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June 5, 2006

Marlene M. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Core Communications, Inc.'s Petition for Forbearance, WC Docket No. 06-100; **COMMENTS OF THE PENNSYLVANIA TELEPHONE ASSOCIATION**

Dear Ms. Dortch:

Pursuant to section 160(c) of the Communication Act and section 1.5 of the Commission's rules, enclosed please find an original and four copies of the Comments of the Pennsylvania Telephone Association. We have also filed a copy electronically at the Commission's website.

Please date stamp the duplicate upon receipt and return it to our office in the self-addressed, stamped envelope. If you have any questions, please do not hesitate to contact me.

Sincerely,

Norman J. Kennard
Counsel to the
Pennsylvania Telephone Association

NJK/ajt
Enclosures

cc: Michael B. Hazzard

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of Core Communications, Inc. for	)	
Forbearance under 47 U.S.C. § 160(c) from	)	WC Docket No. 06-100
Rate Regulation Pursuant to § 251(g) and for	)	
Forbearance from the Rate Averaging and	)	
Integration Regulation Pursuant to § 254(g)	)	

COMMENTS OF THE PENNSYLVANIA TELEPHONE ASSOCIATION

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I. INTRODUCTION AND SUMMARY OF PTA COMMENTS

The Pennsylvania Telephone Association ("PTA") submits the following Comments in response to the Petition for Forbearance ("Core Petition") filed by Core Communications, Inc. ("Core"). The PTA is an association of Local Exchange Carriers ("LECs") operating in Pennsylvania under the jurisdiction of the Federal Communications Commission ("Commission" or "FCC') and the Pennsylvania Public Utility Commission ("PA PUC").[1]

The PTA is filing these comments with the Commission for three purposes:

- To explain the financial importance of access charges and the progress that has been made to reduce the level of access charges;
- To reveal the true nature of Core's business, which has nothing to do with local exchange service; and
- To demonstrate that real competition is vibrant in Pennsylvania.

The conclusion proposed by the PTA is that the public interest is harmed by the relief sought in Core's Petition. The only benefit is to Core's questionable business model.

Core's Petition requests that this Commission "forebear" from applying the current intercarrier rates for switched exchange access, information access and exchange

[1] The Pennsylvania Telephone Association is the Commonwealth's oldest trade organization for the local exchange carrier industry. PTA represents more than 30 telecommunications companies that provide a full array of services over wireline networks. PTA members support the concept of universal service and are leaders in the deployment of advanced telecommunications capabilities. In this docket, the PTA represents the following member companies: ALLTEL Pennsylvania Inc.; Armstrong Telephone Company North; Armstrong Telephone Company Pennsylvania; Bentleyville Telephone Company; Buffalo Valley Telephone Company; Citizens Telephone Company of Kecksburg; Citizens Telecommunications Company of New York, Inc.; Commonwealth Telephone Company; Conestoga Telephone & Telegraph Company; Denver & Ephrata Telephone & Telegraph Company; Frontier Communications Of Breezewood LLC.; Frontier Communications Of Canton LLC.; Frontier Communications Of Lakewood LLC.; Frontier Communications Of Oswayo River LLC.; Frontier Communications Of Pennsylvania LLC.; Hancock Telephone Company; Hickory Telephone Company; Ironton Telephone Company; Lackawaxen Telephone Company; Laurel Highland Telephone Company; Marianna & Scenery Hill Telephone Company; North Penn Telephone Company; North Pittsburgh Telephone Company; North-Eastern Pennsylvania Telephone Company; Palmerton Telephone Company; Pennsylvania Telephone Company; Pymatuning Independent Telephone Company; South Canaan Telephone Company; TDS Telecomm/Deposit Telephone Company; TDS Telecomm/Mahoney & Mahantango Telephone Company; TDS Telecomm/Sugar Valley Telephone Company; United Telephone Company of Pennsylvania d/b/a/ Embarq; Venus Telephone Corp.; West Side Telephone Company; and Yukon Waltz Telephone Company.

services for access as they apply to interexchange carriers and information service providers, as well as rules relating to rate averaging and integration. Based upon prior Commission findings that the cost of terminating traffic does not vary by the type of traffic, Core asserts that the grant of its requested forbearance "would default traffic into Section 251(b)(5)," that is to say reciprocal compensation based upon the "forward-looking" TELRIC model. Arguing that access charges represent incumbent LEC "regulatory arbitrage to collect above-cost intercarrier compensation rates and pay below-cost intercarrier compensation rates,"[2] Core asserts that the effect "will encourage increased competition in all areas of the nation, including rural areas."[3]

Obviously, such a radical move to convert all intercarrier compensation associated with interexchange and information service providers to reciprocal compensation would sidestep the complex issues currently being debated before this Commission in its *Unified Compensation NMPR* docket.[4] The universal service rate design philosophy, so central to ILEC rate design over the last century, simply cannot be eradicated by unilateral election without severe financial dislocation of the ILECs and their customers. The result would be financially devastating to local exchange carriers.

The PTA's fundamental position on intercarrier rates is that the Commission's open *Unified Compensation NMPR* docket is the proper vehicle for responsible access reform. The underlying complex and financially important issues require serious study and responsible solution, not the overly simplistic, self-serving, knee jerk reaction Core urges upon the Commission.

