

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
CORE Communications, Inc.) WC Docket No. 03-171
Petition for Forbearance under)
47 U.S.C. Section 160(c) from)
Application of the ISP Remand)
Order)

To: The Commission

WITHDRAWAL OF CONDITIONAL PETITION FOR RECONSIDERATION

Qwest Corporation (“Qwest”) hereby formally withdraws its pending Conditional Petition for Reconsideration in the above-captioned docket, filed November 10, 2004.

The Conditional Petition requested that the Federal Communications Commission (“Commission”) formally state that its analysis in the *Core Forbearance Order*¹ constituted the official explanation of action denying the Core Petition called for in Section 10(c) of the Communications Act.² When the *Core Order* was released, Core Communications (the original petitioner) filed a “complaint for declaratory relief” with the D.C. Circuit Court of Appeals, claiming that its petition had been granted as a matter of law and requesting a declaration to that effect. Core argued that the passage of fifteen months between the filing of its petition and the issuance of an order of denial had deprived the Commission of all jurisdiction over the petition, and that the Commission was without power to take any further action with regard to the relief addressed in the petition (and in the *Core Order*), and that the *Core Order* was a nullity. Qwest

¹ *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Remand Order*, Order, 19 FCC Rcd 20179 (2004) (“*Core Order*”), *pets. for review denied*, 455 F.3d 267 (D.C. Cir. 2006), and *petition for writ of mandamus dismissed*, Order (D.C. Cir. June 30, 2006), and *pet. for reh’g and reh’g en banc denied*, Order and Statement (*per curiam*) (D.C. Cir., Oct. 13, 2006).

² 47 U.S.C. § 160(c).

was concerned that this position, if accepted, would leave other parties to the proceeding without appellate rights in case it were to be determined that no appeal could lie in the absence of a formal order actually acting on the petition. As, under Core's theory, the *Core Order* had been issued after the Commission had been deprived of jurisdiction over the Core petition, appeals could not lie from that *Order* because the Commission had no jurisdiction to issue it. However, Qwest, as an interested party, had the right to seek reconsideration of an action that occurred as a matter of law as well as one that had been taken by direct Commission action.³ Accordingly, the Commission, even if the *Core Order* itself were untimely, nevertheless retained jurisdiction to reconsider actions taken as a matter of law as well as per formal decision, and it clearly had the right to issue the *Core Order* as one on reconsideration in response to Qwest's Conditional Petition. Thus, if the *Core Order* had been reissued as a reconsideration order, then an appealable order would have existed that resolved any questions of whether an appealable order had been issued. Qwest's Conditional Petition was expressly predicated on these assumptions.

The Core appellate litigation has now been finally resolved,⁴ and Qwest's concerns have proven unfounded. Thus, there is no longer a need for Qwest's Conditional Petition for Reconsideration.

³ See *Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations*, Report and Order, 6 FCC Rcd 7297, 7300, n.40 (1991).

⁴ See note 1, *supra*.

Accordingly, Qwest hereby formally withdraws its Conditional Petition for Reconsideration.

Respectfully submitted,

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January 23, 2007

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **WITHDRAWAL OF CONDITIONAL PETITION FOR RECONSIDERATION** to be 1) filed with the FCC, via its Electronic Comment Filing System in WC Docket No. 03-171, 2) served, via email on the FCC's duplicating contractor, Best Copy and Printing, Inc. at fcc@bcpweb.com and 3) served via First Class United States Mail, postage prepaid, on the parties listed on the attached service list.

/s/ Richard Grozier

January 23, 2007

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