP Remand Order* on its own terms does not apply to the facts and parties in this proceeding and does not address ISP-bound traffic delivered through the use of VNxx arrangements.

ICC Issue No. 4 pertains to whether the FCC's *ISP Remand Order* applies to the parties and facts in this proceeding. Core's apparent interest in this issue stems from Core's position that it should receive reciprocal compensation for non-local ISP-bound traffic that is exchanged with Windstream through Core's use of VNxx arrangements. As discussed previously, VNxx traffic is not local traffic subject to reciprocal compensation.

Therefore, as a threshold matter, it is important to note that the FCC's *ISP Remand Order* arguably does not apply to non-local ISP-bound traffic. For example, in the Brief for Amicus Curiae filed by the FCC on March 13, 2006 in the First Circuit United States Court of Appeals proceeding between Global Naps and Verizon New England (No. 05-2657), the FCC's counsel noted that the history of the FCC's *ISP Remand Order* indicates that the FCC's focus was on customers accessing dial-up ISPs located in the same local calling area but that the FCC's litigation staff was unable to provide an official position. (FCC Brief for Amicus Curiae at pages 12-13.)

Nevertheless, the United States District Court for the Western District of Washington was clear in its April 2007 decision that although "the FCC did reevaluate its use of the term 'local' in the *ISP Remand Order*, it did not eliminate the distinction between 'local' and 'interexchange' traffic and the compensation regimes that apply to each - namely, reciprocal compensation access charges."[13] Further, contrary to Core's assertion that the FCC eliminated any distinction

[13]Qwest Corporation v. Washington State Utilities and Transportation Commission, 484 F. Supp. 2d 1160; 2007 U.S. Dist. LEXIS 26194 (April 9, 2007). ("Qwest Decision")

of "local" as to ISP-bound traffic, the Court in the Qwest Decision determined that "a more appropriate interpretation, in light of federal telecommunications policy and the administrative history of the Act, is that *the ISP Remand Order* addressed the compensation structure of a subset of ISP-bound traffic, specifically, ISP-bound traffic within a local calling area." (*Id.* at 31.) Thus, Core's attempt to place its VNxx ISP offering within the parameters of the FCC's *ISP Remand Order* is questionable at best. Indeed, even as to local ISP traffic, the FCC itself stated in the *ISP Remand Order* that the large volumes of virtually all one-way traffic created with dial-up ISP-bound traffic creates the potential for arbitrage opportunities. (See, e.g., *ISP Remand Order* ¶7.) In short, the prevailing school of thought is that the FCC's *ISP Remand Order* applies only to local ISP traffic.

Additionally, even without considering the threshold issue above which alone is sufficient to decide this issue in favor of Windstream, Core's position that the *ISP Remand Order* on its own terms applies to the facts and parties in this proceeding is in error. At Paragraph 7 of the *ISP Remand Order* the FCC imposed volume caps "in order to eliminate incentives to pursue new arbitrage opportunities." Further, Paragraph 78 of the *ISP Remand Order* provides that for the year 2001, a CLEC such as Core may receive compensation for ISP-bound minutes up to a ceiling equal to, on an annualized basis, the number of ISP-bound minutes for which that CLEC was entitled to receive compensation under its agreement during the first quarter of 2001, plus a ten percent growth factor. The FCC recognized that the rate caps were designed to provide a transition toward bill and keep. (See, ¶¶8 and 78 of the *ISP Remand Order.*) Interestingly, Core did not maintain any interconnection agreement with Windstream in 2001 and was not entitled any ISP compensation at that time. Therefore, by the terms of the *ISP Remand Order* itself on

which Core relies, Core is entitled to no compensation, other than bill and keep, even for local ISP traffic.

The FCC established that ILECs like Windstream may elect, at any time, the rates that were included in the *ISP Remand Order* for termination of ISP-bound traffic or may compensate ISP traffic (again, arguably only local ISP traffic) at reciprocal compensation rates. The *ISP Remand Order* itself does not require, however, Windstream to elect the compensation rate of $0.0007 for termination of local ISP-bound traffic, and Windstream at this time has not made such election.

Therefore, based on the foregoing, the resulting Interconnection Agreement should reflect compensation of local ISP traffic only at Windstream's reciprocal compensation rate (undisputed by Core in this proceeding) until such time as Windstream may elect under the *ISP Remand Order*, in which case local ISP traffic must be compensated at the FCC mandated rate of $0.0007. For all VNxx traffic, Windstream will be compensated by Core pursuant to Windstream's lawful access tariffs.

H. ICC Issue No. 5 – The Interconnection Agreement should provide for the CLEC's establishment of appropriate codes in Windstream's local serving territory to ensure proper rating of calls and to prohibit a party from masking the actual location of customers to avoid payment of appropriate compensation.

ICC Issue No. 5 purports to pertain to whether Windstream or Core should determine for which Nxx codes Core may apply. However, the statement of the issue does not accurately capture the crux of the dispute between the parties. The issue more accurately pertains to whether CLECs operating under the Interconnection Agreement, including Core, should establish codes in Windstream's local serving territory. The issue is not whether Windstream or Core is the party that must apply for the codes or determine how many codes the CLEC may need.

Windstream's proposed language on this issue is in Section 5.0 of Attachment 12 of the Interconnection Agreement. (Appendix 33 of the Arbitration Petition.) Windstream's proposal states that for those exchanges where the CLEC intends to provide local service, then the CLEC at a minimum must obtain a separate Nxx code for each exchange or group of exchanges that share a common mandatory local calling scope. Windstream's language further clarifies that the parties will determine the number of Nxx codes necessary to identify the jurisdictional nature of traffic for intercompany compensation purposes. Core's proposal is to delete this provision. (Core's Best Offer at 11.)

The industry standard for determining the compensation due to a party for termination of a call is based upon the NPA-Nxx. However, if one party like Core (through its stated intent to use VNxx arrangements) uses the same NPA-Nxx for multiple locations, the other party (in this case, Windstream) cannot determine the location of calls in order to determine accurate compensation (*e.g.*, local or reciprocal compensation or access compensation). (Respondent No.1 at pages 25-26.) In fact, Core stated in its Arbitration Petition on another issue that parties should "properly rate calls based on the NPA-Nxx of the calling party". (Arbitration Petition.) However, Core's opposition to Windstream's language on this ICC Issue No. 5 contradicts its statement in the Arbitration Petition since Core's insistence on the use of a single NPA-Nxx for multiple locations would allow Core (or any other CLEC operating under the Interconnection Agreement) to mask the actual location of its customer(s) and, thereby, avoid payment of appropriate access compensation due to Windstream.

Core's position on this issue also has the result of precluding Windstream from complying with dialing parity rules. For example, Windstream's customers in Exchange A may have an NPA-Nxx of 501-234, and Windstream's customers in Exchange B may have an NPA-

Nxx of 501-546. Thus, calling between those Windstream customers is a toll call. However, Core proposes to rate center an NPA-Nxx of 501-743 in multiple locations (here, Exchanges A and B). Thus, calling between Windstream's customers in Exchange A to Core's customers in Exchange B, for example, would appear as a local call. (Respondent No. 1 at 26, lines 8-15.)

Despite Core's misunderstanding of this issue, Windstream is not seeking to require Core to maintain multiple NPA-Nxx codes in the same rate center or to control CLECs through the use of numbering resources. (Complainant No. 1.0 at 21, lines 465-468.) Rather, Windstream's language on this issue simply recognizes that one Nxx code can be rate centered in only one service area. For example, the NPA/Nxx 565-224 cannot be rate centered in both Meadville and Kittaning and assigned to customers in the separate physical locations. Windstream, however, has not sought to determine for Core which codes Core may use or where those codes may be rate centered and believes Core must determine when it needs to apply for one or more codes. Windstream's position is consistent with its positions reflected above on VNxx, and its language should be maintained in the Interconnection Agreement.

I. Definition Issues - The remaining four definitions in dispute should be resolved using Windstream's language to ensure consistency with Windstream's positions on the foregoing issues..

There remain language disputes regarding four definitions for inclusion in the Interconnection Agreement. To ensure consistency with Windstream's positions on the foregoing issues discussed in this Brief and compliance with applicable law, Windstream's definitions are most appropriate and should be included in the Interconnection Agreement.

"Exchange Services" should be defined as two-way switched voice grade telecommunications services with access to the public switched network, which originate and terminate within an exchange. Core did not propose a definition for "exchange services" and

merely object on the basis that "exchange services" is a term that is not defined in the Act. However, Core overlooks that this term is used in the Interconnection Agreement and that parties often use terms in interconnection agreements that may not be defined in the Act. Indeed, the proposed interconnection agreement between Core and Windstream (see, Appendix 33 of the Arbitration Petition) includes many defined terms that are not defined in the Act and were otherwise acceptable to Core.

The Interconnection Agreement should define "intra-LATA toll traffic" as all intraLATA calls provided by a LEC other than traffic completed in the ILEC's local exchange boundary. It is critical to define very clearly the types of traffic to be exchanged between the parties because the type of traffic determines whether access charges or reciprocal compensation should apply. Failure to include a proper definition for "intraLATA toll traffic" is likely to result in compensation disputes once the parties began exchanging traffic under the Interconnection Agreement.

The parties' Interconnection Agreement should define "interconnection point" as the point of demarcation at a technically feasible point within Windstream's interconnected network within the LATA, as specified in Attachment 4 Section 2.1.1, where the networks of Windstream and Core interconnect for the exchange of traffic. This definition is critical to and consistent with Windstream's position on NIA Issue No. 1 to ensure that interconnection between the parties is lawful and occurs within Windstream's network as required by the Act and FCC rules.

Defining "Section 251(b)(5) Traffic" is unnecessary and inappropriate since Core's attempt to include this term in the Interconnection Agreement appears to be an attempt to allow Core to receive reciprocal compensation on VNxx traffic. As discussed above, VNxx traffic is not local traffic and is not subject to reciprocal compensation. As local traffic already has been defined in

Attachment 12 – Compensation, including the definition of Section 251(b)(5) traffic as suggested by Core is inappropriate. Core's proposed "definition" of this term further is inappropriate as it is not a definition but rather a restatement of an FCC rule regarding reciprocal compensation. (See 47 C.F.R. §51.701.)

For these reasons, Windstream's proposals with respect to these definitions should be adopted.

VI. PROPOSED CONCLUSIONS OF LAW / ORDERING PARAGRAPHS

1. Windstream's proposed language pertaining to security deposits in Section 8.0 should be included in its entirety in the Interconnection Agreement as the language is reasonable, consistent with standard practice, and consistent with language previously adopted by Core in another interconnection agreement.

2. Windstream's language in Attachment 4 pertaining to POIs/IPs should be included in the Interconnection Agreement as it is consistent with legal requirements that interconnection occur at any technically feasible point(s) within the ILEC's network. Accordingly, any POI(s) / IP(s) established by Core with Windstream must be within Windstream's network and certificated ILEC service territory. As Windstream is not a Bell Operating Company, such interconnection does not include establishment of one POI/IP per LATA.

3. Windstream's language in Attachment 4 should be adopted providing for indirect interconnection between the parties up to a DS1 volume threshold at which point direct interconnection will be required to the particular Windstream end office exceeding that threshold. This position is reasonable, efficient, and consistent with Commission precedent.

4. The Interconnection Agreement between Windstream and Core may not set forth payment obligations with respect to third-party tandem providers, and Windstream's language pertaining to NIA Issue No. 3, therefore, should be adopted.

5. The issue of NVxx traffic is not ripe for consideration in this arbitration proceeding or by this Commission at this time. Further, Core's attempts to establish VNxx traffic as local traffic subject to reciprocal compensation are misguided. Until such time as the FCC

definitively rules on the issue, VNxx traffic should continue to be subject to applicable access compensation.

6. Windstream's language in Attachment 12 is reasonable, consistent with standard practice, and should be adopted as it is the only option that provides compensation mechanisms both for instances where local traffic is roughly balanced (subject to bill and keep) and where local traffic is not roughly balanced (subject to reciprocal compensation).

7. The FCC's ISP Remand Order on its own terms does not apply to the facts and parties in this proceeding and does not address ISP-bound traffic delivered through the use of VNxx arrangements.

8. Windstream's proposals on the remaining disputed definitions are most reasonable and consistent with law and should be adopted to ensure consistency with the proposals particularly with respect to VNxx arrangements.

VII. CONCLUSION / REQUESTED RELIEF

Windstream's positions on the nine remaining issues are lawful, reasonable, and consistent with standard practice (including Core's own practice in its interconnection agreement with Verizon Pennsylvania. Accordingly, Windstream's positions and proposed language should be adopted for inclusion in the resulting Interconnection Agreement. Windstream requests an order consistent with its language and positions on the nine remaining issues and granting all other necessary and appropriate relief.

Respectfully submitted,

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Dated: October 25, 2007

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that I have this 25th day of October, 2007, served a true and correct copy of Windstream Pennsylvania, Inc.'s Main Brief upon the persons and in the manner set forth below:

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October 25, 2007

HAND DELIVERED
James McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17120

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

Dear Secretary McNulty:

Enclosed are the original and nine (9) copies of the Main Brief on behalf of Core Communications, Inc. in the above captioned matter. Both PROPRIETARY and Non-Proprietary versions are being provided. All parties have been served in accordance with the enclosed certificate of service.

Please feel free to contact me if you have any questions.

Very truly yours,

STEVENS & LEE

Michael A. Gruin

Enclosures
cc: Hon. David A. Salapa
Administrative Law Judge

Certificate of Service

ORIGINAL ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Core Communications Inc. for Arbitration of Interconnection Rates, Terms and Conditions with Windstream Pennsylvania, Inc. f/k/a Alltel	:	**Docket No.: A-310922F7004**

Core Communications, Inc.'s Main Brief

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Introduction and Statement of the Case

This matter involves an arbitration of interconnection rates, terms, and conditions between Core Communications, Inc. ("Core") and Windstream Pennsylvania, Inc. d/b/a Windstream ("Windstream"), two certificated local exchange carriers, pursuant to Section 252 of the Telecommunications Act of 1996 ("Act"). The parties have sought Commission rulings on nine (9) disputed interconnection issues. As set forth more fully below, Core respectfully requests that the Commission issue an Order which resolves each of the nine (9) disputed issues in accordance with Core's positions.

Background and Procedural History

Core is a Competitive Local Exchange Carrier ("CLEC") headquartered in Annapolis, Maryland. Windstream is an Incumbent Local Exchange Carrier ("ILEC") certificated by the Pennsylvania Public Utility Commission ("Commission"). By Order entered February 12, 2007, the Commission authorized Core to furnish telecommunications services as a CLEC within the Windstream service territories.

On August 17, 2005, Core sent Windstream, by Federal Express 2 day delivery, a bona fide request for interconnection, requesting that Windstream promptly join Core in good faith negotiations to establish an interconnection agreement. Additionally, Core stated that this agreement should incorporate the particular terms and conditions that fulfill Windstream's duties under the Communications Act of 1934, as amended, specifically Sections 251 and 252. Despite negotiating continuously from August 2005 through March, 2006, and despite extending the statutory arbitration window, Windstream and Core were unable to fully agree on interconnection rates, terms, and conditions.

On March 30, 2006, Core filed a Petition for Arbitration of Interconnection Rates, Terms and Conditions with the Windstream pursuant to 47 U.S.C. § 252(b) (the "Petition"). On April 24, 2006, Windstream filed its Response to Core's Petition for Arbitration, and also filed a Motion to Stay or Dismiss Core's Petition for Arbitration (the "Motion to Dismiss").

By Order dated May 11, 2006, Administrative Law Judge David Salapa granted, in part, Windstream's Motion to Stay pending the entry of a final Commission Order in the Core RTC Certification Proceeding at Docket No. A-310922F00002, AmA.

On June 8, 2006, Administrative Law Judge Wayne Weismandel issued an Initial Decision in the Core RTC Certification Proceeding at Docket No. A-310922F0002, AmA. The matter at Docket No. A-310922F0002 involved Core's Application to Amend its Certificate of Authority to include the service territories of all of the rural local exchange carriers in Pennsylvania (hereinafter referred to as the "Core RTC Certification Proceeding").

On December 4, 2006, the Commission issued an Order in the Core RTC Certification Proceeding which denied all protests to Core's CLEC Application and granted Core's Exceptions to the Initial Decision in that proceeding. As a result of the Commission's Order, Core has obtained certification as a facilities-based CLEC in all of Pennsylvania's rural service territories[1]. By letter dated January 8, 2007, Core submitted a request by letter requesting the scheduling of a new pre-arbitration conference in the present matter, in accordance with the May 11, 2006 Order in this matter. A second pre-arbitration conference was held on January 26, 2007. Following several postponements to the arbitration schedule, the parties exchanged written Direct Testimony on August 17, 2007, and written Rebuttal Testimony on September 6,

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[1] Opinion and Order, *Application of Core Communications, Inc. for Authority to Amend its Existing Certificate of Public Convenience and Necessity*, Docket No. A-310922F00002, AmA (Order entered Dec. 4, 2006)("*Core RTC Certification Order*"). The order is currently under appeal in Commonwealth Court, at Docket Nos. 6 and 7 CD 2007.

2007. The parties filed their Final Best Offers for each of the disputed issues on September 10, 2007. On September 20, 2007, the parties filed a Joint Disputed Issues Matrix, which set forth the nine (9) issues in dispute between the parties and the parties proposed ICA language for each of the ten issues. The Evidentiary Hearing in the matter was held on September 20, 2007 before ALJ Salapa.

Core's Proposed Findings of Fact

1. Subsections 8.1.2, 8.1.4, and 8.1.5 of Windstream's proposed General Terms & Conditions Section 8 give Windstream the unilateral and unconstrained ability to condition its performance under the Agreement upon Core's payment of a security deposit. *Core Statement 2.0 (Van de Verg Direct Testimony)*, at 2.

2. Subsection 8.1.2 requires payment of a security deposit before any service is rendered. *Core Statement 2.0 (Van de Verg Direct Testimony)*, at 2.

3. Subsection 8.1.4 permits Windstream to increase the security deposit requirement when, in its sole judgment, circumstances so warrant. *Core Statement 2.0 (Van de Verg Direct Testimony)*, at 2.

4. Subsection 8.1.5 licenses Windstream to terminate the ICA, convert the security deposit to its own account, and seek other remedies whenever Core (in Windstream's discretion) is in breach of the ICA. *Core Statement 2.0 (Van de Verg Direct Testimony)*, at 2.

5. The three provisions within Windstream's security deposit proposal to which Core objects are unfair and unreasonable. *Core Statement 2.1 (Van de Verg Rebuttal Testimony)*, at 3.

6. The remaining provisions within Windstream's security deposit proposal to which Core has agreed would easily constitute fair and reasonable security deposit language. *Core Statement 2.1 (Van de Verg Rebuttal Testimony)*, at 4.

7. Core's proposal recognizes that applicable FCC rules—and Commission precedent—require each party to bear the cost to deliver its originating interconnection traffic to the switch location of the other party. *Core Statement 2.0 (Van de Verg Direct Testimony)*, at 4.

8. The designation of a single POI may serve to mask this duty, by implying that Core must bear the cost of bringing Windstream's originating traffic from Windstream's switch (which Windstream defines as the POI) to Core's switch. *Core Statement 2.0 (Van de Verg Direct Testimony)*, at 4.

9. Core's proposal clarifies that each party must deliver its originating traffic to the IP designated by the other party. *Core Statement 2.0 (Van de Verg Direct Testimony)*, at 4.

10. Core's proposal also permits each party to select from among three options for delivery of its originating traffic to the terminating party: collocation with the other party, collocation with a third-party collocator within the terminating party's central office, or purchase of an entrance facility from the terminating party or from a third party. *Core Statement 2.0 (Van de Verg Direct Testimony)*, at 4 and Exhibit CFV-2.

11. Core's proposal in this case is consistent with industry standard practice, as reflected in the ICAs Core has adopted with Verizon in Maryland, New York, Pennsylvania, and Virginia. *Core Statement 2.0 (Van de Verg Direct Testimony)*, at 7 and Exhibits CFV-4, CFV-5, CFV-6 and CFV-7..