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[2] Core Petition at 3.
[3] Core Petition at 1.
[4] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice Of Proposed Rulemaking released April 27, 2001 ("*Unified Compensation NPRM*").

As to the PTA's second main point, Core is not a local exchange carrier, as it *claims to be, but rather is a LATA-wide collector of interexchange Internet dial-up* traffic. Upon receipt of VNXX-routed traffic at its single LATA point of delivery, Core converts protocols and delivers the traffic to the Internet on behalf of retail ISPs.

As has been demonstrated in an on-the-record challenge to Core's attempt to be certified as a competitive local exchange carrier in the rural territories of Pennsylvania, Core simply places a gateway device behind a Verizon Pennsylvania LATA tandem and, using virtual NXX numbering, then demands that any traffic originating anywhere in the LATA destined for those numbers, including interexchange traffic, be delivered by the originating local carrier at no charge to Core, as the terminating "carrier." Consequently, for every other originating ILEC carrier in Pennsylvania, the destination point for their originated traffic bound to Core's ISP customers is not even on their network. Core makes no investment in any ILEC's service area besides a single LATA gateway. Core's business plan heavily relies upon the receipt of reciprocal compensation revenues to terminate the interexchange traffic to the virtual NXX numbers it assigns to ISPs.

Core's operation is threatening to collapse with the decision of the 1st Circuit Court of Appeals rendered last month holding that the application of access charges to virtual NXX, Internet-bound traffic is not preempted where the traffic terminates outside the local calling area of the originating caller. Core has long maintained that this Commission had ordered the application of reciprocal compensation to all traffic destined for an ISP, no matter the location. The Court found, to the contrary, that this Commission's ISP Remand Order continues to maintain the distinction between calls to ISPs physically located within the same exchange and calls to an interexchange ISP destination.

There is no public purpose served by allowing Core to demand reciprocal compensation for interexchange traffic. The relief Core seeks in its Petition would require all originating carriers, even those with no POI with Core, to bear the cost of extra-territory network investment that Core refuses to make and then be charged reciprocal compensation for the privilege of doing so. The only purpose served by the Petition is the benefit bestowed to Core's private interest.

II. ACCESS CHARGES

A. Core's Petition

Intercarrier compensation arrangements are generally categorized into two types:

- **Interexchange**. *Access charges*, which are governed by various Commission rules, PA PUC rules, and LEC tariffs, prescribe the payments that toll providers (both IXCs and LECs) make to originate and terminate long-distance (i.e., interexchange and extended area service) calls; and
- **Local**. *Reciprocal compensation* arrangements, which prescribe the compensation between competing LECs for the transport and termination of "local" (i.e., intraexchange) traffic.

Interstate and intrastate access tariffs specify the charges that LECs and IXCs must pay when the LEC provides originating or terminating access service to, or from, the toll carrier's point of presence ("POP").[5] Local interconnection agreements, establishing terms for traffic that is eligible for reciprocal compensation, are governed by the Telecommunications Act of 1996, Commission rules implementing the Act, and myriad interconnection agreements between individual carriers.

The motive behind Core's Petition is access charge avoidance. Simply stated, the price of access is higher than the price of reciprocal compensation. Interexchange access charges implicitly contain above-cost recovery that is expressly designed to offset the loss incurred by below-cost local exchange service rates. Although access rates have

[5] *Unified Compensation NPRM* at ¶ 11.

been substantially reduced over time, they are not yet as low as reciprocal compensation. Moreover, access is paid by the terminating carrier, whereas reciprocal compensation is paid by the originating carrier. This Commission is studying the complexities of unifying all forms of intercarrier compensation, including the effects on universal service, at its *Unified Compensation NPRM.*

This Commission, however, has wisely and consistently found that reciprocal compensation does not apply to access traffic – "calls that travel to points-both interstate and intrastate-beyond the local exchange."[6] The jurisdiction of a call is determined by reference to its physical end points.[7]

Core seeks to evade the clear import of this Commission's distinction between exchange and exchange access and the 1st Circuit's confirmation that the appropriate intercarrier compensation is not affected by either the use of VNXX or the fact that the call is ultimately destined for the Internet. Were Core successful in obliterating these historic distinctions, the result would be an immediate financially ruinous loss of the LECs' revenue contribution from the switched access revenue stream. The public would experience large, sudden increases in the price of local service.

B. Access Charge Background

Access and toll are fundamental industry arrangements, endorsed by this Commission and its state counterparts time after time. Access charges were instituted at the break-up of AT&T in mid-1980s. As a result of that divestiture, this Commission and the PA PUC implemented a system of intercarrier access charges to apply to

[6] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, ¶¶ 1033-34 (1996).
[7] See discussion, *infra*.

interexchange calling as a replacement for the pre-divestiture settlement pooling arrangements.[8]

Interexchange access charges have never been cost based, but rather contain implicit subsidies designed to offset the loss incurred by below-cost local exchange service rates. Although access rates have been dramatically reduced since divestiture, they are not as low as reciprocal compensation. There is a fundamental problem in reducing access rates, because the support that access/toll rates provides to maintain affordable local rates will be eroded, thereby causing excessive retail rate increases, which threaten the continuation of high telephone service penetration.

