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WITNESS INDEX

WITNESSES

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FORM 2

EXHIBIT INDEX

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FORM 2

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P R O C E E D I N G S

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2 ADMINISTRATIVE LAW JUDGE DAVID A. SALAPA: This is
3 the time and the place that the Pennsylvania Public Utility
4 Commission has set for a prehearing or pre-arbitration
5 conference in the case captioned, Petition of Core
6 Communications for arbitration of interconnection rates,
7 terms and conditions with Core Communications, Inc., at
8 Docket No. A-310922F7004.

9 I am Administrative Law Judge David Salapa. The
10 Commission has assigned me to preside on this case and to
11 render a decision for the Commission to consider.

12 This morning I note the appearance of counsel for
13 Core Communications, Mr. Michael Gruin.

14 Good morning, Mr. Gruin.

15 MR. GRUIN: Good morning, Your Honor.

16 JUDGE SALAPA: Also on behalf of Core Communications
17 is Mr. Chris Van de Berg.

18 MR. VAN DE BERG: Good morning.

19 JUDGE SALAPA: Good morning, Mr. Van de Berg.

20 Appearing on behalf of Alltel are Holly R. Smith.

21 Good morning, Ms. Smith.

22 MS. SMITH: Good morning, Your Honor.

23 JUDGE SALAPA: And Mr. D. Mark Thomas.

24 Good morning, Mr. Thomas.

25 MR. THOMAS: Good morning.

1 JUDGE SALAPA: I have a few preliminary matters that
2 I'd like to go over first.

3 The first thing I'd like to find out, my pre-
4 arbitration conference order had a number of parties listed
5 on it that I do not believe are interested in participating
6 in this case, such as the Consumer Advocate and Small
7 Business Advocate.

8 Have any of the parties received any communication
9 from those entities indicating that they wish to participate
10 in this proceeding?

11 MS. SMITH: We have not, Your Honor.

12 MR. GRUIN: No, Your Honor.

13 JUDGE SALAPA: All right then. I'll remove them from
14 the service list.

15 MR. THOMAS: Your Honor, we have been serving them
16 with all the documents. I think Mr. Gruin has too.

17 MR. GRUIN: Yes, we have also.

18 JUDGE SALAPA: I really don't see any reason to
19 continue having them on the service list if they haven't
20 filed anything indicating that they wish to participate.
21 Any orders that issue from me, at least, we'll delete them.

22 MR. THOMAS: So you're removing the OTS, OCA?

23 JUDGE SALAPA: Well, all I have are the Office of
24 Small Business Advocate and the Office of Consumer Advocate
25 on my service list.

1 MR. THOMAS: Okay. We have the Trial Staff on ours
2 too.

3 MR. GRUIN: Yes, we do.

4 JUDGE SALAPA: Have any of the parties received
5 anything from them indicating their desire to participate?

6 MR. THOMAS: No.

7 MR. GRUIN: No.

8 MS. SMITH: No, Your Honor.

9 JUDGE SALAPA: Okay. Well, then you can delete them
10 as well.

11 Next, the appearance for Alltel I have as
12 Mr. Cesar Caballero. Should that be changed to Ms. Smith,
13 Mr. Thomas, both of you?

14 MS. SMITH: Your Honor, all four of us would like to
15 be listed as counsel in this matter. So that would be
16 Holly Rachel Smith, D. Mark Thomas, Cesar Caballero and
17 Kimberly K. Bennett.

18 JUDGE SALAPA: All right. Then do you wish the
19 orders or whatever to be sent to each of you separately
20 then? Is that how you -- one to you and Mr. Thomas and one
21 to Mr. Caballero?

22 MS. SMITH: In the event that you would be so kind,
23 it would be terrific if we could have both Caballero and
24 Bennett on the list in Little Rock, and myself and
25 Mr. Thomas on the list here in Harrisburg, Pennsylvania.

1 Thank you, sir.

2 MR. THOMAS: Your Honor, we also would like
3 Patricia Armstrong. She signed the initial pleadings for
4 Alltel. We'd like her listed as counsel for Alltel. She's
5 not in attendance today.

6 JUDGE SALAPA: All right. So Alltel will be Smith,
7 Thomas and Armstrong in Harrisburg, and Caballero and
8 Bennett for the address in Little Rock.