12. Core's proposal, as set forth in Appendix 13 to its petition, Att. 4, §§ 1.2 and 1.3, specifically states that "[Core] shall have the sole right and discretion to initiate interconnection **in each LATA**" and "Pursuant to [Core's] written request for interconnection **in each LATA**." *Core Statement 2.1 (Van de Verg Rebuttal Testimony)*, at 5.

13. Core's network is capable of delivering outbound traffic as well as inbound traffic, and there is no legal, technical or other restriction on Core's ability to offer outbound services. *Core Statement 2.1 (Van de Verg Rebuttal Testimony)*, at 5.

14. Whether or not Core originates traffic to Windstream, Windstream's costs of delivering its originating traffic to Core do not change. *Core Statement 2.1 (Van de Verg Rebuttal Testimony)*, at 6.

15. Indirect interconnection is the routing of interconnection traffic between two carriers via the intermediary facilities of a third carrier, generally Verizon. *Core Statement 2.0 (Van de Verg Direct Testimony)*, at 10.

16. Core's current ICA with Verizon Pennsylvania provides that Core may purchase tandem transit service from Verizon at a rate of approximately $0.00085/MOU. *Core Statement 2.0 (Van de Verg Direct Testimony)*, at 10 and Exh. CFV-8.

17. Each party should be afforded the flexibility to choose the most efficient and least cost alternative for its own traffic. Similarly, neither party should limit arbitrarily the other party's interconnection options. *Core Statement 2.0 (Van de Verg Direct Testimony)*, at 11.

18. Establishing a DS1 limit at the outset would only serve to narrow each party's interconnection options, eliminating efficiency, flexibility and control. *Core Statement 2.1 (Van de Verg Rebuttal Testimony)*, at 10.

19. Core's proposed NIA § 12.2.3 recites industry standard practice as well as applicable law, which is that each carrier is responsible (operationally and financially) for the transport of its own originating calls to the interconnection point with its third party tandem transit provider. It also clarifies that the originating party pays the third party tandem transit provider whatever charges may be due pursuant to their particular agreement. *Core Statement 2.0 (Van de Verg Direct Testimony)*, at 14-15.

20. VNXX calls are local calls to a foreign exchange. VNXX services provide a virtual local presence for a customer in a rate center, exchange, or local calling area where that

customer does not have a physical presence. *Core Statement 1.0 (Gates Direct Testimony)*, at 4.

21. FX service is defined in Newton's Telecom Dictionary as follows:

Provides local telephone service from a central office which is outside (foreign to) the subscriber's exchange area. In its simplest form, a user picks up the phone in one city and receives a dial tone in the foreign city. This means that people located in the foreign city can place a local call to get the user. The airlines use a lot of foreign exchange service. Many times, the seven digit local phone number for the airline you just called will be answered in another city, hundreds of miles away. *Core Statement 1.0 (Gates Direct Testimony)*, at 5.

22. The Bell System defined FX service as follows:

Foreign exchange (FX) service enables a customer to be served by a distant or "foreign" central office rather than by the nearby central office. Calls to other customers in the distant exchange area are then treated as local calls instead of toll calls. For customers who make enough calls to a particular distant exchange area, the monthly charge for FX service is less than the sum of the toll charges they would otherwise pay. Customers who find FX service economical include residence customers who often call friends or relatives in towns outside their local calling area and businesses such as firms in New Jersey who often call companies in New York City. *Core Statement 1.0 (Gates Direct Testimony)*, at 5.

23. Windstream does not apply access charges to calls associated with its own FX service. *Core Statement 1.0 (Gates Direct Testimony)*, at 6.

24. Switches rate and route calls based on the NPA/NXX of the dialed number. *Core Statement 1.0 (Gates Direct Testimony)*, at 6.

25. If the NPA/NXX of the calling number is in the same local calling area as the called number the call is rated as local. *Core Statement 1.0 (Gates Direct Testimony)*, at 6.

26. If the called number is not in the same local calling area as the calling number the call is frequently rated as a toll call. *Core Statement 1.0 (Gates Direct Testimony)*, at 6.

27. The "1+" toll indicator prior to a number is another way to tell the switch that the call is a "toll" call and that the call needs additional information for rating and routing. *Core Statement 1.0 (Gates Direct Testimony)*, at 7.

28. The NPA/NXX information represents a rate center and not the physical location of the customer. Toll calls are rated based on the distance between rate centers and not based on the distance between the called and calling parties. *Core Statement 1.0 (Gates Direct Testimony)*, at 7.

29. It would be terribly inefficient for an ISP to establish a physical presence in each and every ILEC-established local calling area where the ISP might have customers or where it might want to attract customers. *Core Statement 1.0 (Gates Direct Testimony)*, at 10.

30. The standard operating arrangement in the industry is for ISPs to obtain telephone numbers from CLECs or ILECs that are local to areas where they have customers. *Core Statement 1.0 (Gates Direct Testimony)*, at 10.

31. Because the CLECs or ILECs are providing local service for the ISPs, where they have no local presence, the service is frequently referred to as virtual NXX or VNXX service by the ILEC industry, and as described above, is in essence identical to the FX service offered by Windstream and other ILECs, at least from an end user customer perspective. *Core Statement 1.0 (Gates Direct Testimony)*, at 10.

32. Windstream agrees with Core that the industry standard for determining the compensation due to a party for the termination of a call is based upon the NPA-NXX. *Core Statement 1.1 (Gates Rebuttal Testimony)*, at 4.

33. Windstream's proposal with respect to VNXX arrangements would eliminate an efficient and technologically advanced means of providing dial-up Internet access to customers throughout the State of Pennsylvania. *Core Statement 1.1 (Gates Rebuttal Testimony)*, at 4.

34. Dial-up Internet access remains an important source of Internet access in Pennsylvania, especially in rural areas. *Core Statement 1.1 (Gates Rebuttal Testimony)*, at 5-7.

35. Windstream has not opted into the compensation scheme set forth in the *ISP Remand Order*. *Core Statement 1.0 (Gates Direct Testimony)*, at 14.

36. As a result of its non-election, Windstream must pay the state approved reciprocal compensation rates for all 251(b)(5) and ISP-bound traffic. *Core Statement 1.0 (Gates Direct Testimony)*, at 14.

37. Windstream and Core have negotiated a composite reciprocal compensation rate of *BEGIN PROPRIETARY* *END PROPRIETARY* per minute of use. *Core Statement 1.1 (Gates Rebuttal Testimony)*, at 11.

38. There is no information in this proceeding that would allow the Commission to find that the traffic exchanged between the parties will be roughly balanced. *Core Statement 1.0 (Gates Direct Testimony)*, at 15.

39. Numbering resources should be requested and deployed by carriers in the standard industry fashion. *Core Statement 1.1 (Gates Rebuttal Testimony)*, at 18.

40. Windstream's proposal for Core's assignment of numbering resources would result in an inefficient use of the numbering resources. *Core Statement 1.1 (Gates Rebuttal Testimony)*, at 18.

41. No carrier should be able to control or influence another carrier's request for numbers. *Core Statement 1.1 (Gates Rebuttal Testimony)*, at 19.

42. Switches and translation tables do not have narrative definitions of "exchange services" or "intraLATA toll traffic" or other traffic types that Windstream might try to create. Switches simply compare the NPA/NXXs for the calling and called parties and compensation flows accordingly. *Core Statement 1.1 (Gates Rebuttal Testimony)*, at 27.

Core's Proposed Conclusions of Law

1. A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network. 47 C.F.R. § 51.703(b).

2. When an incumbent LEC provides interconnection facilities, competing LECs are responsible to pay only for the portion of those facilities the competing LEC uses to deliver its originating traffic. Conversely, the incumbent LEC is obliged to transport its own originating traffic to the competing LEC free of charge. *Local Competition Order*, ¶ 1062.

3. The FCC has found that "under the existing regimes, the calling party's carrier, whether LEC, IXC, or CMRS provider, compensates the called party's carrier for terminating the call. Thus, as a general matter, our existing regimes are based on a "calling-party-network-pays" (CPNP) approach to compensation." *FNPRM*, at ¶ 17.

4. The Commission has found that "FCC rules derived from the Local Competition Order, require that each party, to the extent it is an originating carrier, bear financial responsibility for the delivery of traffic originating on its network. 47 C.F.R. § 51.703(b). Therefore, the originating carrier is prohibited from imposing charges on the terminating carrier for either the telecommunications traffic originating on its network or the facilities used for the delivery of that traffic." *VZW/Alltel Arbitration Order*, at 30.

5. The Commission considered and rejected Alltel's argument (identical to Windstream's argument in this case) that it can not be required to transport traffic across its service territory boundary. *VZW/Alltel Arbitration Order*, at 47.

6. The Commission expressly concluded that the duty of an originating carrier to transport its own originating traffic to the switch of the terminating party is independent of carrier type. *VZW/Alltel Arbitration Order*, at 48.

7. The Commission approved Verizon Wireless's proposed language, which provided for a dual IP arrangement identical to Core's proposal in this case. *VZW/Alltel Arbitration Order*, at 78-79.

8. The Commission has found that "several ILECs, CLECs, and/or their affiliates, offer VNXX, or a VNXX-like service." *Core RTC Certification Order*, at 31.

9. The FCC has defined the scope of traffic that is subject to reciprocal compensation as all "telecommunications traffic... except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access. 47 C.F.R. § 51.701(b).

10. The Act defines "exchange access" as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." 47 U.S.C. § 153(16).

11. The Act defines "telephone toll services" as "telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service." 47 U.S.C. § 153(48).

12. The FCC has found:

Federal and state access charge rules govern the payments that interexchange carriers (IXCs) and commercial mobile radio service (CMRS) providers make to local exchange carriers (LECs) that originate and terminate long-distance calls, while the reciprocal compensation rules established under section 251(b)(5) of the Act generally govern the compensation between telecommunications carriers for the transport and termination of calls not subject to access charges. *FNPRM*, at ¶ 5.

13. The *ISP Remand Order* on its face applies to all ISP-bound traffic, not just ISP-bound traffic that Windstream may consider to be "local." *See, eg., ISP Remand Order*, at ¶¶ 44 (stating that all "ISP-bound traffic" is "information access" under section 251(g) of the Act), 52 (claiming jurisdiction over all "ISP-bound traffic"), and 78, 79, 80, 81, 82, and 89 (creating interim compensation rules for all "ISP-bound traffic.").

14. The Commission acknowledged that "[t]he *ISP Remand Order* has virtually preempted state commission rate authority over intercarrier compensation for ISP-bound traffic." Opinion and Order, *Petition of US LEC of Pennsylvania, Inc. For Arbitration with Verizon Pennsylvania, Inc.*, Docket No. A-310814F7000 (Order entered April 18, 2003) ("*USLEC/Verizon Arbitration Order*"), at 57 and note 46. The identical passage occurs in Opinion and Order, *Petition of Global NAPs South, Inc. For Arbitration... with Verizon Pennsylvania, Inc.*, Docket No. A-310771F7000 (Order entered April 21, 2003) ("*GNAPS/Verizon Arbitration Order*"), at 45 and note 46.

15. The Commission found that "[w]ith regard to the local nature of Core's exchange service as a result of its use of VNXX, we would further agree with Core." *Core RTC Certification Order*, at 31.

16. The FCC found:

> In marked contrast to traditional circuit-switched telephony, however, it is not relevant where that broadband connection is located or even whether it is the same broadband connection every time the subscriber accesses the service. Rather, Vonage's service is fully portable; customers may use the service anywhere in the world where they can find a broadband connection to the Internet. Memorandum Opinion & Order, *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling*, WC Docket No. 03-211, 19 FCC Rcd. 22404 (rel. November 12, 2004).

17. Under section 251(b)(5) of the Act, each "local exchange carrier" has "[t]he duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications." 47 U.S.C. § 251(b)(5).

18. Under the mirroring rule, if an incumbent LEC does not "opt-in", it can charge the full Commission approved rate for termination of voice traffic, and must pay the full Commission approved rate for the origination of ISP-bound traffic. *ISP Remand Order*, at ¶ 89.

19. Federal and state access charge rules govern the payments that interexchange carriers (IXCs) and commercial mobile radio service (CMRS) providers make to local exchange carriers (LECs) that originate and terminate long-distance calls, while the reciprocal compensation rules established under section 251(b)(5) of the Act generally govern the compensation between telecommunications carriers for the transport and termination of calls not subject to access charges. *FNPRM*, at ¶ 5.

20. The standard industry practice is for "carriers [to] rate calls by comparing the originating and terminating NPA-NXX codes." *Virginia Arbitration Order*, at ¶ 301.

21. All ISP–bound calls, including those enabled by VNXX arrangements, are compensable under the *ISP Remand Order*.

22. VNXX traffic is local in nature, and therefore subject to reciprocal compensation and intercarrier compensation for ISP-bound traffic. *Core RTC Certification Order*, at 27-28.

23. The FCC reviewed and rejected its former use of the term "local" to refer to telecommunications traffic that falls within the scope of the section 251(b)(5) reciprocal compensation regime. *ISP Remand Order*, at ¶¶ 31-34

24. The FCC concluded that section 251(b)(5) reciprocal compensation applies to all telecommunications *except* those classes of traffic specifically enumerated in section 251(g). *ISP Remand Order*, at ¶¶ 31-34.

25. The FCC concluded that "state commissions may impose bill-and-keep arrangements if neither party has rebutted the presumption of symmetrical rates and if the volume of terminating traffic that originates on another network is approximately equal to the volume of terminating traffic flowing in the opposite direction, and is expected to remain so..." *Local Competition Order*, at ¶ 1112.

26. The Act defines "telephone exchange service" as follows:

The term "telephone exchange service" means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service. 47 U.S.C. § 153(47).

27. The FCC has defined the class of traffic that is subject to reciprocal compensation under Section 251(b)(5) of the Act as:

(1) telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access (see FCC Order on Remand, 34, 36, 39, 42-43); and/or (2) telecommunications traffic exchanged by a LEC and a CMRS provider that originates and terminates within the same Major Trading Area, as defined in 47 CFR § 24.202(a).

28. The Commission found that "the FCC in its Intercarrier Compensation Order also revised the rules that define the types of traffic that is subject to reciprocal compensation under Section 251(b)(5) of TA-96. As such, the manner in which reciprocal compensation applies for the termination of what was previously defined as "local telecommunications traffic," and is defined today as "telecommunications traffic" is impacted as a direct result of the FCC's definition changes." Opinion and Order, *Petition of Sprint Communication Company, L.P. for an Arbitration Award of Interconnection Rates, Terms and Conditions With Verizon Pennsylvania, Inc.*, Pa. P.U.C. Docket No. A-310183F0002 (Order entered October 12, 2001), at 47-48 ("*Verizon/Sprint Arbitration Order*").

ARGUMENT

GT&C #3: ***Should Windstream be permitted to require Core to post a security deposit prior to Windstream providing service or processing orders and to increase said deposit if circumstances warrant or forfeit same in the event of breach by Core?***

Core's Best Offer Language:

Core accepted most of Windstream's proposal in General Terms & Conditions, section 8, dealing with security deposits. However, Core did strike sub-sections 8.1.2, 8.1.4 and 8.1.5.

8.0 Payment of Rates and Late Payment Charges

8.1 Alltel, at its discretion may require "CLEC ACRONYM TXT" to provide Alltel a security deposit to ensure payment of "CLEC ACRONYM TXT"'s account. The security deposit must be an amount equal to three (3) months anticipated charges (including, but not limited to, recurring, non-recurring, termination charges and advance payments), as reasonably determined by Alltel, for the interconnection, resale services, network elements, collocation or any other functions, facilities, products or services to be furnished by Alltel under this Agreement.

8.1.1 Such security deposit shall be a cash deposit or other form of security acceptable to Alltel. Any such security deposit may be held during the continuance of the service as security for the payment of any and all amounts accruing for the service.

8.1.2 [DELETED]

8.1.3 The fact that a security deposit has been provided in no way relieves "CLEC ACRONYM TXT" from complying with Alltel's regulations as to advance payments and the prompt payment of bills on presentation nor does it constitute a waiver or modification of the regular practices of Alltel providing for the discontinuance of service for non-payment of any sums due Alltel.

8.1.4 [DELETED]

8.1.5 [DELETED]

8.1.6 In the case of a cash deposit, interest at a rate as set forth in the appropriate Alltel tariff shall be paid to "CLEC ACRONYM TXT" during the possession of the security deposit by Alltel. Interest on a security deposit shall accrue annually and, if requested, shall be annually credited to "CLEC ACRONYM TXT" by the accrual date.

8.2 Alltel may, but is not obligated to, draw on the cash deposit, as applicable, upon the occurrence of any one of the following events.

8.2.1 "CLEC ACRONYM TXT" owes Alltel undisputed charges under this Agreement that are more than thirty (30) calender days past due; or

8.2.2 "CLEC ACRONYM TXT" admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had an involuntary case commenced against it) under the U.S. Bankruptcy Code or any other law relating to insolvency, reorganization, wind-up, compostion or adjustment of debts or the like, has made an assignment for the benefit of creditorsor, is subject to a receivership or similar proceeding; or

8.2.3 The expiration or termination of this Agreement.

8.3 If Alltel draws on the security deposit, upon request by Alltel, "CLEC ACRONYM TXT" will provide a replacement deposit conforming to the requirements of Section 8.1.

8.4 Except as otherwise specifically provided elsewhere in this Agreement, the Parties will pay all rates and charges due and owing under this Agreement within thirty (30) days of the invoice date in immediately available funds. The Parties represent and covenant to each other that all invoices will be promptly processed and mailed in accordance with the Parties' regular procedures and billing systems.

8.4.1 If the payment due date falls on a Sunday or on a Holiday which is observed on a Monday, the payment due date shall be the first non-Holiday following such Sunday or Holiday. If the payment due date falls on a Saturday or on a Holiday which is observed on Tuesday, Wednesday, Thursday, or Friday, the payment due date shall be the last non-Holiday preceding such Saturday or Holiday. If payment is not received by the payment due date, a late penalty, as set forth in §8.5 below, will be assessed.

8.5 If the amount billed is received by the billing Party after the payment due date or if any portion of the payment is received by the billing Party in funds which are not immediately available to the billing Party, then a late payment charge will apply to the unpaid balance.

8.6 Except as otherwise specifically provided in this Agreement interest on overdue invoices will apply at the lesser of the highest interest rate (in decimal value) which may be levied by law for commercial transactions, compounded daily and applied for each month or portion thereof that an outstanding balance remains, or shall not exceed 0.0004930% compounded daily and applied for each month or portion thereof that an outstanding balance remains.

Discussion

This issue concerns whether or not the ICA should include certain specific contractual clauses regarding security deposits. In negotiations, Windstream proposed section 8 of the ICA entitled "Payment of Rates and Late Payment Charges," including extensive language relative to

security deposits. Core Statement 2.0 (Van de Verg Direct), at Exh. CFV-1. Core accepted the bulk of Windstream's security deposit language, but rejected the more extreme subsections. *Id.* at 2.

In particular, Core opposes inclusion of Windstream's proposed subsections 8.1.2, 8.1.4, and 8.1.5. *Id.* Each of these subsections gives Windstream the unilateral and unconstrained ability to condition its performance under the Agreement upon Core's payment of a security deposit. *Id.* As Core witness Mr. Van de Verg testified, Subsection 8.1.2 requires payment of a security deposit before any service is rendered. While Core does not oppose paying Windstream a security deposit, tying performance under ICA specifically to payment of a security deposit raises significant competitive issues because Windstream would have leeway to hold individual service orders ransom pending payment of a new deposit. *Id.*

Subsection 8.1.4 permits Windstream to increase the security deposit requirement "when, in its sole judgment, circumstances so warrant." *Id.*, Exh. CFV 1. This language gives Windstream leverage to make new and increasing security deposit demands at any time and seemingly for any reason. *Id.* at 2. It would be unreasonable and unfair to require Core to operate under these circumstances.