Local service pricing, for as long as anyone can remember, has been based upon the primacy of "universal service." Federal and Pennsylvania public policy has recognized that local exchange service rates must be "affordable" to insure that the benefits of telecommunications and information infrastructure are accessible by all customers. As the PA PUC has noted:

> Access charges were established during a monopoly regime of telecommunications regulation at the local exchange level. Access charges provide a significant source of ILEC earnings and contain implicit and explicit subsidies for local rates. This combination of earnings and subsidy was approved pursuant to a public policy of encouraging universally available and relatively affordable telecommunications services while providing earnings sufficient to attract stable investment in a national communications infrastructure. Consequently, public policy over time has resulted in a situation wherein higher cost areas, such as rural areas, with lower density cell rates and longer loop distances, obtain rate support from lower cost areas, such as urban areas with higher density cell rates and shorter loop distances. Access charges provide a source of earnings while keeping basic local service rates lower than might otherwise be the case in high cost areas.[9]

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[8] *Petition Requesting the Commission Institute a Generic Investigation*, PA PUC Docket No. P-830452, Order entered December 28, 1983 at 9-14.

[9] *Joint Petition of Nextlink Pennsylvania, et al*, PA PUC Docket No. P-00991648 and *Joint Petition of Bell Atlantic Pennsylvania, Inc., et al.*, P-00991649, Opinion and Order entered September 30, 1999, at 11 ("*PA PUC Global Order*") (footnotes omitted).

In other words, toll and access "pay" for local service.

The PTA has always advocated a responsible approach of reducing access charges and transitioning local rates upward to bear greater responsibility for cost recovery, along with the creation of Universal Service funding. On an individual basis, rate rebalancing has been successfully used by numerous incumbent local exchange companies in Pennsylvania.

There have been numerous access reforms at both the federal and state level. The PA PUC design of intrastate access rates has followed federal rates closely by mirroring the traffic sensitive element to avoid jurisdictional arbitrage.[10] The institution of a Pennsylvania Universal Service Fund in 1999 initiated wholesale access charge reform on a state level. This reform underwent its second generation of access charge reductions in 2003, with further intrastate access rate changes made consistent with interstate rate reductions implemented by this Commission in the MAG Order (CC Docket No. 00-256).[11] Access reform continues at the PA PUC with a third rural access investigation currently pending.[12]

Access charges still are, however, a critical revenue stream of many millions of dollars for the PTA companies. The smaller, more rural, incumbent local exchange companies represented here by the PTA,[13] based upon calendar year 2002 Annual

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[10] *Petition Requesting the Commission Institute a Generic Investigation*, Docket No. P-830452, Order entered December 28, 1983 at 9-14; later affirmed in Final Order entered August 9, 1985.

[11] *Access Charge Investigation Per Global Order of September 30, 1999*, PA PUC Docket Nos. M-00021596, P-00991648 and P-00991649, Secretarial Letter dated October 24, 2001 and Order entered July 15, 2003.

[12] *Investigation Regarding Intrastate Access Charges qnd IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. I-00040105, Order entered December 20, 2004 ("*Intrastate Access Investigation III*") (temporarily stayed by Opinion and Order entered August 30, 2005, in consideration of this Commission's pending *Unified Compensation NPRM*).

[13] The data presented here excludes the three largest ILECs in Pennsylvania, Verizon Pennsylvania, Verizon North and Sprint/United Telephone (now Embarq).

Reports, received **$231 million from access charges, inter and intrastate - - nearly 38% of all regulated revenue.** As a component of that, intrastate access in 2002 was $154 million or almost 30% of all intrastate operating revenues. Interstate revenue of $77 million is, of course, almost entirely composed of access charge revenue.

The PTA has quantified, on a lost revenue basis only (i.e., other costs and impacts are not included), the local ratepayer impacts:

- The loss of **all access revenue** would increase local service rates in Pennsylvania by **an additional $21.18 per line per month** above current rates, to level more than double the PA PUC's current affordability cap of $18.00.
- The elimination of **interstate** access revenues and settlements alone translates to an average local rate increase of **$7.03 per line per month**.
- Were the PA PUC to follow the federal lead, the elimination of **intrastate** access charges would result in an additional average local rate increase of **$14.15 per line per month**.
- The effect of intraLATA toll-free calling is an increase of **$5.07 per line per month** for the PTA companies.

C. The Next Step In Access Charge Reform

The universal service rate design philosophy, so central to ILEC rate design over the last century, cannot be simply eradicated without severe financial dislocation of the ILECs and their customers. The difficult task of transitioning access reform needs to be accomplished first, before another compensation regime is adopted.

All parties, the PTA included, concur that artificially high interexchange access rates are not sustainable in a competitive environment. The disagreement lies in the appropriate pace of the change and, most difficult, where the revenue responsibility now

lies.[14] These are complex and financially important issues that require serious study and responsible solution, not the overly simplistic, self-serving knee jerk reaction Core urges upon the Commission.

The PTA's fundamental position is that the Commission's open *Unified Compensation NMPR* docket, which is actively studying intercarrier compensation generally and access charge reform specifically, should be permitted to do its work. That deliberate and informed process is the proper vehicle for responsible access reform.