9 All right. Are there any other parties out there
10 that would be considered as indispensable parties that would
11 need to be joined in this proceeding? I don't believe so,
12 in reviewing the proceeding, but I just wanted to make sure.
13 I'm not aware of any others. Are any of the parties?

14 MR. THOMAS: The only thing I can recall, Your Honor,
15 the small companies, the rural telephone companies have a
16 motion pending. And they ask, I think, intervention just
17 for that limited purpose.

18 JUDGE SALAPA: Yes, I'm aware of their petition.

19 All right. Let me get down to what my concern is on
20 this proceeding at this point.

21 Core Communications currently has an outstanding
22 application with the Commission to amend its certificate of
23 public convenience in order to allow it to provide local
24 phone service in the territory of Alltel.

25 MR. GRUIN: Correct.

1 JUDGE SALAPA: To the best of my knowledge, I think
2 that's what, at Docket A-310922F0002AMB?

3 MR. GRUIN: Correct, Your Honor.

4 JUDGE SALAPA: To the best of my knowledge, the
5 Commission has not issued an order either approving or
6 disapproving that application.

7 My concern is that I strongly believe that we should
8 have an order from the Commission approving that application
9 before we proceed with this arbitration.

10 What are the parties' feelings on that?

11 Mr. Gruin?

12 MR. GRUIN: I don't think it's necessary, Your Honor.
13 I think we can move forward with the arbitration because
14 Alltel has withdrawn their protest to the application, and
15 there's no protest pending.

16 The application is at FUS, Fixed Utility Services,
17 for review.

18 And there's no prohibition to arbitrating
19 interconnection terms while the application is still
20 pending. In fact, that's kind of the way it was foreseen by
21 the Commission in the implementation order and the review of
22 interconnection agreement order, that it be a simultaneous
23 process.

24 JUDGE SALAPA: Okay. Well, my understanding -- and I
25 admittedly have access to the Commission's case management

1 system, which you probably do not.

2 My understanding from reviewing that is that there is
3 currently some sort of motion that's been filed by Alltel at
4 that docket number.

5 And at least according to the Commission's case
6 management system, that motion has been assigned to the
7 Office of Special Assistants for disposition. So that's
8 where that proceeding is right now.

9 I'm assuming that Alltel would prefer to have an
10 order from the Commission one way or the other on the
11 application to amend before we proceed with the arbitration.
12 Is that correct.

13 MS. SMITH: Your Honor, we are absolutely in
14 agreement, that there has to be an order on a pending
15 application proceedings to provide service in Alltel's
16 territory, because there's really serious questions about
17 whether or not this arbitration was properly before this
18 Commission.

19 JUDGE SALAPA: Well, without getting into the merits
20 of the application, which really isn't before me, my concern
21 is that without a Commission order stating that Core has the
22 authority to operate in Alltel's territory, that there's an
23 issue of standing in regard to the arbitration proceeding.

24 So my options at this point are to, I think, either
25 stay this proceeding pending the outcome of the proceeding,

1 the application proceeding, or to issue an order granting a
2 motion to dismiss on the basis of lack of standing.

3 Frankly, I would rather just issue an order to stay
4 this proceeding until the application proceeding works
5 itself out one way or the other.

6 MR. GRUIN: If those are our two choices, we would
7 choose stay, obviously. But again, we reiterate our
8 position that we don't think it's necessary to stay it.

9 I don't know how long the Commission's going to take
10 to review the application.

11 JUDGE SALAPA: Well, that's my concern. We're all
12 talking here as though this is a done deal and it's only a
13 matter of time before Fixed Utility Services issues an order
14 granting your application.

15 My concern is, number one, it's no longer just in
16 Fixed Utility Services, it's now in the Office of Special
17 Assistants to rule on whatever the petition is that Alltel
18 has filed. And I don't know what that means in terms of
19 this arbitration.

20 So I would just prefer to wait until the issues in
21 that application are taken care of before we proceed forward
22 with the arbitration.

23 And I believe that right now I have a motion from
24 Alltel to stay, dismiss or strike. And frankly, my
25 inclination would be to issue an order somewhat along the

1 lines of what Judge Weismandel has issued in the other Core
2 arbitrations, to stay this pending the outcome of the
3 application at AMB.