Subsection 8.1.5 licenses Windstream to "terminate" the ICA, convert the security deposit to its own account, and seek other "remedies" whenever Core (in Windstream's discretion) is in "breach" of the ICA. *Id.*, Exh. CFV 1. As Mr. Van de Verg testified, this language extends way past a reasonable security deposit requirement, and would override those parts of the ICA (to which the parties have agreed) that deal with term and termination of the ICA. *Id.*, at 2-3.

The extreme nature of Windstream's proposed subsection 8.1.2, 8.1.4 and 8.1.5 is demonstrated by their absence in other ICAs to which Core is a party. For example, the ICA between Core and Verizon North, Inc. (Aug. 19, 2005), which is Core's adoption of the ICA between Verizon Pennsylvania, Inc. and Sprint Communications Company, L.P., contains a security deposit section, but the language is no where near as far reaching as Windstream's proposals. Core Statement 2.1, (Van de Verg Direct Testimony), at Exh. CFV-10. As Mr. Van de Verg testified, Core's ICA with Verizon North:

- Does not require payment of a security deposit before any service is rendered; *Id.*, at 3.
- Does not permit Verizon North to increase the deposit requirement "when, in its sole judgment, circumstances so warrant," *id.*, and
- Does not override the ICA's separate provisions dealing with termination. *Id.*

Meanwhile, there is no security deposit language whatsoever in Core's ICA with Verizon Pennsylvania. *Id.*, at 4. Accordingly Windstream's proposals are not only extreme on their face, they are way out of line with standard industry practice as reflected in Core's existing ICAs. Core has already agreed to provide Alltel a security deposit to ensure payment of Core's account, in an amount equal to three (3) months anticipated charges. *Id.*, Exh. CFV 1. The Commission should reject Windstream's proposed subsections 8.1.2, 8.1.4, and 8.1.5 and approve the rest of section 8 as agreed to by the parties.

NIA #1: ***Should Windstream be required to interconnect with Core at dual points of interconnection, one of which would be a point outside of Windstream's existing network, and further, should the parties be required to bear the cost to deliver originating interconnection traffic to one another at each other's designated switch location?***

Core's Best Offer Language:

Core proposes deleting Windstream's proposed language at Att. 4, §§ 2.1 through 2.3 and replacing it with the following Core proposed language:

1.1 Each Party shall provide interconnection to the other Party, in accordance with this Agreement, and in accordance with the standards and requirements governing interconnection set forth in 47 U.S.C. §251, FCC implementing regulations, and state law governing interconnection, at (i) any technically feasible point and/or (ii) a fiber meet point to which the Parties mutually agree under the terms of this Agreement, for the transmission and routing of Section 251(b)(5) Traffic, ISP-Bound Traffic, IntraLATA Toll Traffic, and InterLATA Toll Traffic.

1.2 ***CLEC Acronym TXT*** shall have the sole right and discretion to initiate interconnection in each LATA by submitting a written request to Alltel designating the following:

(a) a CLLI code for ***CLEC Acronym TXT***'s designated interconnection point ("IP"); and

(b) a proposed IP for the delivery of ***CLEC Acronym TXT***'s originating interconnection traffic to Alltel.

Within ten (10) days of ***CLEC Acronym TXT***'s written request, Alltel shall provide ***CLEC Acronym TXT*** with the CLLI code of Alltel's designated IP.

1.3 Pursuant to ***CLEC Acronym TXT***'s written request for interconnection in each LATA, each party shall designate an Interconnection Point ("IP") on its own network at which the designating party shall arrange to receive the other party's originating interconnection traffic. Each party shall have a duty to provide for the transport and delivery of interconnection traffic to the other party at the other party's IP.

Discussion:

This issue concerns how the parties will structure and pay for interconnection trunks each party uses for the delivery of telecommunications traffic between their respective networks. The issue encompasses not only how to define the "point of interconnection" or "interconnection point", but also the trunking architecture through which traffic is exchanged.

Core's proposal is entirely consistent with the Act and the FCC's implementing rules. The FCC has found that interconnection refers solely to the physical linking of local networks for the purpose of exchanging traffic between customers subscribed to the respective networks:

> We conclude that the term "interconnection" under section 251(c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic.[2]

Accordingly, this issue does not concern intercarrier compensation for the transport and termination of traffic within each carrier's network. Rather, this issue concerns operational and financial responsibility for the facilities stationed between and connecting the parties' networks. These facilities may belong to either party or to a third party, most commonly, Verizon. Notably, the parties have agreed upon the actual pricing of interconnection facilities.

Under Core's proposal, Core initiates interconnection in each LATA by sending a request in writing to Windstream. Core Exhibit 1 (Core Best Offer) NIA Issue 1, § 1.2. Subsequently, each party designates an interconnection point ("IP") "on its own network at which the designating party shall arrange to receive the other party's originating interconnection traffic." *Id.*, at § 1.3. Once the IPs are established on each network, Core's proposal clarifies that "[e]ach party shall have a duty to provide for the transport and delivery of interconnection traffic to the other party at the other party's IP." *Id.*, at § 1.3. Accordingly, the parties' duties to provide an IP, and transport originating traffic to the other party's IP, are exactly symmetrical.

Core's proposal simply clarifies that each party has a financial responsibility to bring its originating traffic to the network of the other party for termination. Having one POI on one party's network (as Windstream proposes) would unduly favor that party, since the designation

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[2] First Report & Order, *In The Matter Of Implementation Of The Local Competition Provisions In The Telecommunications Act Of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order*, CC Docket No. 96-98, 11 FCC Rcd. 15499, ¶ 176 (rel. Aug 8, 1996) ("*Local Competition Order*").

of POI would imply that such party had no financial duty to deliver its originating traffic to the other party's network.[3]

By contrast, Windstream believes that there must be one POI, located "at any technically feasible point within [Windstream's] network," citing to section 251(c)(2) of the Act.[4] In effect, Windstream believes that Core should be required to bear all of the costs both (1) to deliver Core's originating traffic to Windstream at a POI at one or more Windstream switches; and (2) to pick up traffic originating on Windstream's network at the same POI(s) and bring that traffic back to Core's own switch. Windstream also argues that it can not be required to transport its originating traffic outside of its service territory.[5]

Core's proposal is consistent with FCC and Commission precedent. The FCC's rules specifically recognize that no carrier may impose charges upon another carrier in connection with traffic that originates on its own network:

> A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network.[6]

The FCC recognized, when it codified this rule, that the financial responsibilities for interconnection for the exchange of traffic should be borne solely by each carrier with respect to its own originating traffic. The FCC has also ruled that, when an incumbent LEC provides interconnection facilities, competing LECs are responsible to pay only for the portion of those facilities the competing LEC uses to deliver its originating traffic. Conversely, the incumbent LEC is obliged to transport its own originating traffic to the competing LEC free of charge.[7] These rules prohibit a carrier from shifting the costs of transporting its originated traffic to other

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3 Core Statement 2.0 (Van de Verg Direct Testimony), at p. 4.
4 Windstream Statement 1 (Terry Direct Testimony), at 12.
5 *Id.*
6 47 C.F.R. § 51.703(b).
7 *Local Competition Order*, at ¶ 1062.

carriers. In other words, each carrier is responsible for the costs of delivering its traffic to other carriers for termination.[8] This is consistent with the FCC's longstanding principles of cost-causation. As the agency recognized in its 2005 Further Notice of Proposed Rulemaking ("*FNPRM*") in the Unified Intercarrier Compensation Proceeding, "under the existing regimes, the calling party's carrier, whether LEC, IXC, or CMRS provider, compensates the called party's carrier for terminating the call. Thus, as a general matter, our existing regimes are based on a "calling-party-network-pays" (CPNP) approach to compensation."[9]

The Commission has spent considerable time and effort analyzing and implementing the FCC's interconnection framework for ICAs, pursuant to the Commission's authority to arbitrate ICA disputes under section 252 of the Act.[10] In the *VZW/Alltel Arbitration Order*,[11] the Commission specifically examined the FCC's rules as they apply to an interconnection involving a rural telephone company and a competing wireless or CMRS carrier. The Commission's order in that case is particularly relevant to the present case, since the Commission ruled that the same rules should apply to all competing carriers, whether CMRS or landline/CLEC.

In the *VZW/Alltel Arbitration Order*, the Commission established a framework for direct and indirect interconnection between an incumbent LEC (i.e., Windstream) and a competing telecommunications carrier seeking interconnection (like Core). In the *VZW/Alltel Arbitration Order*, the Commission relied upon the FCC's rules in approving a "dual IP" interconnection arrangement that exactly mirrors Core's proposal in this arbitration. With respect to

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8 Core Statement 2.0 (Van de Verg Direct Testimony), at 5.

9 Further Notice of Proposed Rulemaking, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, 20 FCC Rcd. 4685 (rel. Mar. 3, 2005) ("*FNPRM*") at ¶ 17.

10 47 U.S.C. §252.

11 Opinion and Order, *Petition of Cellco Partnership d/b/a Verizon Wireless For Arbitration... With ALLTEL Pennsylvania, Inc.*, Docket No. A-310489F7004 (Order entered January 18, 2005)("*VZW/ALLTEL Arbitration Order*").

interconnection traffic handled by a third party transit provider (generally speaking, Verizon), the Commission found:

> [T]he general rule is that traffic which originates on the network of a LEC must be delivered by that LEC for termination at the originating LEC's cost...
>
> Based on FCC rule § 51.703(b) that prohibits an originating carrier from charging a terminating carrier for the costs of traffic originating on its network, we decide that the weight of authority would place the cost responsibility for third-party transit on the originating carrier. *VZW/Alltel Arbitration Order*, at 27.
>
> * * *
>
> FCC rules derived from the Local Competition Order, require that each party, to the extent it is an originating carrier, bear financial responsibility for the delivery of traffic originating on its network. 47 C.F.R. § 51.703(b). Therefore, the originating carrier is prohibited from imposing charges on the terminating carrier for either the telecommunications traffic originating on its network or the facilities used for the delivery of that traffic. *Id.* at 30.
>
> * * *
>
> [W]hen ALLTEL's customers originate traffic that eventually terminates on the network of Verizon Wireless, they invoke the prohibition against ALLTEL's shifting of costs for the delivery of this traffic to Verizon Wireless.
>
> There is a strong pronouncement on the part of the FCC to unwaveringly adhere to the principle that the originating carrier bears the costs of delivering traffic which originates on its network. *Id.* at 33.

The Commission considered and rejected Alltel's argument (identical to Windstream's argument in this case) that it can not be required to transport traffic across its service territory boundary:

> ALLTEL objects that the application of the FCC rule could require it to extend delivery of traffic outside of its network and into areas which extend beyond its Pennsylvania-franchised service territory. Because the FCC rule expressly prohibits a charge for either the telecommunications traffic or facilities used in the delivery of this traffic by the originating LEC, we find that ALLTEL's Exceptions shall be denied consistent with the discussion in this Opinion and Order. *Id.* at 47.

In attempt to distinguish the *VZW/Alltel Arbitration*, Windstream argues that the Commission's entire order was based on the premise that wireless carriers by rule enjoy a larger local calling area than do CLECs.[12] However, while it is true that the *VZW/Alltel Arbitration Order* clearly involved an ILEC-CMRS interconnection, as distinct from an ILEC-CLEC interconnection, the Commission expressly concluded that the duty of an originating carrier to transport its own originating traffic to the switch of the terminating party is independent of carrier type:

> ALLTEL essentially takes the position that TSR Wireless, and cases which have followed, turn on the fact that they involve different types of telecommunications carriers (RBOC vs. ILEC) and CMRS providers (paging carriers vs. wireless company) than those involved in the present case. However, the distinction ALLTEL attempts to draw based on the type of carrier involved does not invalidate the ALJ's reliance on TSR Wireless et al. On the contrary, ***to engage in such a distinction would subject such a conclusion to allegations of discrimination which run counter to the goals of TA96.***[13]

Ultimately, the Commission approved Verizon Wireless's proposed language, which provided for a dual IP arrangement identical to Core's proposal in this case.[14] Verizon Wireless proposed that it would be responsible to deliver its own originating traffic to Alltel at an IP "within ALLTEL's interconnected network", and that Alltel would be responsible to deliver its own originating traffic to Verizon Wireless at an IP designated by Verizon Wireless. With respect to Alltel-originated traffic, the Commission rejected the inclusion of the phrase "within ALLTEL's interconnected network,"[15] and permitted Verizon Wireless to designate one IP in each LATA in which it sought interconnection with Alltel.[16]

With respect to Verizon Wireless' IP, the Commission found as follows:

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12 Windstream Statement 1-R (Terry Rebuttal Testimony), at 8.
13 *VZW/Alltel Arbitration Order*, at 48.
14 Core Statement 2.0 (Van de Verg Direct Testimony), at Exh. CFV-3.
15 *VZW/Alltel Arbitration Order*, at 78-79.
16 *Id.* at 95.

> Southwestern Bell stands for the proposition that, although ILEC networks were not designed to accommodate third-party interconnection, the FCC rules require ILECs "to adapt their facilities to interconnection or use by other carriers" in order to accommodate the interconnector, after it has been determined that the point selected by the interconnector is a "technically feasible point" consistent with § 251(c)(2). We also note that Southwestern Bell involved an interconnection between an ILEC and a CLEC. In that regard, FCC rules allow a competitor LEC to select at least one technically feasible interconnection point per LATA. We believe it would be prudent to apply the same interconnection requirements that exist for interconnection between wireline carriers in the instant case involving interconnection between a wireless and an ILEC. Therefore, we shall direct that ALLTEL permit Verizon Wireless the opportunity to select one technically feasible interconnection point per LATA located within the boundaries of the Commonwealth of Pennsylvania.[17]

The Commission's extensive analysis of the originating party's transport duty in the *VZW/Alltel Arbitration Order* simply leaves no room for Windstream's position on this issue. Meanwhile, the Commission's analysis and approved language are entirely consistent with Core's position.

Similarly, the Maryland Public Service Commission has clarified that each party to an interconnection is responsible for the cost of transporting its own originating traffic from its own switch to the switch of the other party. Like the Commission, the Maryland Commission too has rejected the very premise Windstream relies upon in this case:

> The Commission does not find persuasive Verizon's arguments that its obligation to deliver its traffic ends at its tandem because the point of interconnection is for the "mutual exchange of traffic" and because the point of interconnection must be on Verizon's network.[18]

The Maryland Commission also clarified the parties' respective transport obligations as follows:

> The FCC's rules make each party responsible for delivering its traffic to the other party. Therefore, ***Verizon is financially responsible for***

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17 *Id.*

18 Order 79250, *In the Matter of the Petition of AT&T Communications of Maryland, Inc. for Arbitration Pursuant to 47 U.S.C. § 252(b) Concerning Interconnection Rates, Terms and Conditions*, MDPSC Case 8882, at 9 (July 7, 2004)(emphasis added).

> ***transporting its traffic to AT&T's switch location and AT&T is financially responsible for transporting its traffic to Verizon's switch location. Two points of interconnection are appropriate.*** Each party is responsible for the cost of delivering its traffic through its network and into the interconnection facility that connects the two networks.[19]

In addition to being consistent with applicable federal and state law and Commission policy, Core's proposal in this case is consistent with industry standard practice, as reflected in various ICAs that are applicable in areas of Pennsylvania and surrounding states that are relatively open to competition (i.e., the Verizon service territories). In fact, Core's existing ICAs with Verizon in Maryland, New York, Pennsylvania, and Virginia each reflect the principle that both ILEC and CLEC are responsible for transporting their interconnection traffic to the switch or similar network node on the other party's network. Core Statement 2.0 (Van de Verg Direct Testimony), at p. 7; *and* Exhs. CFV-4, CFV-5, CFV-6 and CFV-7.

In fact, Core witness Mr. Van de Verg identified the following specific provisions from Core's ICAs with Verizon which "implement the principle that the originating carrier is responsible to provide its own transport:" *Id.* at p. 7.

- Core Communications, Inc./Verizon Pennsylvania Inc.: §§ 1.2.1.1, 1.2.2, and 2.4.2 and Amendment No. 1, § 1(d). *Id.* at Exh. CFV-4.
- Core Communications, Inc./Verizon Maryland Inc.: §§ 1.2.1.1, 1.2.2, and 2.4.2 and Amendment No. 3, § 1(d). *Id.* at Exh. CFV-5.
- CoreTel New York, Inc./Verizon New York Inc.: §§ 4.1.3, 4.2.3, and 4.2.6. *Id.* at Exh. CFV-6.
- CoreTel Virginia, LLC/Verizon Virginia Inc.: § 4.2.2. *Id.* at Exh. CFV-7.

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19 *Id.*, (emphasis added).

To the extent Windstream proposes to impose new and different interconnection obligations on Core, the burden is on Windstream to demonstrate why the Commission should depart from FCC rules, its own precedent, as well as industry standard practice.

In this case, Windstream has completely failed to justify such a departure. Its primary argument is that Core "omits discussion of critical aspects" of the *VZW/Alltel Arbitration Order*."[20] Specifically, Windstream points to language from the ALJ's Recommended Decision "which allowed Windstream (then known as Alltel) to assess a fee to Alltel customers placing calls to Verizon Wireless customers..."[21] Windstream's argument in this regard is neither clear on its face, nor relevant to the issue at hand. The ALJ's Recommended Decision does briefly state that "Alltel may, if it wishes, impose [the costs] upon their end users"—meaning, the costs associated with transporting originating traffic to Verizon Wireless.[22] In Core's view, the ALJ was simply stating a truism, namely, that Alltel was free to come before the Commission in a ratemaking case to plead inclusion of its transport costs in the rate base. But the Commission does not even appear to have recognized Alltel's alleged transport costs. Rather, the Commission found that "Alltel's concerns relative to increased cost resulting from a change in the compensation regime previously governed by ITORP to be speculative."[23] Windstream has done nothing in this proceeding to shed further light on its "costs", nor has it sought the ability to recover those costs from its end users. Accordingly, Windstream reference to the Recommended Decision remains ambiguous at best.

Windstream muses that Core could, pursuant to its dual-IP proposal, designate an IP

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20 Windstream Statement 1-R (Terry Rebuttal Testimony), at 8.

21 *Id.*

22 Recommended Decision, Petition of Cellco Partnership d/b/a Verizon Wireless For Arbitration... With ALLTEL Pennsylvania, Inc., Docket No. A-310489F7004 (March 22, 2004).

23 *VZW/ALLTEL Arbitration Order*, at 47.

outside of Pennsylvania or even the United States.[24] However, the plain fact is that Core's proposal specifically states that "[Core] shall have the sole right and discretion to initiate interconnection **in each LATA**" and "[p]ursuant to [Core's] written request for interconnection **in each LATA**, each party shall designate an Interconnection Point ("IP") on its own network..."[25] Since Core's designation of an IP is constrained to a particular LATA, Windstream's concern about out-of-state or out-of-country IPs is simply not warranted.

Windstream also complains about the anticipated balance of traffic given Core's focus on serving Internet Service Providers (ISPs).[26] This is a red herring. Core's network is capable of delivering outbound traffic as well as inbound traffic, and Core may modify its business focus and begin delivering substantial amounts of outbound traffic at any time. Core Statement 2.1 (Van de Verg Rebuttal Testimony), at 5. In fact, Core has established no less than nineteen (19) IPs for the delivery of traffic to Verizon in Pennsylvania and surrounding states.[27] But regardless of potential changes in Core's business plan, Windstream's costs of delivering its originating traffic to Core do not change. *Id.* at 6. Whatever costs Windstream may have will be the same since it is solely responsible for its own originating traffic. *Id.* Notably, Windstream's costs will not vary even if Core winds up delivering more traffic to Windstream than it terminates. *Id.*

Windstream also fabricates an alleged industry standard pursuant to which "dual POI" refers solely to arrangements in which both IPs are "within an ILEC's network."[28] Core is not aware of any such standard. Moreover, Core asked Windstream in discovery to supply a factual basis for this alleged standard, but Windstream failed to do so.[29] Windstream claims that the

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24 Windstream Statement 1 (Terry Direct Testimony), at 11.