III. CORE IS NOT A LOCAL EXCHANGE CARRIER OR EVEN A TELECOMMUNICATIONS CARRIER

Core is currently involved in litigation in Pennsylvania regarding its proposed entry[15] as a competitive local exchange carrier into rural telephone company ("RLEC") markets.[16] The RLECs have protested Core's application because its CLEC status is a fiction. This Pennsylvania proceeding has developed a comprehensive insight into Core and its operations, a view that is uniquely comprehensive.[17] The PTA believes that this Commission should be aware of the Petitioner's operations in order to understand exactly why Core seeks to convert all intercarrier billing to reciprocal compensation. With this

[14] Notably, the Pennsylvania General Assembly has statutorily recognized, given the importance of access rates' support of local universal service, that further access reform was to be revenue neutral. 66 Pa.C.S. § 3017(a).

[15] Core may provide local telecommunication services in Pennsylvania upon approval pursuant to 66 Pa.C.S. § 1103. As to the telephone industry specifically, the Pennsylvania Public Utility Code permits the certification of more than one local exchange company to provide local service "upon a showing that it is in the public interest and that the applicant possesses sufficient technical, financial and managerial resources." 66 Pa.C.S. § 3019(a).

[16] *Application of Core Communications, Inc. for Approval to Offer, Render, Furnish or Supply Telecommunications Services to the Public in the Commonwealth of Pennsylvania*; PA PUC Docket No. A-310922F0002, AmA.

[17] All factual statements made in these Comments regarding Core are of record and have been subjected to cross examination and accepted under the rules of evidence before the PA PUC. Hearings were held before ALJ Wayne Weismandel on February 21 and 22, 2006, and were transcribed. Record citations have been removed from these Comments, but are available upon request.

background, it is hoped that the Commission will realize the abject lack of merit in Core's proposed relief.

CoreTel Communications, Inc., a Delaware corporation, is the parent and sole shareholder of eight subsidiary corporations. The main operations of the company is in Maryland and Pennsylvania through its affiliate Core Communications, Inc. The shares of CoreTel Communications, Inc. are privately held by three individuals and two companies, including Toad Computers Inc., an ISP.

While Core originally claimed in a sworn application before the PA PUC that it would offer "a full range of facilities-based [local exchange] services . . . to business and residential customers that will enable customers to originate and terminate local exchange calls" and that it "'currently offers the services set forth in its current Tariffs filed with the [PA] Commission and the FCC,'" it subsequently acquiesced, acknowledging that:

- Core has **no customers subscribing to "Local Line Service"** (i.e., local dial tone service), although "offered" in Core's PA P.U.C. Tariff No. 1.
- Core serves **"absolutely zero" residential access lines** in Pennsylvania **and would not provide** a competitive residential telephone service **if asked**.
- **Core serves no business customers,** unless one includes ISP "managed modem" services in this classification.
- Core serves **no access lines enrolled in Lifeline** in Pennsylvania.
- Core provides **no customers with 911 service**.
- Core's is **not equipped to provide presubscription** (i.e., dialing parity).
- Core does **not provide CLASS services.**
- **No operator services are provided.**
- **Relay service is not available.**

In reality, Core's customer base is composed "entirely" of 26 ISPs who sell retail dial-up Internet service. At its own website, Core expressly states that "it does not sell to

end users directly."[18] Core provides its ISP customers with "modem" services, the *functionalities of which are as follows:*

- Accepting traffic originated and delivered by local carriers to its single LATA POI, a location well outside the originating local calling area; then
- Enhancing the call through protocol conversion, DNS look-up, subscriber filtering; and then
- Delivering the traffic to the Internet.

As Core has explained, ISPs are interested in receiving dial-up traffic, so Core provides "in essence, a product that receives in-bound calls to facilitate an Internet connection." Core sells Internet access and routing on a bulk basis, giving its ISP customers a dial-up product that they can brand as their own and resell. Core's services are sold in incremental units called "DSO modem ports," which relate to the capability of the Internet modem access offered.

Core relies upon the real local exchange carriers to originate, transmit, switch and deliver the dial-up call to its single LATA location. Core uses its claimed CLEC status to obtain virtual numbers (VNXX) and free LATA-wide delivery from other carriers. Core does not invest in any facilities that will actually provide service within a local calling area. Core does not originate or terminate calls within a local calling area. Core's services occur after the message is transmitted out of the public switched telephone network ("PSTN") to its LATA POI, at which point Core prepares and delivers it to the Internet.

Inasmuch as Core's ISP customers are only interested in receiving traffic, **the arrangement then becomes a giant regional siphon for dial-up Internet traffic**. ISPs are receivers of calls, not originators. An end use customer dials up their ISP's number

[18] http://www.coretel.net/service_managed-modem.html.

(VNXX), which is provided by Core, who provides the ISP's customer access to the *Internet.* ***There is no traffic origination by Core.***

If an ISP desires to originate a call to vendors, associates or suppliers, Core does not provide local business dial tone service, even to its own ISP customers. The ISP must obtain the services of a real local telephone service provider to be able to make a call.

It might be helpful to break the progression of a dial-up Internet call to Core's NVXX numbers into component steps:

1. **Dial-up** subscriber's computer.
2. Local exchange companies' **local loop, switching and transport to the LATA hub**. For all ILECs other than Verizon Pennsylvania, there is also the incremental cost obligation normally associated with an IXC's interexchange, inter- or intraLATA toll traffic to transit the traffic from the ILECs' certificated boundary to a point outside their service territories to Core's single LATA-wide POI on Verizon's network at the LATA hub.[19]
3. Verizon Pennsylvania's **tandem switch**.
4. Verizon Pennsylvania's **trunks to Core gateway** site.
5. **Core's gateway site** (message converted from TDM to IP).
6. Third party **transport of IP traffic to the Internet**.