4 I want to make that specific, because, quite frankly,
5 I don't care what goes on with the application at AMA. I
6 understand that's a litigated proceeding, and that may take
7 months more before it's resolved.

8 MR. THOMAS: And Your Honor, that proceeding,
9 however, may impact what's before FUS right now.

10 JUDGE SALAPA: I understand that. I understand that,
11 Mr. Thomas. And like I said, that stuff is all outside of
12 my scope.

13 At this point I have this arbitration. And my
14 feeling is that if the Commission issues an order tomorrow
15 in the AMB application saying, Core, you're authorized to
16 provide service in AMA's territory, that means to me that,
17 pending an appeal, I can proceed with the arbitration.

18 And I'm not really concerned about what goes on at
19 AMA. I understand that there are motions out there that may
20 end up consolidating this whole mess into one big
21 proceeding.

22 I don't have any control over any of that. My
23 control is over this arbitration.

24 So that's my intent.

25 Comments, Mr. Gruin?

1 MR. GRUIN: I think that's reasonable, Your Honor. I
2 would just say that if, like you say, the Commission issues
3 an order in AMB granting Core authority in Alltel territory,
4 that we would move forward with the arbitration even if
5 there's an appeal outstanding.

6 In other words, get the arbitration moving at that
7 time, and then if they want to appeal, take it up in a
8 separate daisy chain.

9 But if the arbitration's already --

10 JUDGE SALAPA: Well, let's just take one step at a
11 time.

12 MS. SMITH: I don't want to be prejudging what our
13 appeal rights may be.

14 JUDGE SALAPA: Yes. I think at this point let's just
15 take it one step at a time. And what I will do is put
16 together an order, a short order along the lines of
17 Judge Weismandel's, basically staying this proceeding until,
18 I believe he says 35 days or something like that after the
19 Commission issues an order in the AMB proceeding.

20 MR. THOMAS: The AMA proceeding.

21 JUDGE SALAPA: No, AMB in this case.

22 MR. GRUIN: Right.

23 MR. THOMAS: Oh, okay. His order was AMA.

24 JUDGE SALAPA: Yes. What his order says is that the
25 consolidated arbitration proceedings are stayed until at

1 least 35 days after final Commission order in the
2 application proceeding.

3 MR. THOMAS: If I recall, I think he went 35 days to
4 allow the appeal to --

5 JUDGE SALAPA: Yes. And once the order comes out, if
6 the parties choose to appeal one way or the other, we can
7 address that at that point.

8 MR. GRUIN: It's not ideal in our position, but I
9 think we can live with it at this point in time.

10 JUDGE SALAPA: Okay.

11 Ms. Smith?

12 MS. SMITH: We would be in agreement, Your Honor.

13 JUDGE SALAPA: All right. So I have an agreement
14 from the parties to stay this proceeding pending the outcome
15 of the application in AMB.

16 I also have this motion to stay from the rural
17 telephone companies. I think it's Pennsylvania Telephone
18 Association.

19 MR. THOMAS: Rural Telephone Company Coalition,
20 Pennsylvania Telephone Association, and Frontier Companies.

21 JUDGE SALAPA: Thank you, Mr. Thomas.

22 I guess I will either hold that in abeyance; I guess
23 what they seem to be asking for is for me to stay the
24 proceeding pending resolution of the application at the AMA
25 docket.

1 Number one, I don't think they have standing to be
2 filing anything in this proceeding. But I guess I can hold
3 that in abeyance.

4 And you have a motion to admit pro hac vice. I can
5 grant that; would Core have any objection to that?

6 MR. GRUIN: No objection.

7 JUDGE SALAPA: All right. Well, then I will put
8 something in the order I issue granting the motion to admit
9 pro hac vice.

10 MS. SMITH: Thank you, Your Honor. I would
11 appreciate if you also could amend the service list to add
12 the new attorneys.

13 JUDGE SALAPA: All right. So my order will stay 35
14 days, admit pro hac vice, amend the service list. And I'll
15 have to think about what to do with the other motion,
16 frankly.

17 MR. THOMAS: Actually, you granted that in part.

18 JUDGE SALAPA: Well, in part, yes.

19 MR. GRUIN: What motion is that again? I'm sorry.

20 JUDGE SALAPA: There's a motion from the Rural
21 Telephone Company Coalition, the PTA and everybody else to
22 stay the proceeding.