25 Core Exhibit 1 (Core Best Offer) NIA Issue 1, §§ 1.2 and 1.3. (Emphasis added).

26 Windstream Statement 1 (Terry Direct Testimony), at 11.

27 Core Exhibit 2 (Core Answers to Windstream's Set I Interrogatories), at 3 (third column shows the "Verizon-IPs" Core has established to deliver originating traffic).

28 *Id.*

29 Core Statement 2.1 (Van de Verg Rebuttal Testimony), at 6 and Exh. CFV-11.

current ICA between Core and Verizon Pennsylvania, Inc. requires both Core's and Verizon's IP to be located with Verizon's service territory.[30] Again, Core asked Windstream where in the Agreement this alleged "integral part" could be found, and again, Windstream failed to do so.[31]

Finally, Windstream insists that "interconnection point" must be defined as "a single point within Windstream's interconnected network within the LATA."[32] The problem with this formulation is that Windstream has more than one "network" in each LATA within Pennsylvania.[33] In fact, Windstream's network map shows no less than eleven (11) separate service territories in Pennsylvania, a state with six (6) LATAs. This disparity leads in two directions. One is that Windstream may actually be asking for Core to interconnect in more than one POI in each LATA, which is patently unfair and has no basis in the law and is unsupported even in Windstream's testimony. The other is, given that no single Core IP can possibly be in each of Windstream's separate networks, locating that single Core IP at a centralized location in Verizon territory appears all the more reasonable.

30 Windstream Statement 1 (Terry Direct Testimony), at 14.
31 Core Statement 2.1 (Van de Verg Rebuttal Testimony), at 7-8 and Exh. CFV-12.
32 Windstream Statement 1 (Terry Direct Testimony), at 30-31.
33 Core Statement 2.1 (Van de Verg Rebuttal Testimony), at 8 and Exh. CFV-13.

NIA #4: ***Should Core be permitted to indirectly interconnect with Windstream without volume limitations that would necessitate direct interconnection?***

Core's Best Offer Language:

Core proposes the following language to be included in Att. 4:

12. Indirect Traffic

12.1. For purposes of exchanging Indirect Traffic there is no physical or direct point of interconnection between the Parties, therefore neither Party is required to construct new facilities or make mid-span meet arrangements available to the other Party for Indirect Traffic. Indirect interconnection shall only be allowed to the extent each party is interconnected at a tandem which ***RLEC Acronym TXT***'s end office subtends.

Discussion:

This issue concerns whether or not to limit each party's ability to use third party tandem transit service to deliver traffic to the other party. According to the FCC, "transiting occurs when two carriers that are not directly interconnected exchange non-access traffic by routing the traffic through an intermediary carrier's network. Typically, the intermediary carrier is an incumbent LEC (in this case, Verizon) and the transited traffic is routed from the originating carrier through the incumbent LEC's tandem switch to the terminating carrier. The intermediary (transiting) carrier then charges a fee for use of its facilities."[34]

Core witness Mr. Van de Verg provided a description of how transit service works:

> Say a customer of Core calls a customer of Windstream. Core would route the call over its direct interconnection trunks with Verizon to a Verizon tandem switch. Verizon would then accept the call at its tandem switch and route the call to Windstream via Verizon's direct interconnection trunks with Windstream. Windstream would then deliver the call to its customer over its own facilities. Core, as the originating carrier, would pay Verizon for the tandem transit service, and pay Windstream for termination of the call.

[34] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, Federal Communications Commission, 20 FCC Rcd 4685; 2005 FCC LEXIS 1390, FCC 05-33, rel. March 3, 2005 ("*FNPRM*"), ¶ 120.

Notably, in this scenario it is Verizon—not Windstream and not Core—that provides the tandem switching function. Mr. Van de Verg also testified that Core's current ICA with Verizon Pennsylvania provides that Core may purchase tandem transit service from Verizon at a rate of approximately $0.00085/MOU (tandem switching rate of $0.000795/MOU plus tandem transport rate of $0.000152/MOU).[35]

Core objects to Windstream's arbitrary limit of "a DS1 level" after which Core must establish direct interconnection with each and every Windstream end office.[36] Core also objects to Windstream's thesis that "Core should bear all third party tandem provider costs."[37] Core stands ready to discuss direct interconnection with Windstream at any time, and nothing in Core's proposal would inhibit such discussions. However, Core would not require either party to shoulder the entire responsibility to establish direct end office trunks. There is no technical or engineering reason for the parties to impose restrictions on their own use of a third party tandem provider (Verizon in this case) for delivery of transit interconnection traffic. As Mr. Van de Verg testified, using a third party tandem can be just as efficient—if not more so—than establishing new, direct interconnection facilities.[38]

Ultimately, Windstream's proposal is rooted in its belief that "Core should bear all third party tandem provider costs" including transport of Windstream's own originating traffic back to Core's network. If each party is responsible only for the delivery of its own originating traffic (as Core has advocated), then Windstream like Core would be absolutely indifferent as to whether traffic arrived on Verizon tandem trunks or direct end office trunks from Core. Only the originating party has a choice to make, i.e., whether to use tandem transit, or buy, build, or lease

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35 Core Statement 2.0 (Van de Verg Direct Testimony), at 10 and Exh. CFV-8.

36 Joint Exhibit 1 (Final Consolidated Issues List), at 3.

37 Response of Alltel Pennsylvania, Inc. to the Petition of Core Communications, Inc. (filed April 24, 2006), at App. A, p. 5.

a direct circuit. As Mr. Van de Verg testified, "[e]ach party should be afforded the flexibility to choose the most efficient and least cost alternative for its own traffic. Similarly, neither party should limit arbitrarily the other party's interconnection options."[39]

Core also objects to Windstream's requirement that Core interconnect directly with each and every Windstream end office, if the total "traffic volumes' between Core and Windstream anywhere in Pennsylvania exceed "a single DS1 of traffic per month."[40] As Mr. Van de Verg testified, direct end office interconnection can be extremely costly:

> Say Core forecasts sending Windstream enough traffic to fill one DS3 in a given LATA, using industry standard capacity calculations. With tandem interconnection, Core would simply buy, build or lease one (1) DS3 into Windstream's tandem in the LATA. At the rates agreed to by the parties, the DS3 would cost Core $420.25 per month to lease an entrance facility DS3. With end office interconnection, Core would instead have to lease one or more DS1s to each Windstream end office. Say Windstream has 10 end offices subtending its tandem in the LATA. At the rates agreed to by the parties, direct end office interconnection would cost Core $736.50 ($73.65 X 10) per month. Direct end office interconnection would cost far more than tandem interconnection to handle the same total volume of traffic.[41]

Not only is Windstream's DS1 limit unnecessary, its direct end office interconnection remedy is costly, inefficient and unreasonable.

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38 Core Statement 2.0 (Van de Verg Direct Testimony), at 11.

39 *Id.*.

40 Petition of Core Communications, Inc. for Arbitration of Interconnection Rates, Terms and Conditions (filed March 30, 2006), at App. 33, p. 50, § 12.1.

41 *Core Statement 2.0 (Van de Verg Direct Testimony), at 12-13.*

NIA #5: ***Should the Agreement require each Party to arrange and pay for third-party tandem services relative to its own originating traffic?***

Core's Best Offer Language:

Core proposes the following language for inclusion in Att. 4:

12.2.3. Each Party is responsible for the transport of originating calls from its network to its point of interconnection with the transiting party. The originating Party is responsible for the payment of transit charges assessed by the transiting party.

Discussion:

In Core's view, the ICA should contain a simple provision delineating each party's duty to procure transit service from a third party in connection with its own originating traffic in an indirect interconnection scenario.[42] While Windstream agrees with Core, that "each [sic] Core and Windstream is responsible for making its own arrangements with a third party transiting provider", Windstream objects to inclusion of language in the ICA "setting forth the payment obligations of either Core or Windstream."[43] Core is cognizant of and sympathetic to Windstream's concern that "the terms and conditions of any agreement Core or Windstrean may have with a third party" should not be prejudged in an ICA between Core and Windstream alone.[44] Indeed, Core believes Windstream's proposal to limit indirect interconnection to a DS1 (NIA Issue # 4, above) unduly interferes with Core's transiting arrangements under its ICA with Verizon. However, Core's proposed language for this issue does not in any way presume that either party will pay anything. It simply clarifies that any third party charges that may exist are payable by the originating party. This clarification is necessary because "[w]ithout this language the originating carrier could attempt to pass off to the terminating carrier [] charges that may be

42 Core Statement 2.0 (Van de Verg Direct Testimony), at 14-15.
43 Windstream Statement 1-R (Terry Rebuttal Testimony), at 13.
44 *Id.*, at 13.

due for the third party tandem transit service."[45]

[45] Core Statement 2.0 (Van de Verg Direct Testimony), at 15.

ICC #1: ***How should the jurisdiction of VNXX traffic be determined, and what compensation should apply?***

Core's Best Offer Language:

Core proposes deleting Windstream's proposed Att. 12, sections 3.4, and modifying Windstream's proposed Att. 12, section 1 to read as follows:

1.0 Introduction

1.1 For purposes of compensation under this Agreement, the telecommunications traffic exchanged between the Parties will be classified as Section 251(b)(5) Traffic, ISP-Bound Traffic, IntraLATA Interexchange Traffic, or InterLATA Interexchange Traffic. The provisions of this Attachment shall not apply to services provisioned by Alltel to "CLEC ACRONYM TXT" as local Resale Services.

Discussion:

This issue involves the proper classification of virtual NXX or "VNXX" traffic for intercarrier compensation purposes.[46] VNXX traffic is traffic that is rated and routed as "local" or non-toll traffic based on the NPA-NXX combinations of the dialing number and the dialed number, even though the call path may cross over the geographic boundaries of the incumbent LEC's local calling area. The Commission has found that:

> With VNXX service, a customer can obtain a telephone number from a NXX code that is associated with a rate center or local calling area in which they are not physically located. This type of arrangement or service has been referred to as "virtual" NXX because the customer has only a virtual presence, as opposed to a physical presence, in the local calling area based solely on the use of the assigned NXX code for that local calling area.[47]

As Core witness Timothy Gates testified, "this is the same functionality that has been provided with FX [i.e., "foreign exchange"] service for decades."[48] The Commission has found that "several ILECs, CLECs, and/or their affiliates, offer VNXX, or a VNXX-like service."[49]

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46 Prehearing Memorandum of Windstream

47 Statement of Policy, *Generic Investigation Regarding Virtual NXX Codes*, Pa. P.U.C. Docket No. I-00020093 (Order entered Oct. 14, 2005), at 3.

48 Core Statement 1.0 (Gates Direct Testimony), at 4.

49 *Core RTC Certification Order*, at 31.

Core's position is that all intraLATA traffic, whether geographically local or VNXX, should be rated as Section 251(b)(5) Traffic or intraLATA toll traffic based on a comparison of the NPA-NXX of the calling and called parties.[50] Similarly, Core's position with respect to ISP-bound traffic is that it should be rated as compensable traffic pursuant to the *ISP Remand Order* if the NPA-NXX of the calling and called parties fall within the same local calling area.[51] Windstream believes VNXX traffic should be subject to originating access charges, not terminating reciprocal compensation charges.[52] Windstream believes that the designation of traffic as intraLATA toll based on the actual geographic locations of the calling and called parties.[53] Windstream also proposes that calls using VOIP technology also be classified based on geographic locations for compensation purposes.[54]

a. Voice VNXX Calls Are Compensable Under Section 251(b)(5)

Core's proposal for voice VNXX calls is clearly consistent with federal law. The FCC has defined the scope of traffic that is subject to reciprocal compensation as all "telecommunications traffic... except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access."[55] In order for Windstream to excise VNXX traffic from section 251(b)(5), it must demonstrate that VNXX traffic falls within one of the enumerated exceptions to the rule. And although Windstream

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50 Joint Exhibit 1 (Final Consolidated Issues List), at 4. Core Exhibit 1 (Core Best Offer), at 8; *and* Core Petition, Appendix 2, at 10; *and id.*, Appendix 13 (Core redline of Allel proposal), at 92-93, §§ 1.1-1.3, 3.0, 3.4 and 3.4, and 108 (definition of "IntraLATA Toll Traffic").

51 Core Exhibit 1 (Core Best Offer), at 8; *and* Core Petition, Appendix 2, at 10; *and id.*, Appendix 13 (Core redline of Alltel proposal), at 93, §§ 4.0.

52 Response of Alltel Pennsylvania, Inc. to the Petition of Core Communications, Inc. for Arbitration of Rates, Terms and Conditions (filed April 24, 2006), Appendix B (Windstream statement of issues), at 7.

53 *Id.* at 8; *and* Core Petition, Appendix 33 (Windstream's final negotiations proposal), at p. 93, § 1.4, and 109-10 (definition of "IntraLATA Toll Traffic").

54 Windstream Response, Appendix A, at p. 6; *and* Core Petition, Appendix 33, at p. 93 and §§ 1.4-1.6.

55 47 C.F.R. § 51.701(b).

argues at various points in this proceeding that VNXX traffic is "subject to access compensation",[56] it ultimately fails to offer any justification for this claim.

In order for VNXX traffic to be subject to originating access charges, Windstream would need to prove that this traffic is "exchange access." The Act defines "exchange access" as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services."[57] The Act defines "telephone toll services" as "telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service."[58] VNXX traffic does not constitute "exchange access" because VNXX is offered as a non-toll service out of Core's local exchange services tariff, a fact which is not contested.

An access call generally involves three carriers: an originating LEC, an IXC, and a terminating LEC. The FCC has described the situation thus:

> Federal and state ***access charge rules govern the payments that interexchange carriers (IXCs) and commercial mobile radio service (CMRS) providers make to local exchange carriers (LECs) that originate and terminate long-distance calls***, while the reciprocal compensation rules established under section 251(b)(5) of the Act generally govern the compensation between telecommunications carriers for the transport and termination of calls not subject to access charges.[59]

Of course, unlike an access call, **a VNXX call involves two LECs and no IXC**. Even if one could overlook this distinction (and Windstream offers no reason why one should), application of the access regime to VNXX calls yields absurd results. Without an IXC to pay the access charges, the originating and terminating LECs would have equal claim to bill the other for the

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56 *See, eg.*, Windstream Statement 1-R (Terry Rebuttal Testimony), at 22.

57 47 U.S.C. § 153(16).

58 47 U.S.C. § 153(48).

59 Further Notice of Proposed Rulemaking, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, 20 FCC Rcd. 4685 (rel. Mar. 3, 2005) ("*FNPRM*"), at ¶ 5.

same minutes (in which case the LEC with the higher tariffed per minute access rate would receive net compensation).

In any event, the FCC has stated on numerous occasions that VNXX arrangements are properly rated as local and are subject to section 251(b)(5) of the Act for intercarrier compensation purposes, and that such jurisdictional determinations should be based on a comparison of the NPA-NXXs associated with a call. As one example, in its *Virginia Arbitration Order*, the FCC expressly stated that the standard industry practice is for "carriers [to] rate calls by comparing the originating and terminating NPA-NXX codes."[60] Indeed, in that proceeding, the FCC agreed that "local traffic" is defined as "traffic that stays within the local calling area as determined by the NPA-NXX codes of the calling and called parties,"[61] not the physical location. The FCC similarly noted that "Verizon concedes that NPA-NXX rating is the established compensation mechanism not only for itself, but industry-wide."[62] Notably, **Windstream openly agrees with the FCC's assessment**, stating "[t]he use of NPA-NXXs is the only available method for determining the geographic location of each party's customer and the appropriate rate to be assessed."[63] Similarly, Windstream witness Mr. Terry testified that "[t]he industry standard for determining the compensation due to a party for termination of a call is based on the NPA-Nxx."[64] In addition, Core witness Mr. Gates was able to determine through discovery responses provided by Windstream that Windstream treats FX calls placed by its own retail end users as local calls, and does not impose access charges on its end users.[65]

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60 *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, 17 FCC Rcd. 27039, ¶ 301 (2002) ("*Virginia Arbitration Order*").

61 *Id.* at ¶ 264 (characterizing AT&T's position) and ¶ 266 (adopting AT&T's position and clarifying that the *ISP Remand Order's* 3:1 presumption is rebuttable).

62 *Id.* at ¶ 301.

63 Windstream Response, Appendix A, at p. 8.

64 Windstream Statement 1 (Terry Direct Testimony), at 25.

65 Core Statement 1.0 (Gates Direct Testimony), at 5-6.

In the *Virginia Arbitration Order* the FCC determined that use of originating and terminating NPA-NXX codes is an appropriate means for segregating toll traffic, which is subject to state regulation, and local voice and ISP-bound traffic, which respectively are subject to the sections 251(b)(5) and 201 of the Federal Act and FCC rules.[66] To the extent the NPA-NXXs associated with a call are assigned to the same local calling area, a call is not "toll." Rather, the call is rated as either a local voice call under 251(b)(5) of the Federal Act or as an ISP-bound call under section 201 of the Federal Act using the "3:1" presumption established by the FCC in its *ISP Remand Order*.[67] Traffic associated with the same calling area (based on a comparison of NPA-NXX codes) that falls below the 3:1 ratio is presumptively local, and traffic above the 3:1 ratio is presumptively ISP-bound. Both forms of traffic, however, are subject to federal law.

Of course, the *Virginia Arbitration Order* is not the only instance in which the FCC determined that compensation for a VNXX call is based on a comparison of relevant NPA-NXX codes. In its landmark decision in *Starpower*, the FCC similarly confirmed that it is standard industry practice to rate calls as local or toll based on a comparison of NPA-NXX codes.[68] The FCC has stayed true to its precedence in *Starpower*, noting in its 2005 intercarrier compensation *FNPRM* that "telecommunications carriers typically compare the telephone numbers of the calling and called party to determine the geographic end points of a call."[69] Indeed, relying on *Starpower* and clarifying its analysis in the *Virginia Arbitration Order*, the FCC further explained that "a call is rated as local if the called number is assigned to a rate center within the

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66 *Id. at* ¶¶ 286-88.

67 Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. ___, 16 FCC Rcd. 9151 (rel. April 27, 2001), *remanded sub nom., WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), at ¶ 34. ("*ISP Remand Order*"), ¶ 79.

68 *Starpower Communications, LLC v. Verizon South Inc.*, EB-00-MD-19, Memorandum Opinion and Order, 18 FCC Rcd 23625, 23633, ¶ 17 (2003) ("*Starpower*").

local calling area of the originating rate center. If the called number is assigned to a rate center outside the local calling area of the originating rate center, it is rated as a toll call."[70] At bottom, FCC precedent demands that parties rate calls based on a comparison of the relevant NPA-NXXs.

In addressing the same issue, the Maryland Commission followed the FCC's analysis in Starpower, and found that:

> ***FX calls are local calls, not interexchange calls, based on standard industry practice, including Verizon's own practice, and therefore reciprocal compensation is owed to the terminating carrier, and no access charges apply.*** The calls are local because the status of a call as local or toll is determined, pursuant to standard industry practice, by the telephone numbers of the calling and called parties, not by their physical location. The Commission notes in this regard the FCC's decision in *Starpower* rejecting Verizon's assertion that FX calls should be considered toll calls because the service enables a customer to avoid toll charges. The FCC noted that this argument missed the crucial point that Verizon South itself rated calls to and from its foreign exchange customers as local or toll based upon the telephone number assigned to the customer, not the physical location of the customer.[71]

The analysis provided by the FCC and the Maryland Commissions is supported by the record in this case, which demonstrates that the industry standard is that calls are rated based on the NPA-NXX combinations, not geographical end points.

b. ISP VNXX Calls Are Compensable Under the *ISP Remand Order*

All of the foregoing analysis applies equally to ISP-bound VNXX traffic as it does to voice VNXX traffic. Like voice VNXX traffic, and for the same reasons, ISP-bound VNXX traffic is not an "exchange access" or "telephone toll service." However, pursuant to the *ISP*

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69 FNPRM at n.59.

70 *Id.* at ¶ 141.