Core has investment only at Step 5 and only pays for Internet transport at Step 6. Core does not pay for use of any facilities or for the in-service area transport or extra-service area transit to the LATA tandem listed at Step 2. Nor does it pay for use of the ILEC tandem at Step 3.

Steps 2 and 3 are free to Core, because it claims to be a CLEC and, therefore, entitled to demand interconnection under Section 251(c)(2) of the TCA-96 at "any

[19] When an RLEC is forced to take on the cost obligations and functions of an IXC to deliver traffic to Core at a point off the RLEC's network, Core's assertions in its Petition that this Commission's statements that transport and termination of traffic, whether locally or from a distant exchange, involve the same network functions, become wholly inapplicable. Core Petition at 3 and 7. IXCs clearly provide a different network function for the transit and termination of traffic across exchange boundaries that is separate and apart from the transport and termination within an exchange boundary of geographically local traffic.

technically feasible point,"[20] even if that point is off an ILEC's network. Indeed, Core demands to be paid reciprocal compensation under § 251(b)(5),[21] because it deems all ISP-bound traffic to be "local," notwithstanding the geographic location of its ultimate delivery point. Core does not even pay for the DS3 and T1 links between the Verizon tandem and Core's gateway (Step 4).

Core only possesses capital investment at Step 5, the entire original cost of which, before being transferred to an affiliate in 2003, was only slightly more than $600,000. This capital investment is composed entirely of sets of Cisco Systems AS5800 and AS5850 "Universal Gateways"[22] located at Core's LATA POIs. "Data gateways," which, as the term implies, are a connection between two incompatible networks, principally used to convert protocol, from the PSTN's TDM to the Internet's IP. Beyond the five Cisco "gateways" and related equipment (routers, servers and power managers), Core owns no other assets in Pennsylvania.

At Step 5, Core provides its ISP customers with "enhanced services":

- **Core converts the format** to Internet Protocol ("IP"). The Public Switched Telephone Network ("PSTN," i.e. the ILECs) originates and sends a call in time division multiple ("TDM") protocol. Core converts this signal to IP, the language of the Internet, forwarding it to an Internet interconnection point. In other words, a message in TDM format received by Core is converted to IP format before delivery by Core to the Internet.
- **Core translates the alpha numeric address** entered by the PSTN dial-up customer into an Internet (numeric) address. An address of www.whatever.net might be translated to 198.105.232.4. Core provides Domain Name Service ("DNS") service to its ISP customers, offering DNS pools so that the ISP can control access based upon dedicated blocks.
- **Core filters the traffic** for account verification. Core physically locates a "RADIUS server" within its network, allowing the ISP customer to log onto

[20] 47 U.S.C. § 251(c)(2).
[21] 47 U.S.C. § 251(b)(5).
[22] Nowhere in the technical literature does Cisco describe that the AS5800 is a "switch" or that it possesses the functionalities of a switch. Indeed, neither of these "Universal Gateway" units is included on Cisco's list of switches.

Core's website and add new end use customers, delete old ones and otherwise ensure that the ISP's customer base access is up-to-date. Alternatively, Core will route a dial-up customer's request for access to the ISP's RADIUS equipment and then deliver it to the Internet after receiving ISP customer confirmation.

- ***Core allows its customers to control subscriber access.*** *By logging onto* Core's website an ISP can access "special tools" to observe customer communications and control access. The ISP customer's ability to log on and control end user access need not be coordinated with Core.

Core then delivers the message to the Internet (Step 6). Core leases all transport to the Internet and Internet circuits from third parties. Core's witness acknowledged that "[t]his IP routing is an enhanced service . . ."

The ISP customer need not be physically involved in the Internet session. Indeed, some of the ISPs Core serves in Pennsylvania have no Pennsylvania presence whatsoever, as Core's President explained:

> We also have companies who buy some Pennsylvania service who are not located in Pennsylvania, and just have a coverage area in Pennsylvania through us, or have moved their physical facilities, their physical modem banks onto our network.

In other words, Core will collect, convert and route the Internet dial-up traffic without it ever being touched by the ISP customer.

According to Core, there is no intraLATA, interexchange traffic in Pennsylvania. All traffic within the Pennsylvania's LATAs is "local." Any traffic to Core's LATA hubs "originated and terminated within the same local calling area," and no "interexchange calls" are terminated to Core. This is impossible, as the originating LEC and Core's tariffs both clearly define local areas the same way that all LECs do, as groups of neighboring exchanges.[23]

[23] Indeed, Core's tariffed local calling areas expressly state that they "mirror" the Verizon and Sprint/United (now Embarq) local calling areas.