23 But I believe their request for stay is pending the
24 outcome of the AMA application.

25 MR. GRUIN: Right.

1 JUDGE SALAPA: And as I said, I don't believe they
2 have standing to be filing anything in this proceeding.

3 MR. GRUIN: Right.

4 JUDGE SALAPA: So I will probably just dismiss it as
5 moot, because I am granting a stay, and leave it at that.

6 All right. At this point is there anything that the
7 parties want to address? I'll open the floor to either one.

8 Mr. Gruin, is there anything that you would like to
9 address at this point?

10 MR. GRUIN: Well, I guess I would like to propose the
11 parties to continue to negotiate during the stay and narrow
12 the issues and to work together so we can get a better
13 consolidated list of issues.

14 JUDGE SALAPA: If the parties want to do that, that
15 certainly would be a profitable use of time. That's up to
16 you.

17 MR. VAN DE BERG: I would also add, I believe your
18 scheduling order was put together with the concept of trying
19 to preserve the nine-month window of the Commission's
20 jurisdiction under 252. So the parties should probably
21 stipulate that --

22 MR. THOMAS: Chris, I can't hear you.

23 MR. VAN DE BERG: That we're waiving our rights to
24 protest that window. The nine-month window under 252.

25 MR. THOMAS: Oh, okay.

1 MR. VAN DE BERG: I think that the scheduling order
2 was put together to try to preserve that.

3 JUDGE SALAPA: Yes.

4 MR. VAN DE BERG: So whatever we can do to preserve
5 that window.

6 JUDGE SALAPA: All right. So basically, if I could
7 incorporate something into the order stating that the
8 parties agree that the nine-month window is stayed,
9 suspended.

10 MR. GRUIN: I think there's language in
11 Judge Weismandel's order in the other proceeding that
12 addresses that.

13 JUDGE SALAPA: Right, okay. I'll check on that.
14 Waive the nine-month deadline for rendering an arbitration
15 decision.

16 MR. GRUIN: Right.

17 JUDGE SALAPA: All right.

18 Ms. Smith, anything?

19 MS. SMITH: I have two points. I'm wondering if
20 discovery could continue in this matter, and that we could
21 set some time lines for responding and for objections.

22 And also, I have an amendment to the issues list, and
23 I have brought with me a new version of the issues list.
24 But I have one item that I need to discuss.

25 Shall I take the discovery first?

1 JUDGE SALAPA: Yes. At this point, what kind of time
2 frame, or what are you looking at here? Are you looking for
3 me to set some deadlines for sending discovery requests and
4 responding?

5 MS. SMITH: The amount of time for which the parties
6 would have to object, and also the amount of time from
7 service, upon which the parties would have to answer, and
8 discovery served.

9 MS. BENNETT: Your Honor, this is Kimberly. Can I
10 interject something? Is it necessary that we can stay this
11 today if the proceeding is then stayed?

12 MR. GRUIN: That's what I think. I think if we're
13 going to stay it, we completely stay it, we reconvene with
14 another pre-arbitration conference at some point when it
15 gets back on track, and talk about these issues then. Not
16 kind of a half stay, a quarter stay.

17 JUDGE SALAPA: All right. I think that's a good
18 point, because if this is stayed, really, as Mr. Gruin said,
19 you can continue to negotiate and try and narrow the issues.
20 And that may resolve some of the discovery concerns that you
21 have.

22 But depending on what the AMB order says, there may
23 be nothing to discover. I mean the whole arbitration may
24 disappear depending on what happens.

25 So at this point let's just hold that, and we'll pick

1 it up whenever the AMB order comes out and we reconvene.

2 MS. SMITH: We would be in agreement, Your Honor.

3 JUDGE SALAPA: All right.

4 Is there anything further at this point that we need
5 to discuss? Going once. Going twice.

6 (No response.)

7 JUDGE SALAPA: All right. I'd like to thank you all
8 for your cooperation. We are adjourned.

9 (Whereupon, at 10:20 a.m., the hearing was adjourned,
10 to reconvene at a time and date to be designated by the OALJ
11 Scheduling Unit.)

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C E R T I F I C A T E

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