71 *In the Matter of the Petition of AT&T Communications of Maryland, Inc. for Arbitration Pursuant to 47 U.S.C. § 252(b) Concerning Interconnection Rates, Terms and Conditions*, Maryland PSC Case 8882, Order 79250

Remand Order, there is a separate reason why ISP-bound VNXX traffic in particular is compensable under the terms of that order, and not subject to originating access charges. The reason is quite simply that **the *ISP Remand Order* on its face applies to all ISP-bound traffic**, not just ISP-bound traffic that Windstream may consider to be "local."[72]

The Commission acknowledged in the *USLEC/Verizon Arbitration Order* and the *GNAPS/Verizon Arbitration Order* that "[t]he *ISP Remand Order* has virtually preempted state commission rate authority over intercarrier compensation for ISP-bound traffic."[73] Accordingly, the Commission in those arbitrations applied a different analysis for voice VNXX traffic and ISP-bound VNXX traffic, and simply referred the parties to the terms of the *ISP Remand Order* with respect to the latter.[74] On reconsideration of the *USLEC/Verizon Arbitration Order* the Commission further clarified its discussion of ISP-bound traffic:

> [B]oth Parties agree that federal law governs any compensation that may be due for ISP-bound VNXX traffic. However, it is certain that they specifically disagree about the intent of federal law as to how the FCC's interim intercarrier compensation plan, which was adopted in the ISP Remand Order, should be applied. US LEC is of the opinion that the interim intercarrier compensation rates for ISP-bound traffic includes both VNXX ISP-bound calls as well as calls to ISPs that are located in the same local calling area as the calling party. Verizon PA, as noted, opines that the FCC's interim intercarrier compensation plan applies only to calls where the ISP and the calling party are located in the same local calling area. In light of the fact that we have previously concluded in our April 18, 2003 Order that the FCC's ISP Remand Order has preempted rate authority by state commissions over intercarrier compensation for ISP-bound traffic, it is clear that this Commission lacks the authority to resolve the rate issue at hand. Consequently, we are of the opinion that, based on federal law, Verizon PA's

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at 4-5; *and* Case 8922, Order 79813 at 3. This order is available online at www.psc.state.md.us under the "Case Search" link.

[72] *See. eg., ISP Remand Order*, at ¶¶ 44 (stating that all "ISP-bound traffic" is "information access" under section 251(g) of the Act), 52 (claiming jurisdiction over all "ISP-bound traffic"), and 78, 79, 80, 81, 82, and 89 (creating interim compensation rules for all "ISP-bound traffic.").

[73] Opinion and Order, *Petition of US LEC of Pennsylvania, Inc. For Arbitration with Verizon Pennsylvania, Inc.*, Docket No. A-310814F7000 (Order entered April 18, 2003) ("*USLEC/Verizon Arbitration Order*"), at 57 and note 46. The identical passage occurs in Opinion and Order, *Petition of Global NAPs South, Inc. For Arbitration... with Verizon Pennsylvania, Inc.*, Docket No. A-310771F7000 (Order entered April 21, 2003) ("*GNAPS/Verizon Arbitration Order*"), at 45 and note 46.

[74] *Id.*

> proposal with regard to the definition of "Measured Internet Traffic" in Section 2.56 of the Glossary attempts to achieve a result relative to VNXX that is not the state of federal law.[75]

Windstream has given the Commission in this proceeding no reason to deviate from its past rulings that defer to the *ISP Remand Order* for the resolution of compensation for all ISP-bound traffic, including VNXX traffic.

The Commission's analysis is fully consistent with the FCC's order. Importantly, the *ISP Remand Order* explicitly abandons the agency's original focus on whether ISP-bound calls are local or non local. Instead, the FCC focused solely on its theory that **all ISP-bound traffic is "information access" traffic** that is inherently interstate in nature, and therefore subject to the FCC's section 201 jurisdiction:

> We conclude that a reasonable reading of the statute is that Congress intended to exclude the traffic listed in subsection (g) from the reciprocal compensation requirements of subsection (b)(5). Thus, the statute does not mandate reciprocal compensation for "exchange access, information access, and exchange services for such access" provided to IXCs and information service providers. ***Because we interpret subsection (g) as a carve-out provision, the focus of our inquiry is on the universe of traffic that falls within subsection (g) and not the universe of traffic that falls within subsection (b)(5). This analysis differs from our analysis in the Local Competition Order, in which we attempted to describe the universe of traffic that falls within subsection (b)(5) as all "local" traffic. We also refrain from generically describing traffic as "local" traffic because the term " local," not being a statutorily defined category, is particularly susceptible to varying meanings and, significantly, is not a term used in section 251(b)(5) or section 251(g).***[76]
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> * * *
>
> We recognize, as noted earlier, that based on the rationale of the Declaratory Ruling, the court indicated that the question whether this traffic was "local or interstate" was critical to a determination of whether ISP-bound traffic should be subject to reciprocal compensation... ***[W]e created unnecessary ambiguity for ourselves, and the court, because the statute does not define the term "local***

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[75] Opinion and Order, *Petition of US LEC of Pennsylvania, Inc. For Arbitration with Verizon Pennsylvania, Inc.*, Docket No. A-310814F7000 (Order entered January 18, 2006) , at 10 . Notably, Verizon's definition of "Measured Internet Traffic" expressly excluded VNXX traffic.

[76] *Id.*, at ¶ 34 (emphasis added).

> ***call," and thus that term could be interpreted as meaning either traffic subject to local rates or traffic that is jurisdictionally intrastate.*** In the context of ISP-bound traffic, as the court observed, our use of the term "local" created a tension that undermined the prior order because the ESP exemption permitted ISPs to purchase access through local business tariffs, yet the jurisdictional nature of this traffic has long been recognized as interstate.[77]
>
> As explained above, ***we no longer construe section 251(b)(5) using the dichotomy set forth in the Declaratory Ruling between "local" traffic and interstate traffic.*** Rather, we have clarified that the proper analysis hinges on section 251(g), which limits the reach of the reciprocal compensation regime mandated in section 251(b). Thus our discussion no longer centers on the jurisdictional inquiry set forth in the underlying order.[78]

According to the FCC, what matters now is that calls – all calls – that are placed to an ISP are classified as "information access," rendering them subject to the agency's jurisdiction over "interstate" traffic:

> We conclude that this definition of ***"information access" was meant to include all access traffic that was routed by a LEC "to or from" providers of information services, of which ISPs are a subset.*** The record in this proceeding also supports our interpretation. When Congress passed the 1996 Act, it adopted new terminology. The term "information access" is not, therefore, part of the new statutory framework. Because the legacy term "information access" in section 251(g) encompasses ISP-bound traffic, however, this traffic is excepted from the scope of the "telecommunications" subject to reciprocal compensation under section 251(b)(5).[79]

All of the FCC's rules are now premised on the theory that **any call to an ISP is interstate** and therefore under the FCC's jurisdiction and rules for intercarrier compensation:

> Having found that ISP-bound traffic is excluded from section 251(b)(5) by section 251(g), we find that the Commission has the authority pursuant to section 201 to establish rules governing intercarrier compensation for such traffic. Under section 201, the Commission has long exercised its jurisdictional authority to regulate the interstate access services that LECs provide to connect callers with IXCs or ISPs to originate or terminate calls that travel across state lines. Access services to ISPs for Internet-bound traffic are no exception... Thus, ***ISP traffic is properly classified as interstate, and it falls under the Commission's section 201***

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77 *Id.*, at ¶ 45 (emphasis added).

78 *Id.*, at ¶ 54 (emphasis added).

79 *Id.*, at ¶ 44 (emphasis added).

jurisdiction.[80]

Windstream does not, and can not, explain how calls that are generically classified as "interstate" can also be classified as "local." Nor can it explain why "local" is relevant at all now that the FCC has disposed of the ambiguous "local/non local" dichotomy

Several federal courts and state commissions have ruled affirmatively that all calls to ISPs, including VNXX-enabled calls, are compensable under the *ISP Remand Order*. For example, the federal district court for Connecticut found:

> [I]n the ISP Remand Order, the FCC did not use the term "local ISP-bound" traffic and did not impose any explicit restriction on the term "ISP-bound traffic." Moreover... the FCC expressly disavowed the use of the term "local," making it difficult to believe the Commission nevertheless intended that term to be implicitly read back into its ruling... Put simply, the language of the ISP Remand Order is unambiguous-the FCC concluded that section 201 gave it jurisdiction over all ISP-bound traffic, and it proceeded to set the intercarrier compensation rates for such traffic.[81]

> [T]he FCC began by addressing the question whether ISP-bound traffic that would typically be subject to reciprocal compensation-which at the time would have consisted of "local" ISP-bound traffic-was nevertheless exempt. In other words, because at the time only "local" traffic was subject to reciprocal compensation, the question before the FCC was whether "local" ISP-bound traffic was exempt from reciprocal compensation. Other forms of ISP-bound traffic were already exempt because they were not "local."

> What these statements, taken by themselves, do not reveal is how the FCC proceeded to answer that question in the ISP Remand Order. In answering the question, the FCC: (a) disclaimed the use of the term "local," (b) held that all traffic was subject to reciprocal compensation unless exempted, (c) held that all ISP-bound traffic was exempted because it is "information access," (d) held that all ISP-bound traffic was subject to the FCC's jurisdiction under section 201, and (e) proceeded to set the compensation rates for all ISP-bound traffic. In short, though the FCC started with the question whether "local" ISP-bound traffic was subject to reciprocal compensation, it answered that question in the negative on the basis of its conclusion that all ISP-bound traffic was in a class by itself.[82]

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80 *Id.*, at ¶ 52 (emphasis added).

81 *Southern New England Telephone Company v. MCI WorldCom Communications*, 359 F.Supp.2d 229, 231-32 (D.Conn. 2005); *aff'd on motion to vacate, Southern New England Telephone Co. v. MCI Worldcom Communications, Inc.*, 2006 WL 3085709 (D.Conn. 2006) ("SNET").

82 *SNET*, at 231.

Similarly, the Alabama P.S.C. found that "by virtue of the determinations reached by the FCC in its ISP Remand Order, ISP-Bound FX and VNXX calls are predominantly considered jurisdictionally interstate and subject to the authority of the FCC. This Commission accordingly has no authority to render determinations regarding the ISP-Bound FX/VNXX traffic referenced in this proceeding.[83] The Arizona Corporation Commission found that "[t]he ISP Remand Order makes no reference to VNXX ISP-bound traffic. The salient paragraphs of the FCC's ISP Remand Order do not limit the compensation scheme to only ISP-bound calls that originate and terminate in the same LCA."[84] And, the Maryland Public Service Commission found that: "industry standard and practice also means that FX calls to ISPs are local (if the calling and called telephone numbers are local) and therefore access charges would not apply. Rather, ISP compensation applies, and reciprocal compensation does not, pursuant to FCC's ISP Remand Order. The Commission notes in this regard that the FCC's ISP Remand Order requires ISP call compensation for all calls to ISPs, and the Order does not distinguish between FX calls to ISPs and other calls to ISPs."[85]

c. The Commission has Resolved Treatment of ISP VNXX Traffic in the *Core RTC Certification Order*

In addition to all the reasons set forth above, Core notes that the Commission has already addressed the issue of compensation for ISP-bound VNXX traffic in the *Core RTC Certification Order*. The order clearly establishes VNXX traffic as local in nature, and therefore subject to

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83 Slip opinion, *Re Local and Interexchange Telecommunications Services*, 2004 WL 1794914, Ala. P.S.C. Docket 28906 (April 29, 2004), at *17.

84 *Level 3 Communications, LLC v. Qwest Corporation*, Ariz. Corp. Comm. Docket Nos. T-01051B-05-0415 and T-03654A-05-0415, Decision No. 68855, at ¶ 55 (July 28, 2006).

85 *In the Matter of the Petition of AT&T Communications of Maryland, Inc. for Arbitration Pursuant to 47 U.S.C. § 252(b) Concerning Interconnection Rates, Terms And Conditions*, Md. P.S.C. Case 8882, Order 79250 (July 7, 2004), at 5. This order is available online at: http://webapp.psc.state.md.us/Intranet/Casenum/NewIndex3_VOpenFile.cfm *GNAPS/Verizon Arbitration Order*?ServerFilePath=C%3A%5CCasenum%5C8800%2D8899%5C8882%5C110%2Epdf

reciprocal compensation and intercarrier compensation for ISP-bound traffic. The order rejects Windstream's theory that VNXX traffic is interexchange ("long distance") traffic subject to the access charge regime.

Although Core never took the position that an evaluation of VNXX traffic was necessary for the resolution of the certification case, the RTC Protestants insisted that Core was not a local exchange carrier because it relied primarily or exclusively on the use of VNXX arrangements to offer local calling to its ISP customers in RTC territories.[86]

Indeed, the Protestants' arguments about VNXX-enabled ISP-bound traffic in the Core certification case mirror Windstream's arguments in this case.

Ultimately, the Commission granted Core's exceptions on the issue of VNXX traffic, and explicitly agreed with Core's conclusion that such traffic should be classified as "local" as opposed to access or toll traffic:

> The record supports a conclusion that several ILECs, CLECs, and/or their affiliates, offer VNXX, or a VNXX-like service. The record indicates that VNXX is not exclusively used by Core. Based on our conclusion that Core has sufficiently invested in facilities and by a preponderance of the evidence has demonstrated a commitment for more investment so as not to fall in the category of reseller, we find the emphasis on its VNXX use misplaced in this regard.
>
> ***With regard to the local nature of Core's exchange service as a result of its use of VNXX, we would further agree with Core.***[87]

As further clarification of its endorsement of Core's position, the Commission cited with approval the following passage from Core's Exceptions:

> ***Core's services are telephone exchange services because each and every call is terminated on a local basis (whether geographically local, or VNXX)***, within the same LATA in which it originated, courtesy of Core's direct interconnections with Verizon tandems in each LATA. . . .It is also important to differentiate between Core's services, whereby each call is originated and terminated on a local basis, within the same LATA, and the service at issue in the Level 3

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86 *Core RTC Certification Order*, at 29-30.

87 *Id.* at 31. (Emphasis added).

> Application in Marianna & Scenery Hill territory. In the case of Level 3, it was determined that all Pennsylvania calls terminated by Level 3 were terminated at Level 3's modem banks in Baltimore, Maryland. By contrast, as set forth above, ***all calls handled by Core originate and terminate on a local basis in the same LATA.***[88]

The Commission broadly concluded "[t]he Exceptions of Core are granted."[89]

In light of the importance of the VNXX issue in the Core RTC Certification Proceeding, and the Commission's careful and conclusive analysis of the issue, there remains no further basis in the law to support Windstream's position that such traffic should be considered long distance or access traffic. Rather, the Commission's analysis wholly supports Core's position that VNXX traffic should be considered "local" compensable traffic both under Section 251(b)(5) and the *ISP Remand Order.*

d. Requiring Compensation for VNXX Calls is in the Public Interest

Compensating carriers for the termination of ISP-bound VNXX traffic pursuant to the *ISP Remand Order* is clearly in the public interest. Core witness Mr. Gates demonstrated that VNXX number assignments permit ISPs to operate in a cost-effective manner in the rural areas of Pennsylvania, which includes much of Windstream's home service territory.[90] Mr. Gates noted that rural residents in particular rely heavily on dial up ISP service, since broadband services are often not available or prohibitively expensive.[91] Mr. Gates noted that "[f]or those citizens of Pennsylvania that can't either afford or don't have available to them broadband connectivity, dial-up internet provides access to one of – if not the – cornerstone of economic and community viability."[92] Finally, Mr. Gates concluded that imposition of originating access

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88 *Id.* (Emphasis added).
89 *Id.*
90 Core Statement 1.0 (Gates Direct Testimony), at 9-10.
91 *Id.*, at 5-6.
92 *Id.*, at 7.

charges by Windstream would "eliminate an efficient and technologically advanced means of providing dial-up Internet access throughout the State of Pennsylvania."[93]

Windstream offers precious little in support of its view that "ISP-bound VNXX traffic is interexchange traffic subject to originating access charges."[94] Indeed, Windstream's primary argument is that the issue of VNXX traffic is actually not properly within the scope of this proceeding.[95] However, this argument is ludicrous. A simple comparison between Core's final redline of the Windstream ICA proposal (Appendix 13 to Core's Petition) with Windstream's final negotiations proposal (Appendix 33) reveals that the parties negotiated wholly different positions with respect to the rating of VNXX calls. Core's final redline (dated December 26, 2005) strikes provisions in Windstream's initial proposal that tied the concept of "local traffic" and the definition of "IntraLATA Toll Traffic" to geographic end points.[96] Meanwhile, Windstream's final negotiations proposal to Core (dated February 15, 2006) retains this same language regarding geographic end points.[97] Beyond specific differences in ICA language, Windstream's overall advocacy in this case demonstrates its hostile opposition to VNXX arrangements, as well as its deeply held belief that such traffic should be subjected to access charges. In its Response to Core's Petition, Windstream stated that "Core plans to use VNXX to carry out its service with the appearance of local telephone numbers, and this VNXX scheme is further evidence that Core will not provide facilities-based CLEC service",[98] and that "[t]he use by Core of virtual numbering in this manner represents an interexchange service squarely outside

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93 Core Statement 1.1 (Gates Rebuttal Testimony), at 4.

94 Response of Alltel Pennsylvania, Inc. to the Petition of Core Communications, Inc. for Arbitration of Rates, Terms and Conditions (filed April 24, 2006), Appendix B (Windstream statement of issues), at 7.

95 Windstream Statement 1 (Terry Direct Testimony), at 21.

96 Core Exhibit 1 (Core Best Offer), at 8; *and* Core Petition, Appendix 2, at 10; *and id.*, Appendix 13 (Core redline of Allel proposal), at 92-93, §§ 1.1-1.3, 3.0, 3.4 and 3.4, and 108 (definition of "IntraLATA Toll Traffic").

97 Core Petition, Appendix 33 (Windstream's final negotiations proposal), at p. 93, § 1.4, and 109-10 (definition of "IntraLATA Toll Traffic").

98 Windstream Response, at 4.

Section 251(b)(5) reciprocal compensation..."[99], and that "Core's emphasis only on compensation related to ISP-bound VNXX traffic... demonstrates that Core does not intend to exchange local traffic..."[100] There can be no question that the proper treatment of VNXX traffic is an issue in this proceeding.

In his rebuttal testimony, Mr. Terry for the first time reveals his objections to VNXX arrangements. Mr. Terry's testimony revolves around two related claims. One is that Windstream cannot recover its alleged "dedicated transmission path, or transport costs, associated with such service" when VNXX arrangements are employed, although it can charge its own end user for such costs when its own FX service is employed.[101] The other claim is that "by providing VNxx... Core would be providing no facilities, yet Windstream would be routing the calls and providing the transport service without due compensation."[102] Together Mr. Terry's claims reflect the insular views of a rural telephone company obsessed with recovering its costs multiple times.

The plain facts are that Core's VNXX service and Windstream's FX service are both local exchange services which offer end users expanded calling areas, and "[n]either Windstream nor Core imposes any sort of toll charge in connection with calls to VNXX numbers."[103] Windstream has confirmed that it does not apply access charges to its FX service.[104] And the Commission has ruled that Core's VNXX service is "local in nature"[105]—one that is "comparable to and in direct competition to the service offerings provided by certain of the rural

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99 *Id.*, at 8
100 *Id.*, at 10.
101 Windstream Statement 1-R (Terry Rebuttal Testimony), at 16.
102 *Id.*, at 17.
103 Core Statement 1.1 (Gates Rebuttal Testimony), at 3.
104 *Id.*, at 3.
105 *Core RTC Certification Order*, at 31

ILECs in this proceeding."[106] The central difference Mr. Terry relies on is the fact that Windstream chooses to charge its end users "an additional monthly fee" in connection with its provision of FX service.[107] But as Bell System documentation indicates, "[f]or customers who make enough calls to a particular distant exchange area, the monthly charge for FX service is less than the sum of the toll charges they would otherwise pay."[108] While it is true that Core does not charge a similar monthly fee, that fact has no bearing on intercarrier compensation between Windstream and Core. The problem with the comparison of end user fees is that it suggests that Core should structure its retails offerings more like a rural LEC such as Windstream. That is a result no one except Windstream actually wants.