Core accomplishes this transformation of interexchange traffic to local calling by assigning telephone numbers "virtually." Core acknowledges assigning numbers on a virtual basis to its ISP client base, thereby avoiding any actual local presence. Calls to VNXX numbers are claimed to be local, because the associated rate center listed, when the number block is opened by the VNXX carrier,[24] is a rate center within the local calling area. However, the listing given to the Local Exchange Routing Guide ("LERG")[25] by the VNXX carrier instructs that calls should be physically routed to a different, toll location, in this case, Core's LATA POI. But for Core's virtual numbering, the traffic would require the facilities and services of an IXC. In other words, Core provides LATA-wide call termination coverage through the use of numbers, not actual network investment. VNXX relies upon the network already built by others.

Core's services are not those of a "local exchange carrier," which is defined as "any person that is engaged in the provision of telephone exchange service or exchange access."[26] In turn, "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.[27]

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[24] The term "CLEC" does not always apply here. A carrier must be a LEC to open a code, but often the opening carrier is a LEC in name only, since the **sole purpose** is to use the code to originate interexchange calls. In other words, the carrier is masquerading as local carrier. "VNXX carrier" or "VNXXer" may be a more accurate term.

[25] "The Local Exchange Routing Guide (LERG) is a Telecordia document that lists all North American Class 5 offices (Central Offices, or end offices) and describes their relationship to Class 4 offices (Tandem Offices). The telecommunications industry relies on the LERG to dictate network flow for local calling. Telecordia is the successor to Bellcore, an entity formed by federal mandate coincident with the Divestiture of AT&T in 1984. Bellcore administrated the North American Numbering Plan (NANP) until 1995 when this responsibility shifted to the North American Numbering Council (NANC)."

[26] 47 U.S.C. § 153(26).

[27] 47 U.S.C. § 153(47) (emphasis added); *See also*, 47 CFR § 51.5.

Conversely, the term "exchange access" means "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services."[28] The Commission's definition of toll service ("between stations in different exchange areas") much more clearly applies.[29]

The difference between the rates for intercarrier local and interexchange compensation is precisely why Core claims itself as a CLEC and why the PTA Companies so adamantly oppose anything other than interexchange status for this calling. Local forms of intercarrier compensation, however, do not apply to interexchange traffic.[30] The Commission has expressly ruled that the TCA-96 did not alter (and, indeed, affirmed) interexchange compensation:

> [A]s a legal matter, transport and termination of local traffic are different services than access service for long distance telecommunications. Transport and termination of local traffic for purposes of reciprocal compensation are governed by sections 251(b)(5) and 252(d)(2), while access charges for interstate long distance traffic are governed by sections 201 and 202 of the Act. The Act preserves the legal distinctions between charges for transport and termination of local traffic and interstate and intrastate charges for terminating long distance traffic. . . . We find that the reciprocal compensation provisions of section 251(b)(5) for transport and termination of traffic do not apply to the transport or termination of interstate or intrastate interexchange traffic.[31]

For decades, the Commission has affirmed that the geographic points of origination and termination are used to determine the call jurisdiction. This is often

[28] 47 U.S.C. § 153(16).
[29] 47 CFR § 51.5.
[30] Moreover, this Commission has not held that in determining local pricing Rural LECs are subject to the TELRIC model, as the relief Core seeks in its Petition would unilaterally provide. First Report and Order at ¶¶ 706, 783, 934, 957, 1059, 1068, 1088 and 1115. *See* Core Petition at 7.
[31] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996) at ¶¶ 1033-35.

referred to as the Commission's "end to end analysis."[32] Whether those points are within the local calling area is defined by local state tariffs:

> [S]tate commissions have the authority to determine what geographic areas should be considered "local areas" for the purpose of applying reciprocal compensation obligations under section 251(b)(5), consistent with the state commissions' historical practice of defining local service areas for wireline LECs.[33]

So, Core is, at best, providing an interexchange service.

Actually, however, none of these distinctions apply, since Core is not really a "telecommunications" carrier at all. "Telecommunications" is defined as "the transmission, between or among points specified by the user, of information of the user's choosing, **without change in the form or content of the information as sent and received.**"[34] This is not what Core does.

Core's operation is more accurately described as an "information service," which is "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system of the management of a telecommunications service."[35]

Core is not passively transmitting the call, as a telecommunications carrier is required to do, "without change in the format or content of the message sent."[36] Other carriers, not Core, handle the traffic when it is "telecommunications." Core only accepts

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[32] *Bell Atlantic Tel. Co. v. FCC,* 206 F.3d 1,3 (D.C. Cir. 2000); *See also, In the Matter of AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services,* WC Docket No. 03-133, Regulation of Prepaid Calling Card Services, WC Docket No. 05-68, Order and Notice of Proposed Rulemaking at ¶ 5 (Released February 23, 2005).
[33] First Report and Order at ¶ 1035.
[34] 47 U.S.C. § 153(20) (emphasis added).
[35] 47 U.S.C. § 153(20).
[36] 47 U.S.C. § 153(20).

custody of the Internet session at its LATA gateway, then enhances it and sends it to the Internet. This is an "information service." Core is changing protocols, translating, filtering and controlling. These are the functions of an "information service" provider. The Commission has determined that Internet access service is classified as an information service.[37]

Core is an ISP or, at the very least, acting in concert with other ISPs to provide the functions needed to establish and maintain a LEC subscriber's dial-up session with the Internet. Core's ISP customers are not required to have any presence at the gateway or involvement in the Internet session. Indeed, some of the ISPs Core serves in Pennsylvania have no Pennsylvania presence whatsoever.

The Commission has described an ISP's functions as consisting of these very same services:

- "[A]n ISP **converts the analog signal to digital and converts the communication to the IP protocol**. This **allows the user to access the global Internet** infrastructure and communicate with users and websites throughout the world. In a narrowband context, the ISP facilitates access to this global network."[38]
- "Typically, when the customer wishes to interact with a person, content, or computer, the **customer's computer calls a number provided by the ISP that is assigned to an ISP modem bank**. The ISP modem answers the call (the familiar squelch of computers handshaking)."[39]
- "ISPs are **service providers that technically modify and translate communication**, so that their customers will be able to interact with computers across the global Internet."[40]

[37] *In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, FCC 02-77 (March 15, 2002), 2002 WL 407567 at *9 (FCC).
[38] *ISP Remand Order* at ¶ 17 (emphasis added).
[39] *Id.* at ¶ 58 (emphasis added).
[40] *Id.* at ¶ 63 (emphasis added).

The only difference between Core and any other ISP is that Core, by claiming CLEC status, obtains favorable rate treatment and extraordinarily wide geographic scope from the originating LEC. This is not how an ISP operates:

> An ISP customer dials a seven-digit number to reach the ISP server in the same local calling area. The ISP, in turn, combines "computer processing, information storage, protocol conversion, and routing with transmission to enable users to access Internet content and services." Under this arrangement, the end user generally pays the LEC a flat monthly fee for use of the local exchange network and generally pays the ISP a flat, monthly fee for Internet access. The ISP typically purchases business lines from a LEC, for which it pays a flat monthly fee that allows unlimited incoming [local] calls.[41]

The ISP's **in-bound calling scope is the originating LEC's** local calling area, not that of the recipient ISP or even the terminating "CLEC" as Core prefers to describe itself.

The definitions of "information service" and "telecommunications service" are mutually exclusive.[42] "Telecommunications service" "exclude[s] Internet access services, 'which alter the format of information through computer processing applications.'"[43] Further, entities offering a combination of telecommunications and information services are considered information service providers. That is, "the [Commission] does not recognize the telecommunications component of an information service as a telecommunications service under" the TCA-96.[44] The Commission "analyze[s] ISP traffic as a continuous transmission from the end user to a distant Internet site" even though such traffic necessary requires "a transmission component" over telecommunications.[45] Being an "information

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[41] *ISP Declaratory Ruling* at ¶ 4.
[42] *In the Matter of Communications Assistance for Law Enforcement Act and Broadband Access and Services*, FCC 05-153 (September 23, 2005), 2005 WL 2347765 at *5 (FCC).
[43] *Id.* (quoting *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, 11516-17, para. 33).
[44] *Id.*
[45] *In the Matter of GTE Telephone Operating Cos.*, FCC 98-282 (October 30, 1998), 13 F.C.C. Rcd. 22,466 at 22,478, 1998 WL 758441 (F.C.C.).

service" provider eliminates Core from local exchange carrier status and, indeed, any status as a telecommunications carrier.

In summary, Core is not offering exchange service by any definition, is not providing competitive local exchange service, and, indeed, is not providing "telecommunications" services at all.

A grant of Core's Petition seeking to convert the compensation for interexchange, VNXX-based, ISP-bound calls from the existing access regimes into "local" calls subject to reciprocal compensation would require this Commission to abandon its deliberate approach and embrace an entirely new form of regulatory arbitrage associated with ISP traffic. Such a result would be in direct contradiction to the efforts by this Commission and state commissions to curb reciprocal compensation abuses[46] by entities, like Core, whose business plans revolve exclusively around collecting compensation for ISP-bound traffic.[47] Indeed, Core has converted the Commission's ISP series of orders, designed to stop reciprocal compensation schemes,[48] into an even more virulent strain of that particular virus by using VNXX.

IV. COMPETITION IS VIBRANT IN RURAL PENNSYLVANIA

Core will most likely argue in response that it represents the forces of local competition. This is a myth designed to perpetuate Core's receipt of benefits offered to

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[46] *See e.g., Qwest Corporation v. Level 3 Communications, LLC.* Order No. 06-037 (Oregon Public Utility Commission), January 30, 2006.

[47] As Core reported to the PA PUC in its 2004 Annual Report, but for $10,000 cash on hand, Core's entire accounts receivable consisted of an uncollected, and challenged, amount due from another carrier for reciprocal compensation for the termination of ISP-bound traffic.

[48] The inflation of local terminating traffic and the tremendous imbalances in compensation was the principal topic of the ISP Orders. CLECs were collecting huge amounts of ILEC-owed reciprocal compensation for local terminating access by creating a local traffic imbalance based upon longer ISP holding times. *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Declaratory Ruling and Notice of Proposed Rulemaking released February 26, 1999 ("*First ISP Order*").

CLECs under the Telecommunications Act of 1996.

There is a surfeit of real competition in Pennsylvania that is energetic and expanding exponentially. New technologies have enabled various providers – many of which are not traditional wireline telecommunications providers – to offer services using their existing platforms. These competitors to traditional land line service are relying on unregulated technologies and applications that make possible such services as messaging on the go, high speed data connections, cable telephone, VoIP, e-mail, and instant messaging.