Further, Mr. Terry never actually describes in any details the transport costs he alleges Windstream bears alone in a VNXX arrangement. Of course, as the originating carrier in ISP-bound VNXX traffic scenario, Windstream has a legal duty to deliver its traffic to Core free of charge.[109] Getting beyond that duty, however, Mr. Terry's claim that Core bears no costs in relation to its provision of VNXX service has been specifically rejected by the Commission in the *Core RTC Certification Order*. There the Commission found:

> We are cognizant of the fact that the "dial up" ISP market has developed significant competition and we have required investment in facilities for purposes of CLEC entry into rural service territories. We conclude that Core's facilities, which, at minimum, provide switch functionality, meet these criteria.
>
> Finally, we agree with Core's position on the facts of its proposed service. Core leases interconnection facilities from fiber based carriers and uses a self-provision switch, or switch equivalent, for service.[110]

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106 *Id.*, at 22.

107 Windstream Statement 1-R (Terry Rebuttal Testimony), at 19.

108 Core Statement 1.0 (Gates Direct Testimony), at 5 (quoting Engineering and Operations in the Bell System; Second Edition, AT&T Bell Laboratories, 1983, at 63).

109 47 C.F.R. § 51.703(b).

110 *Core RTC Certification Order*, at 23.

> Based on our conclusion that Core has sufficiently invested in facilities and by a preponderance of the evidence has demonstrated a commitment for more investment so as not to fall in the category of reseller, we find the emphasis on its VNXX use misplaced in this regard.[111]
>
> * * *
>
> This Commission would not, however, condone an express shifting of costs by a new entrant where the record supports such a conclusion. We conclude that the record does not support such a conclusion.[112]

There is absolutely no evidence in this case to support Windstream's cost-shifting argument. Core incurs real costs in its provision of service to its customers. The fact that Core offers expanded calling areas to those customers should in no way limit the intercarrier compensation due Core for the termination of VNXX calls.

e. VOIP Traffic is Telecommunications and is Compensable Under Section 251(b)(5) of the Act

Consistent with its position on other calls, Windstream proposes that calls using VOIP technology be classified based on geographic locations for compensation purposes.[113] VOIP traffic, as is relevant to this proceeding, is traffic that is originated by a VOIP end user in internet protocol (IP) format, is converted into time-division multiplexing (TDM) format, and is then delivered through the parties' switched telecommunications network (the same network that handles dial up calls and "ordinary" voice calls) to an end user with "plain old telephone service, or "POTS." Conversely, VOIP traffic may originate with a POTS end user, be routed through the switched telecommunications network, and terminate to a VOIP end user. Much like ISPs, VOIP providers seek to work with CLECs instead of incumbents, since VOIP services are marketed as replacements for incumbents' POTS lines.

Core's position is that VOIP traffic that passes between the parties' networks is

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111 *Id.*, at 31.

112 *Id.*, at 39.

"telecommunications" traffic that is subject to reciprocal compensation arrangements under section 251(b)(5). If Core delivers VOIP traffic originated by its VOIP provider customer to Windstream for termination, then Core would pay Windstream at the reciprocal compensation rates the parties have agreed to, so long as the NPA-NXX of the calling party (the VOIP provider) and the called party (the POTS line end user) fall within the same local calling area. Conversely, if Windstream delivers VOIP traffic to Core, Windstream would pay Core at those same rates. Consistent with its position on other calls, Core proposes to rate VOIP calls "made through a presubscribed service and dialed on a 1+ basis for which additional toll charges apply" as toll calls subject to access charges.[114] Conversely, Windstream proposes that VOIP calls "be assessed either interstate or intrastate (depending on the end points of the call) terminating charges at the rates provided in the terminating Party's access tariff."[115]

Once converted into TDM format, VOIP traffic unquestionably qualifies as "telecommunications" under section 251(b)(5) of the Act and the FCC's implementing rules.[116] As such, VOIP traffic would be rated as "local" or "toll" based on a comparison of the calling party's and called party's NPA-NXX combination. Locally dialed calls are compensable under the reciprocal compensation regime, and toll calls are compensable under the access regime. Attempting to rate VOIP calls based on geographic end points would be practically impossible, since VOIP services are portable depending on where the VOIP end user chooses to log in to his VOIP service. As the FCC has found:

> In marked contrast to traditional circuit-switched telephony, however, it is not relevant where that broadband connection is located or even whether it is the same broadband connection every time the subscriber accesses the service.

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113 Windstream Response, Appendix A, at p. 6; *and* Core Petition, Appendix 33, at p. 93 and §§ 1.4-1.6.

114 Core Exhibit 1 (Core Best Offer), at 13 (definition of "IntraLATA Toll Traffic").

115 Core Petition, Appendix 33, at p. 93 and § 1.4.

116 *See*, Memorandum Opinion and Order, *In re Universal Service Contribution Methodology*, WC Docket No. 04-3621 FCC Rcd 7518 (rel. June 27, 2006), at ¶ 41("we determine that interconnected VoIP providers provide 'telecommunications.'").

> Rather, Vonage's service is fully portable; customers may use the service anywhere in the world where they can find a broadband connection to the Internet.[117]

Given these practical circumstances, Windstream's proposal to rate VOIP calls based on geographic end points should be rejected. Also relevant in this context is Windstream's testimony that "[t]he industry standard for determining the compensation due to a party for termination of a call is based on the NPA-Nxx."[118]

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[117] Memorandum Opinion & Order, *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling*, WC Docket No. 03-211, 19 FCC Rcd. 22404 (rel. November 12, 2004).

[118] Windstream Statement 1 (Terry Direct Testimony), at 25.

ICC #3: ***Should reciprocal compensation apply to local traffic that is roughly balanced?***

Core's Best Offer Language:

Core deleted Windstream's proposed Att. 12, sections 3.2 and 3.3 and added the following language:

3.0 Reciprocal Compensation for Section 251(b)(5) Traffic

The Party originating Section 251(b)(5) Traffic shall compensate the terminating Party for the transport and termination of such traffic to its Customer in accordance with Section 251(b)(5) of the Act at the equal and symmetrical rates stated in the Pricing Attachment.

Discussion:

In Core's view, all traffic that falls within the ambit of section 251(b)(5) of the Act is subject to reciprocal compensation at the agreed per-MOU rate.[119] Windstream believes that all "Local Traffic" should be subject to a bill-and-keep regime, unless and until "the level of traffic exchanged between the parties is out of balance using a ratio of 60%/40% for three (3) consecutive months..."[120] Presumably, Windstream believes that once this "level" is reached, the parties will then begin to pay reciprocal compensation.

Very simply put, Core's view is consistent with federal law, and Windstream's is not. The FCC carefully considered the merits of bill and keep in its 1996 *Local Competition Order*. The FCC defined bill and keep as "arrangements... in which neither of two interconnecting networks charges the other network for terminating traffic that originated on the other network."[121] As a general matter, the FCC frowned on bill and keep, since it fails to permit cost recovery for the terminating carrier. ***"[A]s long as the cost of terminating traffic is positive, bill-and-keep arrangements are not economically efficient because they distort carriers' incentives,***

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119 Joint Exhibit 1 (Final Consolidated Issues List), at 4-5.

120 Core Petition, Appendix 33, at p. 94, §§ 3.1-3.3; *and see*, Joint Exhibit 1 (Final Consolidated Issues List), at 4.

121 *Local Competition Order*, at ¶ 1096. (Emphasis added).

encouraging them to overuse competing carriers' termination facilities by seeking customers that primarily originate traffic."[122] The FCC did however recognize that when the traffic volumes terminated by each party to an interconnection are balanced, "bill-and-keep arrangements may minimize administrative burdens and transaction costs."[123] Accordingly, the FCC concluded that "state commissions may impose bill-and-keep arrangements if neither party has rebutted the presumption of symmetrical rates and ***if the volume of terminating traffic that originates on another network is approximately equal to the volume of terminating traffic flowing in the opposite direction, and is expected to remain so...***"[124]

Core submits that neither party has offered any evidence to support the notion that the volumes of traffic to be terminated by the parties will be "approximately equal" nor that it "is expected to remain so." Indeed, Core asked Windstream in discovery for any evidence Windstream has to show that the anticipated traffic will be "roughly balanced." Core Statement 1.1 (Gates Rebuttal Testimony), at 13. Far from rebutting the "presumption of symmetrical rates," Windstream actually responded that "any predictions as to whether traffic exchanged between these particular parties will be roughly balanced are irrelevant." *Id.* Accordingly, the Commission has no basis under FCC rules to impose a bill and keep regime in this proceeding.

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122 *Id.*, at ¶ 1112.
123 *Id.*
124 *Id.*, at ¶ 1111.

ICC #4: ***Does the FCC's ISP Remand Order apply to the parties and facts in this proceeding?***

Core's Best Offer Language:

Core proposes adding the following language in Att. 12:

4.0 Intercarrier Compensation for ISP-Bound Traffic

Compensation for ISP-Bound Traffic shall be governed by the FCC's ISP Remand Order and ISP Forbearance Order. To the extent the ISP Remand Order is overturned or otherwise found to be inapplicable, and to the extent ***RLEC Acronym TXT*** does not elect to exchange all Section 251(b)(5) traffic at the ISP Remand Order rates (as set forth in paragraph 89 of the ISP Remand Order) ISP-Bound Traffic shall be treated the same as Section 251(b)(5) Traffic for compensation purposes.

Core's position is that the *ISP Remand Order* governs compensation for the exchange of ISP-bound traffic. Joint Exhibit 1 (Final Consolidated Issues List), at 5. Windstream's position is unintelligible. In the Final Consolidated Issues List (dated September 20, 2007), Windstream appears to abandon its previous position, stating "[t]he *ISP Remand Order*, through application of the *Core Petition Order*, **does apply to the parties in this proceeding** and may require compensation for termination of ISP-bound traffic." *Id.* (Emphasis added). However, in its direct testimony (dated August 17, 2007) and rebuttal testimony (dated September 6, 2007), Windstream raises substantive issue relating to application of the *ISP Remand Order.*

First, Windstream testified that "the applicability of the *ISP Remand Order* to the facts in this proceeding is questionable since it appears that Core may provision its ISP services through the use of VNxx arrangements."[125] According to Windstream's testimony, only "local" ISP-bound traffic is compensable.[126] Windstream is dead wrong. As discussed at length herein under ICC Issue 1, the *ISP Remand Order* applies to all ISP-bound traffic, and makes no distinction whatsoever between "local" and "VNXX" traffic. *See, infra.*, at pp.40-45. Moreover, the

[125] Windstream Statement 1 (Terry Direct Testimony), at 25.
[126] Windstream Statement 1-R (Terry Rebuttal Testimony), at 22.

Commissioned reviewed Core's VNXX arrangements thoroughly in the *Core RTC Certification Order*, and found that Core's ISP-bound traffic is local in nature, which should obviate Windstream's concerns. *See, infra.*, at pp. 45-47.

Second, Windstream testified that "Windstream has not made any such election [pursuant to paragraph 79 of the *ISP Remand Order*] as of the date of this filing"[127] Windstream further testified that "the resulting interconnection agreement should reflect compensation of local ISP traffic at Windstream's reciprocal compensation rate (undisputed by Core in this proceeding)..."[128] Minus the "local" traffic distinction, Core agrees with Windstream's assessment of the effect of its non-election. As Core witness Timothy Gates testified:

> Under the FCC's mirroring rule, the ILEC can choose whether the rate is a state-determined "reciprocal compensation" rate or the FCC's own low rate (now $0.0007 per minute), but ***the same rate applies to all non-toll traffic.*** As noted in the FCC's *ISP Remand Order* at paragraph 89, "This "mirroring" rule ensures that incumbent LECs will pay the same rates for ISP-bound traffic that they receive for section 251(b)(5) traffic." This is the proper result from an economic perspective since the FCC found that there were no "inherent differences between the costs on any one network of delivering a voice call to a local end-user and a data call to an ISP."[129]

Since Windstream, by its own admission, has not opted into the *ISP Remand Order* compensation regime, "Windstream must pay the state approved reciprocal compensation rates for all 251(b)(5) and ISP-bound traffic."[130]

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127 Windstream Statement 1 (Terry Direct Testimony), at 25.
128 Windstream Statement 1-R (Terry Rebuttal Testimony), at 22.
129 Core Statement 1.0 (Gates Direct Testimony), at 14-15; *and, ISP Remand Order*, at ¶¶ 90, 93.
130 *Id.*, at 14.

ICC Issue 5: Should Windstream or Core determine for which NXX codes Core may apply?

Core's Best Offer Language:

Core proposes to delete Windstream's proposed Att. 12, section 5.2.

Discussion:

Core objects to Windstream's proposed language that would require Core to "use multiple NPA/NXXs, apparently in the same rate center."[131] Core's position is that "numbering resources be requested and deployed by carriers in the standard industry fashion."[132] It appears that Windstream wants to restrict Core's use of numbering resources in order to prevent any possibility that Core will deploy VNXX arrangements on behalf of its customers.[133]

Industry standard guidelines, as well as Commission precedent, militate against Windstream's proposal. As Core witness Mr. Gates testified "[n]o carrier should be able to control or influence another carrier's request for numbers. This is improper and unheard of in the industry. CLECs abide by the Central Office Code Assignment Guidelines in order to receive codes required for offering service."[134] Meanwhile, the Commission approved Core's use of VNXX arrangements in the *Core RTC Certification Order*:

> The record supports a conclusion that several ILECs, CLECs, and/or their affiliates, offer VNXX, or a VNXX-like service. The record indicates that VNXX is not exclusively used by Core. Based on our conclusion that Core has sufficiently invested in facilities and by a preponderance of the evidence has demonstrated a commitment for more investment so as not to fall in the category of reseller, we find the emphasis on its VNXX use misplaced in this regard.
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> With regard to the local nature of Core's exchange service as a result of its use of VNXX, we would further agree with Core.[135]

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131 Core Statement 1.1 (Gates Rebuttal Testimony), at 18; *and see*, Joint Exhibit 1 (Final Consolidated Issues List), at 5.

132 Core Statement 1.1 (Gates Rebuttal Testimony), at 18.

133 Joint Exhibit 1 (Final Consolidated Issues List), at 5.

134 Core Statement 1.0 (Gates Rebuttal Testimony), at 22.

135 *Core RTC Certification Order*, at 31.

Given the Commission's specific sanction of Core's use of VNXX arrangements, Windstream's attempt to restrict such arrangements must be rejected.

Definitions: How should "ANI," "Exchange Services," "Intra-LATA Toll Traffic," "Interconnection Point," and "Section 251(b)(5)Traffic" be defined in the Agreement?

a. "ANI"

ANI: Issue resolved as to the definition of ANI.

The parties have agreed upon language to settle this issue as to the definition of "ANI." Joint Exhibit 1 (Final Consolidated Issue List), at 6.

b. "Exchange Services"

Core's Best Offer Language:

Exchange Services (Windstream definition): Core objects to inclusion of a definition for "exchange services"—a term that is not defined in the Act or elsewhere. Core also notes that that this term is wholly inconsistent with the statutory definition of "telephone exchange services"—the term that does appear in the Act.

Core does not propose to include a definition for "exchange services" because there is no such definition in the Act or the FCC's rules. The Act does contain a definition of "telephone exchange services", but that definition is far different from that proposed by Windstream.

Windstream proposes the following definition for "exchange services" – "two-way switched voice grade telecommunications services with access to the public switched network, which originate and terminate **within an exchange**."[136] The Act defines "telephone exchange service" as follows:

> The term "telephone exchange service" means (A) service within a telephone exchange, **or within a connected system of telephone exchanges** within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, **or** (B) **comparable service** provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service."[137]

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136 Joint Exhibit 1 (Final Consolidated Issues List), at 6.

137 47 U.S.C. 153 ("telephone exchange services").

Clearly, Windstream's definition (service "within an exchange") is overly restrictive as compared with the Act's definition (service "within a connected system of telephone exchanges... or comparable service"). The Commission should either (1) reject Windstream's definition of "exchange services", or (2) require the parties to include the definition of "telephone exchange service" as set forth in the Act.

c. "Intra-LATA Toll Traffic"

Core's Best Offer Language:

> IntraLATA Toll Traffic (Core definition):
> IntraLATA Toll Traffic includes calls made through a presubscribed service and dialed on a 1+ basis for which additional toll charges apply.

Core proposes a definition of "IntraLATA Toll Traffic" that "captures the presubscription characteristics of toll services and the use of toll indicator digit."[138] This is consistent with Core's position on ICC Issue 1, which is that calls should be rated based on the NPA-NXX of the calling and the called parties. *See, infra.*, at pp.36-40.. Core opposes Windstream's proposed definition of "IntraLATA Toll Traffic," which is "all IntraLATA calls provided by a LEC other than traffic completed in the LECs [sic] local exchange boundary."[139] The problem with Windstream's definition is that it "would include EAS, remote call forwarding, foreign exchange, and other traffic that might cross an exchange boundary but would normally be treated and billed as local."[140] In this way "Windstream is attempting to characterize all intraLATA calls that are not geographically local to be subject to access charges."[141] So for example, Windstream's proposed definition would result in the application of access charges to foreign exchange (FX) calls. But FX calls are unquestionably "local calls" as defined by industry

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138 Core Statement 1.0 (Gates Direct Testimony), at 26.
139 Joint Exhibit 1 (Final Consolidated Issues List), at 6.
140 Core Statement 1.0 (Gates Direct Testimony), at 26.
141 Core Statement 1.1 (Gates Rebuttal Testimony), at 24.

standard sources such as Newton's Telecom Dictionary,[142] as well as Windstream's own discovery responses.[143] The Commission should reject Windstream's novel and unsupported definition of "IntraLATA Toll Traffic."

d. "Interconnection Point"

Core's Best Offer Language:

> Interconnection Point (Windstream definition).
> Core objects to Windstream's definition of "Interconnection Point" because it would require the interconnection point for Windstream's originating traffic to Core to be on Windstream's network. This issue is simply a recasting of Network Interconnection Architecture Issue No. 1.

Core opposes Windstream's proposed definition of "Interconnection Point" because it would require Core to pick up Windstream's originating traffic at a location within Windstream's network and transport it back to Core's switch. Joint Exhibit 1 (Final Consolidated Issues List), at 6. Windstream's definition requires a single interconnection point "within Windstream's interconnected network in a LATA." *Id.* While Core does not object to establishing an IP on Windstream's network, Core fully expects Windstream to establish a corresponding IP on Core's network. Core's position on this issue is fully incorporated in its discussion of NIA Issue 1, above. *See, infra.*, at pp.19-29..

e. "Section 251(b)(5) Traffic"

Core's Best Offer Language:

> Section 251(b)(5) Traffic (Core definition):
> Section 251(b)(5) Traffic means (1) telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access (see FCC Order on Remand, 34, 36, 39, 42-43); and/or (2) telecommunications traffic exchanged by a LEC and a CMRS provider that originates and terminates within the same Major Trading Area, as defined in 47 CFR § 24.202(a).

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142 Core Statement 1.0 (Gates Direct Testimony), at 5.

143 *Id.*, at 5-6.

Discussion:

This issue will determine what term and what definition is used to describe traffic that is subject to the FCC's reciprocal compensation regime. Core proposed a definition of "Section 251(b)(5) Traffic" which tracks—down to the exact word and punctuation—the definition set forth in the FCC's rules at 47 C.F.R. § 51.701(b).[144] By contrast, Windstream proposes a definition of "Local Traffic" that would include only "traffic that originates and terminates in the same Alltel exchange."[145]

Core's definition of "Section 251(b)(5) Traffic" is consistent with federal law, whereas Windstream's definition of "Local Traffic" is wholly contrary to federal law. Like Windstream, the FCC originally used the term "local" to define traffic that is subject to reciprocal compensation. All traffic that was "local" was subject to reciprocal compensation. And by extension, all traffic that was not "local" was not subject to reciprocal compensation. But in the 2001 *ISP Remand Order*, the FCC reviewed and rejected its former use of the term "local" and the entire "local/non-local" paradigm:

> This analysis differs from our analysis in the Local Competition Order, in which we attempted to describe the universe of traffic that falls within subsection (b)(5) as all "local" traffic. We also refrain from generically describing traffic as "local" traffic because the term "local," not being a statutorily defined category, is particularly susceptible to varying meanings and, significantly, is not a term used in section 251(b)(5) or section 251(g).[146]

As result of its new analysis, the FCC specifically "eliminated all references to 'local' and amended its rules accordingly."[147]

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144 Joint Exhibit 1 (Final Consolidated Issues List), at 7; *and* Core Petition, Appendix 13, at 92 (striking Windstream's proposed definition of "Local Traffic" at § 1.2.

145 Joint Exhibit 1 (Final Consolidated Issues List), at 7; *and* Core Petition, Appendix 33, at 93, § 1.2.

146 O,. (*ISP Remand Order* at ¶ 34

147 Core Statement 1.1 (Gates Rebuttal Testimony), at 27; *and,* ISP *Remand Order*, at ¶ 60.

The FCC created a new definition that parallels the language in the Act. As the FCC explained in the *ISP Remand Order*:

> Section 251(b)(5) imposes a duty on all local exchange carriers to "establish reciprocal compensation arrangements for the transport and termination of telecommunications."[ ] On its face, local exchange carriers are required to establish reciprocal compensation arrangements for the transport and termination of all "telecommunications" they exchange with another telecommunications carrier, without exception.
>
> Unless subject to further limitation, section 251(b)(5) would require reciprocal compensation for transport and termination of all telecommunications traffic, -- i.e., whenever a local exchange carrier exchanges telecommunications traffic with another carrier. Farther down in section 251, however, Congress explicitly exempts certain telecommunications services from the reciprocal compensation obligations [under section 251(g)].[148]

The FCC concluded that section 251(b)(5) reciprocal compensation applies to *all* telecommunications *except* those classes of traffic specifically enumerated in section 251(g):

> Thus, the statute does not mandate reciprocal compensation for "exchange access, information access, and exchange services for such access" provided to IXCs and information service providers. Because we interpret subsection (g) as a carve-out provision, the focus of our inquiry is on the universe of traffic that falls within subsection (g) and not the universe of traffic that falls within subsection (b)(5).[149]

The FCC essentially changed the paradigm under which various types of traffic would subsequently be categorized. And the term "local" has no place in this paradigm.

In addition, Core notes that the Commission has previously approved, in an ICA arbitration, Verizon's definition of "Reciprocal Compensation Traffic" in lieu of the definition of "Local Traffic" proposed by Sprint.[150] In the *Verizon/Sprint Arbitration Order*, Verizon argued

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148 *ISP Remand Order*, at ¶¶ 31-32.

149 *Id.*, at ¶ 34.

150 *See,* Opinion and Order, *Petition of Sprint Communication Company, L.P. for an Arbitration Award of Interconnection Rates, Terms and Conditions With Verizon Pennsylvania, Inc.*, Pa. P.U.C. Docket No. A-310183F0002 (Order entered October 12, 2001), at 43-50 ("*Verizon/Sprint Arbitration Order*"). Verizon's proposed definition of "Reciprocal Compensation Traffic", which is similar to Core's definition of "Section 251(b)(5) Traffic" is set forth on page 45, and Sprint's proposed definition of "Local Traffic", which is practically identical to Windstream's proposed definition of the same term, is set forth on page 44.

that Sprint's focus on what constitutes "local traffic" was no longer relevant in the wake of the *ISP Remand Order*. As formulated by the Commission, "Verizon asserts that the principal fault with Sprint's definition of "local traffic" is that it fails to realize that whether or not traffic is local is now irrelevant with regard to the payment of reciprocal compensation."[151] The Commission agreed with Verizon, finding that:

> We believe that Verizon's definition more closely aligns with the discussion contained in the FCC's April 27, 2001 ISP Remand Order. We also disagree with the ALJ's characterization that the FCC, in its order, was only reconsidering the proper treatment for purposes of intercarrier compensation of telecommunications traffic delivered to ISPs. Although the FCC Remand Order primarily addressed reconsideration of the proper treatment of intercarrier compensation for ISP traffic, Verizon is correct in its observation that the action taken by ***the FCC in its Intercarrier Compensation Order also revised the rules that define the types of traffic that is subject to reciprocal compensation under Section 251(b)(5) of TA-96.*** As such, the manner in which reciprocal compensation applies for the termination of what was previously defined as "local telecommunications traffic," and is defined today as "telecommunications traffic" is impacted as a direct result of the FCC's definition changes.[152]

Not only is Windstream's definition of "Local Traffic" at odds with the applicable FCC rule, it is equally contrary to the Commission's interpretation of the rule in the *Verizon/Sprint Arbitration Order*.

Conclusion

As set forth above, Core's position on each and every one of the nine disputed issues is entirely consistent with applicable law, and is completely supported by the Act, FCC regulations, Federal Court decisions, FCC rulings and/or Commission Orders. By contrast, Windstream's positions on the nine disputed issues are not supported by applicable law, and in many cases run directly contrary to the controlling body of law. As such, Core respectfully requests that the

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151 *Id.* at 44-45.

152 *Id.* at 47-48.

Commission issue an Order which resolves each of the nine (9) disputed issues in accordance with Core's positions and incorporate Core's proposed language on each of the positions in the final interconnection agreement that is ultimately executed by the parties.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of October, 2007 copies of the foregoing Main Brief have been served 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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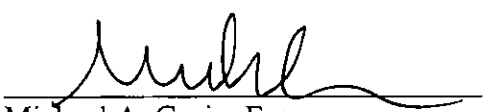

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November 27, 2007

HAND DELIVERED
James McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17120

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

Dear Secretary McNulty:

Enclosed are the original and nine (9) copies of the Reply Brief on behalf of Core Communications, Inc. in the above captioned matter. All parties have been served in accordance with the enclosed certificate of service.

Please feel free to contact me if you have any questions.

Very truly yours,

STEVENS & LEE

Michael A. Gruin

Enclosures
cc: Hon. David A. Salapa
Certificate of Service

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Core Communications Inc. for Arbitration of Interconnection Rates, Terms and Conditions with Windstream Pennsylvania, Inc. f/k/a Alltel	:	**Docket No.: A-310922F7004**

Core Communications, Inc.'s Reply Brief

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Dated: November 27, 2007

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ARGUMENT

Preliminary Matters:

In its Main Brief, Windstream states that "[o]n December 4, 2006, the Commission certified Core to operate as a CLEC in Windstream's certificated service territory", citing the *Core RTC Certification Order*. As a technical matter, this statement is incorrect. In actuality, the Commission certified Core to operate as a CLEC in Windstream's ILEC service territory in a separate order, dated February 12, 2007. Order, *Application of Core Communications, Inc. for expanded authority to offer, render, furnish or supply telecommunications services... in the service territory of Windstream Pennsylvania, Inc.*, Docket Nos. A-310922F0002AMB et al. (order entered Feb. 12, 2007). This clarification is notable because, whereas the *Core RTC Certification Order* is currently under appeal, Core's certification in Windstream territory was not challenged and is not under appeal.

GT&C #3: ***Should Windstream be permitted to require Core to post a security deposit prior to Windstream providing service or processing orders and to increase said deposit if circumstances warrant or forfeit same in the event of breach by Core?***

In its Main Brief, Windstream raises three points relative to this issue. First, Windstream claims that its security deposit proposal "is not unlike" the security deposit requirements in Core's ICA with Verizon North, Inc. (which is an "opt in" to the ICA between Verizon Pennsylvania, Inc. and Sprint Communications Company). W. M. Br. at 24. This claim was refuted by Core witness Mr. Van de Verg, who provided a blow-by-blow comparison between Windstream's proposal and the existing Core/Verizon North, Inc. ICA. Core Statement 2.1, (Van de Verg Rebuttal Testimony), at 3 and Exh. CFV-10. In sharp contrast with Windstream's proposal, Core's ICA with Verizon North, Inc.:

- Does not require payment of a security deposit before any service is rendered; *Id.*, at 3.
- Does not permit Verizon North to increase the deposit requirement "when, in its sole judgment, circumstances so warrant," *id.*, and
- Does not override the ICA's separate provisions dealing with termination. *Id.*

Apparently, Windstream never bothered to read the Core/Verizon North, Inc. ICA and compare the actual provisions there to its own proposal. Like so much of its case, Windstream instead relies on gross generalizations and unwarranted comparisons.

Windstream also states that Core can "control the factors giving rise to security deposits." W. M. Br. at 25. However, Windstream's actual proposal does not give Core this control, nor does it list the specific "factors" set forth in Windstream's Main Brief. Instead, Windstream's proposal bluntly and unequivocally states "[Windstream] reserves the right to increase the security deposit requirements when, **in its sole judgment**, circumstances so warrant." Core Statement 2.0, (Van de Verg Direct Testimony), at Exh. CFV-3. Windstream of course offers no explanation of how Core can "control" Windstream's "judgment" of unnamed "circumstances." Windstream's proposal is clearly unreasonable.

Finally, Windstream suggests that its security deposit proposal is somehow bolstered by the Supreme Court's landmark decision in *AT&T Corp. v. Iowa Utils. Bd.* W. M. Br. at 26. However, the discussion cited by Windstream involved whether certain unbundled network elements ("UNEs") were "necessary" for competition and whether their absence would "impair" competitors. *See, AT&T Corp v. Iowa Utils. Bd.*, 525 U.S. 366, 389-90 (1999). That discussion is completely inapposite in this proceeding, as there is no dispute whatsoever regarding UNE

availability. The issue here is whether the parties' agreed upon security deposit requirements should be approved, or whether Windstream's additional proposed provisions should be tacked on. Core has amply demonstrated that the provisions it has already agreed to "easily constitute fair and reasonable security deposit language." Core Statement 2.1, (Van de Verg Rebuttal Testimony), at 4.

NIA #1: ***Should Windstream be required to interconnect with Core at dual points of interconnection, one of which would be a point outside of Windstream's existing network, and further, should the parties be required to bear the cost to deliver originating interconnection traffic to one another at each other's designated switch location?***

For the very first time in this proceeding, Windstream sets forth in its Main Brief the actual contract language it proposes for resolution of NIA Issue # 1.[1] Windstream's proposed language is notable in two aspects. First, Windstream agrees with and incorporates language first proposed by Core, which states that "[e]ach Party shall provide interconnection to the other Party, in accordance with this Agreement, and in accordance with the standards and requirements governing interconnection set forth in 47 U.S.C. § 251, FCC implementing regulations, and state law governing interconnection." W. M. Br. at 27 and § 1.1. This is a key concession on Windstream's part, and confirms that this disputed issue comes down to the proper interpretation of applicable law.

Second, Windstream proposes that "[i]n each Alltel Exchange Area where the Parties interconnect their networks, the Parties will utilize the interconnection method as specified below." W. M. Br. at 27 and § 1.2. While somewhat ambiguous, this language could reasonably be read to require the parties to interconnect "in each Alltel Exchange Area." An "exchange" is commonly defined as "a geographic area established by a common communications carrier for the administration and pricing of telecommunications in a specific area that usually includes a city, town, or village... A LATA consists of several adjacent exchanges." Newton's Telecom Dictionary, 21st Ed., at p. 320. Of course, federal law requires Core to interconnect with

[1] The proper time to provide proposed contract language was the due date for best offer filings, September 10, 2007, which is when Core filed proposed contract language for each disputed issue. In lieu of actual language, Windstream filed a brief email referencing its April 24, 2006 Response to Core's Petition. However, Windstream's Response to Core's Petition does not contain any offer of proposed contract language, either.

Windstream at just one point in each LATA,[2] not in each and every exchange. The FCC clarified in the 2005 *FNPRM* that "[u]nder section 251(c)(2)(B), an incumbent LEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point. The Commission has interpreted this provision to mean that competitive LECs have the option to interconnect at a single point of interconnection (POI) per LATA. In addition, our rules preclude a LEC from charging carriers for traffic that originates on the LEC's network." *FNPRM*, at ¶ 87. Accordingly, Windstream's proposed language directly contradicts applicable law.

Windstream objects to Core's language because "Windstream does not maintain network or provide service beyond the boundaries of its certificated service territory." W. M. Br. at 28. But Core never took the position that Windstream maintain a network or provide service outside of its traditional territory. To the extent Core's proposal would require Windstream to deliver its originating traffic to a Core IP outside of Windstream's territory, Windstream is free to use Verizon tandem transit service to interconnect indirectly with Core, or to use a third party transport provider to establish a direct interconnection with Core.

Windstream states pejoratively that "Core intends to function primarily as an aggregator of dial-up ISP-bound traffic." W. M. Br. at 28. Although Core has traditionally focused its service offerings on ISPs, Core's network is capable of delivering outbound traffic as well as inbound traffic, and Core may modify its business focus and begin delivering substantial amounts of outbound traffic at any time. Core Statement 2.1 (Van de Verg Rebuttal Testimony), at 5. The Commission should not base its decisions in this proceeding on one carrier's current business focus, especially since the ICA resulting from this proceeding may be adopted by any

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[2] *VZW/Alltel Arbitration Order*, at 95 ("FCC rules allow a competitor LEC to select at least one technically feasible interconnection point per LATA. We believe it would be prudent to apply the same interconnection requirements that exist for interconnection between wireline carriers in the instant case involving interconnection between a wireless and an ILEC. Therefore, we shall direct that ALLTEL permit Verizon Wireless the opportunity

other CLEC licensed in Windstream territory.

Windstream argues that "Core's position fails to address the pertinent fact that such originating traffic arises as a result of Windstream end users calling numbers supported by Core in order to access dial-up ISPs served by Core." W. M. Br. at 29. Here Windstream raises in essence a novel policy argument that challenges traditional FCC cost-causation principles. These principles are discussed extensively in the 2005 *FNPRM*. There, the FCC stated that "under the existing regimes, the calling party's carrier, whether LEC, IXC, or CMRS provider, compensates the called party's carrier for terminating the call. Thus, as a general matter, our existing regimes are based on a "calling-party-network-pays" (CPNP) approach to compensation." *FNPRM*, at ¶ 17. The FCC further discussed its theory of cost causation in *Texcom*:

> Currently, our rules in this area follow the cost causation principle of allocating the cost of delivering traffic to the carriers responsible for the traffic, and ultimately their customers. Thus, through reciprocal compensation payments, the cost of delivering LEC-originated traffic is borne by the persons responsible for those calls, the LEC's customers. As we stated in the Local Competition Order, "the local caller pays charges to the originating carrier, and the originating carrier must compensate the terminating carrier for completing the call.[3]

The plain fact is that Windstream's end users are the cost-causers because they place the calls to Core's end users, the ISPs. Accordingly, Windstream's claims about cost causation are simply inconsistent with federal law and FCC policy.

Windstream states that "Windstream's direct testimony confirmed that Windstream does not oppose any effort by Core to establish dual POIs or IPs... within Windstream's network." W. M. Br. at 29, *citing* Windstream Statement No. 1 (Terry Direct Testimony), at 14 *and* Core's Petition, Appendix 33, at p. 43, §§ 1.2-1.3. Core welcomes this statement as an important

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to select one technically feasible interconnection point per LATA located within the boundaries of the Commonwealth of Pennsylvania.")

concession on Windstream's part. Accordingly, Core now understands the parties to agree that, where Core offers a Core-IP within Windstream's certificated territory, Windstream will deliver its originating traffic to that Core-IP free of charge, and Core will deliver its originating traffic to the corresponding Windstream-IP free of charge.

Windstream notes that "[t]he unambiguous language of §251 of the Act states ILECs have a duty to provide for interconnection at any technically feasible point within the carrier's network." W. M. Br. at 29. Core fully agrees that it must establish an IP on Windstream's network in order to interconnect with Windstream for the termination of Core-originating traffic. But Core likewise expects Windstream to deliver its originating traffic to Core at an IP on Core's network. Core's expectation is consistent with the FCC rule prohibiting charges for originating traffic, 47 C.F.R. § 51.703(b), as well the FCC rule governing allocation of interconnection transport costs between incumbent and competitor, Local Competition Order, at ¶ 1062. *See*, Core M. Br. at 19-20. Put another way, § 251 establishes the requirement for where Core interconnects with Windstream; and the FCC rules establish a reciprocal requirement for where Windstream interconnects with Core.

Windstream complains that Core's proposal would allow it to establish an IP "outside of Windstream's network, outside of Pennsylvania, or even outside the United States." W. M. Br. at 30. Core demonstrated in its Main Brief that its actual proposed language for this issue would require Core to establish an IP in each LATA in Pennsylvania. *See*, Core M. Br. at 25-26. This is consistent with the Commission's requirement of a single Verizon Wireless IP in each LATA in Pennsylvania. VZW/Alltel Arbitration Order, at 95.

Windstream claims that the existing ICA between Core and Verizon Pennsylvania, Inc.

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[3] Texcom, Inc., d/b/a Answer Indiana, v. Bell Atlantic Corp., d/b/a Verizon Communications, 16 FCC Rcd 21493, at ¶ 6; 2001 FCC LEXIS 6437 ("Texcom"). The Commission reprinted this excerpt from Texcom in the

"sets forth an arrangement whereby each POI/IP designated by Core and Verizon is located within Verizon's ILEC territory." W. M. Br. at 31. Yet Windstream fails to identify where this "arrangement" is set forth in the Core/Verizon Pennsylvania ICA. As noted in Core's Main Brief, Windstream also failed to identify this alleged arrangement in response to a Core discovery request. *See,* Core M. Br. at 26-27. The fact is that there is no such arrangement.

Windstream similarly states that "Core's IP arrangements with Verizon Pennsylvania all are located within Verizon's territory." W. M. Br. at 31. While this is factually true, it does not follow that Core must provide a Core IP in Windstream territory in addition to the Core IPs already established in Verizon territory. Verizon's service territory covers most of the land area and all the major population centers in each LATA. Therefore, it is not surprising that Core would choose to build its network into, and offer interconnection within, those areas. Moreover, Verizon's service territory in each LATA is a single contiguous area, whereas Windstream's territory is made up of eleven (11) separate service territories scattered throughout Pennsylvania's six (6) LATAs. Other rural LECs of course have numerous other small service territories in the state. Establishing IPs in Verizon's service territory, then, offers a relatively central location from which Core can provide interconnection to all of the Windstream service territories as well as the other rural LECs.

Windstream states that it "is unaware of any instance where the Windstream ILECs have established or been required to establish IPs/POIs outside of their certificated ILEC service territories." W. M. Br. at 31. This statement is simply not credible. The Commission clearly "required" Windstream's own predecessor (Alltel) to establish an IP with Verizon Wireless outside of its certificated ILEC service territories. *VZW/Alltel Arbitration Order*, at 47.

Finally, Windstream offers four reasons—none of them justified—to distinguish the

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VZW/Alltel Arbitration Order, at 32.

VZW/Alltel Arbitration Order from the present case. First, Windstream claims that "[i]n the Verizon Wireless proceeding, Verizon Wireless was seeking interconnection to a specific location, unlike Core who has failed throughout the course of this proceeding to identify where it proposes to interconnect." W. M. Br. at 32. Once again, Windstream offers no citation, and there is nothing in the Commission's order, to substantiate this claim. Rather, just like Core in the present proceeding, Verizon Wireless argued for the right to designate an IP on its network (and outside Alltel's service territory) for the termination of Alltel-originating traffic. *VZW/Alltel Arbitration Order*, at 76. There as here, the issue was the principle of whether Verizon Wireless could designate an IP outside Alltel's service territory, not the identification of specific locations.