The regulated LEC community in Pennsylvania faces in-territory, facilities-based competition today from wireless carriers, facilities-based CLECs, satellite companies and cable companies:

- **Wireless providers** serve over seven million consumers in Pennsylvania, a **penetration rate in excess of 56%**.
- **Cable companies pass approximately 90%** of the homes in Pennsylvania.
- **Satellite competition covers 100%** of Pennsylvania.
- **CLECs operate more than 1.4 million lines** in Pennsylvania.[49] The Commission reported that CLECs served **23% of all wireline access lines** in Pennsylvania as of June 30, 2005, exhibiting significant growth year over year.[50]
- Customers have access to **Voice over Internet Protocol ("VoIP")** service providers available through broadband connections provided by the PTA companies, competing cable companies and other broadband providers.

Although the PTA Companies have no way of measuring actual market loss to these competitors, most ILECs have been experiencing **line loss** over the last three years, after decades of line gain. Six percent of phone users no longer subscribe to any wireline phone connection at all, instead relying completely on cellular services.

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[49] *PA PUC Keystone Competition*, Winter 2004 at 7.

[50] *Local Telephone Competition: Status as of June 30, 2005,* Wireline Competition Bureau Report released April 2006, Tables 7 and 9.

High speed connections are growing quickly in Pennsylvania, as the Commission staff recently reported.[51] There are 70 broadband service providers operating in Pennsylvania, including: 35 ADSL, 17 SDSL, 19 Traditional Wireline, 19 Cable Modem, 12 Fiber, and 8 Fixed Mobile.[52] ILECs and cable companies are making broadband widely available in Pennsylvania with 74% xDSL availability where the ILECs offer local telephone service and 89% cable modem availability where cable systems offer cable TV service.[53] Penetration is growing quickly in Pennsylvania from 71,926 at year end 1999 to 1,602,716 as of June 2005.[54]

Dial-up (i.e., "narrowband") Internet access is widely available on a local call basis in Pennsylvania also. With respect to dial-up service, most RLECs offer Internet access and there are a multitude of independently-owned local ISPs operating in the territories also. These ISPs have a true local presence and can be dialed on a local basis or have connection through a legitimate 800 number to establish an expanded toll free calling scope.

V. THE PUBLIC INTEREST IS NOT SERVED BY GRANTING CORE'S PETITION

At this point, it should be apparent that there is no public interest served by granting Core's petition. Pennsylvania local exchange carriers will lose hundreds of millions of dollars in access revenues upon which they depend to provide universal service at affordable rates. The result sought by Core is nothing other than a complete, unilateral revocation of the historic pricing agreement upon which regulators and the

[51] *High-Speed Services for Internet Access: Status as of June 30, 2005*, FCC Industry Analysis and Technology Division Wireline Competition Bureau Report released April 2006.
[52] *Id.* at Table 8. The 70 service provider figure represents an unduplicated total.
[53] *Id.* at Table 14.
[54] *Id.* at Table 10.

industry have relied, without the substitution of any alternative mechanism for achieving the still-vital policy of universal service. Core proposes, instead, to simply discontinue the LECs' revenues, supplanting it with a financially crippling expense that the carriers that are providing true local service would pay to Core for its own economic benefit. Wireline customers, faced with a doubling and even tripling of rates, would likely abandon their carriers forcing even more sudden declines in LEC finances. This draconian proposal would fiscally devastate the local exchange carrier community and dispossess the customers who rely upon them.

Core's proposition that this result is beneficial to competition is a fiction. The Petitioner is not a local exchange carrier and is totally devoid of any local presence. The only benefit is to Core's own dubious business plan, which offers a large dial-up originating area at discounted rates (which Core is able to offer due to the reciprocal compensation payments it receives from the originating local exchange carrier). This wholly lacks any "public benefit" given the consequences that would be visited upon the local exchange carrier community. There is no lack of Internet dial-up access existing now. There is no argument by Core that its ISP customers even pass along to subscribers the reciprocal compensation-based discounts that it offers to the ISPs.

Moreover, dial-up is a fading business. Broadband access is growing exponentially and dial-up traffic is diminishing.[55] It makes absolutely no sense to attempt to resuscitate a business segment that is dying by killing the host.

[55] In 2004, this Commission noted that: "Recent industry statistics indicate, however, that this expansion is not likely to occur given declining usage of dial-up ISP services. For example, one recent report suggests that the number of end users using conventional dial-up to connect to ISPs is declining as the number of end users using broadband services to access ISPs grows." *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Remand Order*, WC Docket No. 03-171, Order released October 18, 2004 at para. 20

Public policy is focused on the goal of ubiquitous broadband availability. All *Pennsylvania ILECs* have committed themselves, under a 2004-enacted state law, to provide ubiquitous 1.544 Mbps service as the minimum bandwidth capability for broadband service throughout their telephone company network. The vast majority have agreed to do so by the end of 2008. The Pennsylvania General Assembly recognized the nexus between the transition to broadband availability and the retention of universal service when it stated that "it is the policy of this Commonwealth to . . . [m]aintain universal telecommunications service at affordable rates while encouraging the accelerated . . . deployment of a universally available, state-of-the-art, interactive broadband telecommunications network" throughout the Commonwealth.[56]

VI. CONCLUSION

For the foregoing reasons, the PTA requests that the Commission deny Core's Petition.

Respectfully Submitted,

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[56] 66 Pa. C.S. § 3011(2).