Second, Windstream argues that "the Verizon Wireless proceeding involved disputes as to interconnection within what is deemed the local calling scope for wireless companies ("MTA") – a concept which is wholly inapplicable to Core." W. M. Br. at 33. Here Windstream is mixing apples and oranges. The "local calling scope" applicable to wireless calls may indeed be the "MTA"—but those concepts define when reciprocal compensation is due under section 251(b)(5) of the Act. *See*, 47 C.F.R. § 51.701(b)("(a) The provisions of this subpart apply to reciprocal compensation for transport and termination of telecommunications traffic between LECs and other telecommunications carriers. (b) Telecommunications traffic. For purposes of this subpart, telecommunications traffic means: ... (2) Telecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area..."). But what is at issue here is interconnection pursuant to section 251(c)(2) of the Act and the FCC's implementing rules, as discussed herein. Interconnection and reciprocal compensation are two different regimes, designed for different purposes. Indeed, Windstream's argument leads to the bizarre conclusion that a CLEC is

required to establish interconnection in each and every Windstream local calling area. But even Windstream does not openly advocate that position in this proceeding.

Third, Windstream complains that "[t]he Commission recognized in the case of interconnection with Verizon Wireless that there were additional costs incurred by Windstream beyond those being recovered by Windstream's end users." W. M. Br. at 33. But as Core demonstrated in its Main Brief, the Commission expressed doubts about the existence of such alleged "additional costs." *See*, Core M. Br. at 25.

Fourth, Windstream states that "Windstream and Verizon Wireless executed an interconnection agreement that is on file with the Commission and which does not provide for establishment of an IP or POI outside of Windstream's network." W. M. Br. at 33. Windstream and Verizon Wireless are free to agree upon ICA language at any time, so long as the resulting ICA is nondiscriminatory as to any other carrier, and otherwise complies with the Commission's requirements. Nonetheless, the *VZW/Alltel Arbitration Order* stands unimpeached as Commission precedent on a wide variety of interconnection issues, including the dual IP arrangement, and Core and other parties are entitled to rely on it.

NIA #4: ***Should Core be permitted to indirectly interconnect with Windstream without volume limitations that would necessitate direct interconnection?***

Windstream states that "[o]nce the parties exceed the DS1 threshold, they are exchanging significant volumes of traffic" and "at such levels, direct interconnection is more efficient." W. M. Br. at 34. Yet there is no evidence on the record in this proceeding to demonstrate that a DS1 (24 voice-grade DS0 channels) is a "significant volume[] of traffic" or that direct interconnection is more "efficient." In the absence of any such evidence, a DS1 threshold) or any other threshold for that matter, is simply unsupported.

Windstream states that its proposal "does not require Core to establish direct facilities with every Windstream end office." W. M. Br. at 35. This is a welcome admission on Windstream's part. Core agrees that such a requirement is unreasonable and should not be included in the parties' ICA. Of course, what Windstream is actually proposing would have been a lot easier to determine had Windstream simply provided its Best Offer on the September 10, 2007 filing deadline.

Windstream further states that its proposal "would require direct interconnection only to the particular Windstream end office(s) to which indirect traffic volumes between Core and Windstream exceeded a DS1 threshold." W. M. Br. at 35. Here Windstream is arguing that Core must interconnect (potentially) at multiple end office IPs throughout the LATA. As such, Windstream's proposal contradicts the FCC's requirement that CLECs be permitted to choose a single IP in a LATA. *VZW/Alltel Arbitration Order*, at 95 *and*, *FNPRM*, at ¶ 87 ("[u]nder section 251(c)(2)(B), an incumbent LEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point. The Commission has interpreted this provision to mean that competitive LECs have the option to interconnect at a single point of interconnection (POI) per LATA."). In other words, Core has no obligation to extend its network to each and

every end office in Windstream's network, no matter what threshold may be exceeded. It is Windstream's sole responsibility to distribute traffic within its own network.

Windstream argues that its threshold proposal is necessary to "ensure the quality of service" and "avoid tandem exhaust." W. M. Br. at 36. Again, there is no evidence on the record in this proceeding to demonstrate that Windstream's proposal would "ensure" service quality or avoid "tandem exhaust." Windstream's fascination with tandem exhaust is particularly poignant since by it own admission, "unlike Verizon, Windstream is not the LATA tandem provider." W. M. Br. at 35. Windstream can not be permitted to conjure up alleged "tandem exhaust" issues when it is admittedly not a tandem provider in the first place.

NIA #5: ***Should the Agreement require each Party to arrange and pay for third-party tandem services relative to its own originating traffic?***

Windstream cites language from the *VZW/Alltel Arbitration Order* to the effect that the parties' arrangements with third parties for transit are "legally immaterial" to the ICA in that case. W. M. Br. at 37. Core agrees. However, Core's proposal does not incorporate or reference any term of any other agreement. Core's proposal simply clarifies that each party "is responsible for the payment of transit charges assessed by the transiting charges." Core Best Offer, at 7. There is no reasonable basis to exclude this language. On the other hand, Windstream's extensive focus on Core's proposal for this issue highlights a strong possibility that Windstream may plan to avoid its payment obligations, and perhaps even foist them on Core. In light of this possibility, Core's language is positively necessary.

ICC #1: ***How should the jurisdiction of VNXX traffic be determined, and what compensation should apply?***

According to Windstream, this issue may not be addressed in this proceeding because Appendix 33 to Core's Petition "contains no reference to VNxx traffic." W. M. Br. at 38. This is ludicrous. In negotiations, Core and Windstream proposed competing language for this issue; and Windstream's opposition to the use of VNXX arrangements is clear from its filings in this proceeding. *See*, C. M. Br. at 46-47. Core also notes that Appendix 33 to its petition is, by its own terms, simply one of many iterations of Windstream's own position on various disputed issues. Whether or not the term "VNXX" appears therein has no factual or legal significance.

Windstream also argues that "the Commission has established a policy that compensation with respect to VNxx traffic cannot be determined until the FCC rules on the proper jurisdiction and compensation." W. M. Br. at 38. However, nothing prevents the Commission from implementing applicable federal law—as set forth in the *Virginia Arbitration Order* and *Starpower*—in the context of this proceeding. As set forth in Core's main brief, applicable law requires that VNXX calls be classified as "local" and subject to reciprocal compensation under section 251(b)(5) of the Act. *See*, C. M. Br. at 34-39. Also, Windstream ignores the fact the Commission has already ruled on compensation for ISP-bound VNXX traffic, and has found that such traffic is compensable under the *ISP Remand Order*.[4]

Moving beyond procedural objections, Windstream argues at great length that Core's VNXX service can not legitimately be compared to Windstream's foreign exchange ("FX"), extended area service ("EAS"), and remote call forwarding ("RCF") services. W. M. Br. at 39-47. At base, Windstream's arguments rely on alleged "additional cost components that

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[4] Opinion and Order, *Petition of US LEC of Pennsylvania, Inc. For Arbitration with Verizon Pennsylvania, Inc.*, Docket No. A-310814F7000 (Order entered January 18, 2006) , at 10 (rejecting Verizon's definition of

differentiate true FX and EAS service arrangements from VNxx arrangements." W. M. Br. at 39. In particular, Windstream states that it, even though its FX subscribers pay "local rates", they also pay a separate charge "for a dedicated transmission path (or certain transport costs)." W. M. Br. at 40. Core addresses these arguments at length in its Main Brief. At bottom, Windstream has failed to demonstrate exactly what "costs" it incurs in provisioning FX service to its end users. All we know is that Windstream charges its customers a special monthly flat fee in connection with FX service, whereas Core does not so charge for its VNXX services. C. M. Br. at 47-49. In addition, the Commission certified Core based in part on its finding that "[t]he record supports a conclusion that several ILECs, CLECs, and/or their affiliates, offer VNXX, or a VNXX-like service. The record indicates that VNXX is not exclusively used by Core." *Core RTC Certification Order*, at 31. Of course, the "VNXX-like service" the Commission referred was clearly FX service. *Id.* at 28 (describing various VNXX-like services).

Windstream also argues that "Core would be providing no facilities" in connection with its VNXX services. W. M. Br. at 41. This is absurd. The Commission reviewed and rejected similar arguments in the *Core RTC Certification Order*, finding that:

> Core, admittedly, provides service to a "niche" market. Its business model is geared towards aggregating dial-up access to ISPs. In this regard, its service is assailed by the PTA as not investing in any facilities that will actually provide service within a local calling area. However, we conclude that Core's business provides more than this. The service Core provides is comparable to and in direct competition to the service offerings provided by certain of the rural ILECs through affiliates.
>
> * * *
>
> We are cognizant of the fact that the "dial up" ISP market has developed significant competition and we have required investment in facilities for purposes of CLEC entry into rural service territories. We conclude that Core's facilities, which, at minimum, provide switch functionality, meet these criteria. *Id.* at 22-23.

"Measured Internet Traffic" because that definition expressly excluded VNXX traffic from the scope of ISP-bound traffic that is compensable under the *ISP Remand Order*).

There is no question that Core incurs costs, just like Windstream.

Windstream complains that it will pay "twice for the same traffic—once for the transmission facility/transport costs and twice in the form of reciprocal compensation." W. M. Br. at 42. Again, Windstream provides no real description of its alleged "transmission facility/transport costs." This is simply a hollow concept created for litigation purposes. As set forth above, both Core and Windstream incur various costs in operating their networks. There is no requirement that Core reimburse Windstream for each and every cost Windstream alleges.

Windstream cites to a federal court decision in *Global NAPs* in which the court essentially approved the state commission's analysis of the alleged differences between VNXX and FX services. W. M. Br. at 43, *citing*, *Global NAPs v. Verizon New England*, 454 F.3d. 91, []. W. M. Br. at 43. That case involved federal court review of another state commission. It has no bearing on this Commission's ruling on this case or its rulings in past cases. As set forth above, the Commission has specifically found that incumbents and competitors alike offer VNXX or VNXX-like services, such as FX service.

Windstream argues that using the NPA-NXX of the calling and called parties (as Core advocates) would result in the "wrong party" being compensated. W. M. Br. at 44. This is exactly backwards. As set forth in the *Virginia Arbitration Order* and *Starpower*, the FCC has found that the NPA-NXXs of the calling and called parties determines the appropriate compensation.

Finally, Windstream calls for the Commission to require that calls be rated "based on the end points of the calling and called parties (which appropriately identifies the physical location of the parties)," and states that "using the physical locations of the parties (or end points of the call) is the best way" to rate the call. W. M. Br. at 44. But Windstream fails to provide any

method to determine "the physical location of the parties." Indeed, the lack of any viable alternative was one of the bases for the FCC's reliance on NPA-NXX comparisons in the *Virginia Arbitration Order*:

> We agree with the petitioners that Verizon has offered no viable alternative to the current system, under which carriers rate calls by comparing the originating and terminating NPA-NXX codes. We therefore accept the petitioners' proposed language and reject Verizon's language that would rate calls according to their geographical end points. Verizon concedes that NPA-NXX rating is the established compensation mechanism not only for itself, but industry-wide. The parties all agree that rating calls by their geographical starting and ending points raises billing and technical issues that have no concrete, workable solutions at this time. *Virginia Arbitration Order*, at ¶ 301.

In fact, Windstream itself concedes throughout proceeding that using NPA-NXX is the industry standard for rating calls.

ICC #3: Should reciprocal compensation apply to local traffic that is roughly balanced?

Windstream argues that "Core's language is less efficient than Windstream's" because CLECs who do not serve ISPs (and who may adopt the ICA) "may have roughly balanced traffic." W. M. Br. at 46. However, under applicable federal law, it is Windstream, not Core, that bears the burden of proof to "rebut the presumption of symmetrical rates." *Local Competition Order*, at ¶ 1111. Windstream has done exactly nothing to meet its burden in this proceeding.

Windstream also argues that "VNxx traffic is not reasonably considered local traffic subject to reciprocal compensation," so that VNXX traffic would not be considered in determining whether the parties' traffic is "roughly balanced." W. M. Br. at 46. Core has demonstrated that VNXX traffic should be rated as "local traffic" subject to reciprocal compensation under section 251(b)(5) of the Act. *See*, C. M. Br. at 34-39. Therefore, VNXX traffic should absolutely count in determining whether the total traffic exchanged between the parties is balanced, or not.

ICC #4: Does the FCC's ISP Remand Order apply to the parties and facts in this proceeding?

Here Windstream argues that ISP-bound VNXX traffic is not included within the ambit of "ISP-bound traffic" subject to the *ISP Remand Order*. W. M. Br. at 47-48. As set forth in Core's main brief, applicable law requires that VNXX calls be classified as "local" and subject to reciprocal compensation under section 251(b)(5) of the Act. *See*, C. M. Br. at 34-39. Also, Windstream ignores the fact the Commission has already ruled on compensation for ISP-bound VNXX traffic, and has found that such traffic is compensable under the *ISP Remand Order*.[5]

In the alternative, Windstream argues that the *ISP Remand Order* should not apply to ISP-bound traffic because the order was designed "in order to eliminate incentives to pursue new arbitrage opportunities." W. M. Br. at 48. Yet this is no reason for the Commission to recast the order or limit its reach. The FCC balanced a variety of concerns both in the *ISP Remand Order* as well as the subsequent *Core Forbearance Order*, and came up with a set of rules for ISP-bound traffic. The Commission has previously found that "[t]he *ISP Remand Order* has virtually preempted state commission rate authority over intercarrier compensation for ISP-bound traffic."[6] Further, just because a rule results in Windstream compensating Core for the termination of traffic, does not render that rule an "arbitrage opportunity." At some point, Windstream must recognize that other carriers, including Core, should be compensated for the termination of traffic originating on Windstream's network.

As another alternative, Windstream argues that the *ISP Remand Order* does not apply to

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[5] Opinion and Order, *Petition of US LEC of Pennsylvania, Inc. For Arbitration with Verizon Pennsylvania, Inc.*, Docket No. A-310814F7000 (Order entered January 18, 2006) , at 10 (rejecting Verizon's definition of "Measured Internet Traffic" because that definition expressly excluded VNXX traffic from the scope of ISP-bound traffic that is compensable under the *ISP Remand Order*).

[6] Opinion and Order, *Petition of US LEC of Pennsylvania, Inc. For Arbitration with Verizon Pennsylvania, Inc.*, Docket No. A-310814F7000 (Order entered April 18, 2003) ("*USLEC/Verizon Arbitration Order*"), at 57 and note 46. The identical passage occurs in Opinion and Order, *Petition of Global NAPs South, Inc. For Arbitration... with Verizon Pennsylvania, Inc.*, Docket No. A-310771F7000 (Order entered April 21, 2003) ("*GNAPS/Verizon*

Core because Core is barred from receiving any compensation under the growth cap provisions found at paragraph 78 of the order. W. M. Br. at 48-49. This argument can not possible be offered in good faith. As Windstream is well aware, the FCC forbeared from further application of the growth cap (as well as the new market bar) in the 2004 *Core Forbearance Order*.

Finally, Windstream claims that Core must compensate it for "all VNXX traffic", subject to the "Windstream's lawful access tariffs." W. M. Br. at 49. Of course, Windstream fails to mention that its access tariffs set forth rates many, many times greater than the $0.0007 per MOU rate in the *ISP Remand Order*. Windstream's attempt to squeeze its access tariff rates into this proceeding is a blatant attempt at regulatory arbitrage. Also, assuming VNXX traffic is "access" traffic (which it is not), Windstream fails to explain why its access tariffs should apply, and Core's access tariffs should not. In fact, Windstream's most recent ICA proposal to Core specifies that "all traffic, other than Local Traffic... will be assessed either interstate or intrastate (depending on the end points of the call) **terminating charges at the rates provided in the terminating Party's access tariff.**" Core Petition, Appendix 33, at p. 93 and § 1.4.

Arbitration Order"), at 45 and note 46.

ICC Issue 5: Should Windstream or Core determine for which NXX codes Core may apply?

In its Main Brief, Windstream reveals that, from its perspective, "this issue... pertains to whether CLECs... should establish [VNXX] codes in Windstream's local serving territory. W. M. Br. at 49. But the Commission has already determined on multiple occasions—most recently in the *Core RTC Certification Order*—that CLECs absolutely may employ VNXX arrangements. Since Windstream's proposal is designed to prevent such use, it must be rejected.

Windstream argues that "Core's insistence on the use of a single NPA-Nxx for multiple locations would allow Core... to mask the actual location of its customer(s) and, thereby, avoid payment of... access charges." W. M. Br. at 49. Core simply does not understand where Windstream found this alleged "insistence" and there is no record evidence surrounding any such position on Core's part. In any event, NPA-NXXs do not correspond to "the actual location of [] customer(s)", but rather "a rate center and not the physical location of the customer." Core Statement 1.1 (Gates Rebuttal Testimony), at 8. The fact is there is no system in telecommunications that actually identifies the physical location of a customer.

Windstream also argues that "Core's position on this issue also has the result of precluding Windstream from complying with dialing parity rules. W. M. Br. at 50-51. However, Windstream does not identify any legally applicable requirement that Core's position allegedly circumvents. It is unfair, to the say the least, for Windstream to raise alleged legal issues for which there is no (1) no citation; and (2) no foundation in either party's testimony or exhibits.

In a further attempt to clarify its very confusing position, Windstream claims that it does not seek "to determine for Core which codes Core may use or where those codes may be rate centered." Yet a simple look at the language Windstream identifies in its Main Brief as its "position" on this issue reveals otherwise. It states that "[CLEC] will, at a minimum, obtain a

separate NXX code for each Exchange or group of Exchanges that share a Mandatory Local Calling Scope." Windstream's proposal clearly requires Core to obtain certain codes in certain situations. Whatever the intent behind these requirements, they are wholly unreasonable and contrary to standard industry practice.

Definitions: ***How should "ANI," "Exchange Services," "Intra-LATA Toll Traffic," "Interconnection Point," and "Section 251(b)(5)Traffic" be defined in the Agreement?***

a. "ANI"

ANI: Issue resolved as to the definition of ANI.

The parties have agreed upon language to settle this issue as to the definition of "ANI." Joint Exhibit 1 (Final Consolidated Issue List), at 6.

b. "Exchange Services"

Windstream argues that "the parties often use terms in interconnection agreements that may not be defined in the Act." W. M. Br. at 52. The problem with this argument is that Windstream's definition of "exchange service" is not only not set forth in the Act, it is actually in conflict with the definition of "telephone exchange service", which is set forth in the Act. *See*, C. M. Br. at 58-59.

c. "Intra-LATA Toll Traffic"

Windstream argues that the ICA "should define 'intra-LATA toll traffic" as all intraLATA calls provided by a LEC other than traffic completed in the ILEC's local exchange boundary." W. M. Br. at 52. But as Core demonstrated in its Main Brief, Windstream's proposal would result in non-toll calls, such as VNXX, FX, EAS and other calls, being classified as "toll" traffic. *See*, C. M. Br. at 59.

d. "Interconnection Point"

Windstream agues that its definition of "interconnection point" is consistent with its position on Issue 1, namely, that any interconnection point "occurs within Windstream's network." Windstream's position is contrary to applicable law, as set forth in Core's Main Brief. C. M. Br. at 19-29 and 60.

e. "Section 251(b)(5) Traffic"

Windstream claims that Core's definition of "Section 251(b)(5) Traffic" should be rejected because "it appears to be an attempt to allow Core to receive reciprocal compensation on VNxx traffic." W. M. Br. at 52. That is precisely Core's position, because federal law and Commission precedent (1) treat VNXX calls as "local" calls, subject to reciprocal compensation under section 251(b)(5); and (2) hold that the *ISP Remand Order* applies to all ISP-bound calls, including VNXX calls.

Windstream also argues that Core's definition should be rejected because it is "a restatement of an FCC rule regarding reciprocal compensation." W. M. Br. at 52. Crafting a ICA provision to match the applicable FCC rule is a great reason to approve Core's definition, not reject it.

Conclusion

As set forth above, Core's position on each and every one of the nine disputed issues is entirely consistent with applicable law, and is completely supported by the Act, FCC regulations, Federal Court decisions, FCC rulings and/or Commission Orders. By contrast, Windstream's positions on the nine disputed issues are not supported by applicable law, and in many cases run directly contrary to the controlling body of law. As such, Core respectfully requests that the Commission issue an Order which resolves each of the nine (9) disputed issues in accordance with Core's positions and incorporate Core's proposed language on each of the positions in the final interconnection agreement that is ultimately executed by the parties.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of November, 2007 copies of the foregoing Reply Brief has been served 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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