CenturyLink™

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February 15, 2013

VIA OVERNIGHT MAIL

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Petition of Core Communications, Inc. for an Arbitration of Interconnection Rates, Terms and Conditions with The United Telephone Company of Pennsylvania d/b/a Embarq (now d/b/a CenturyLink) Pennsylvania Pursuant to 47 U.S.C. §252(b)
Docket No. A-310922F70002

Dear Secretary Chiavetta:

Pursuant to the Commission's Secretarial Letter dated October 4, 2012, on behalf of The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink (hereinafter "CenturyLink"), enclosed please find for filing PROPRIETARY and PUBLIC versions of CenturyLink's Supplemental Reply Brief and the Affidavit of Guy Miller.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Sue Benedek
Attorney ID: 60451

ZEB/jh
Enclosures
cc: Certificate of Service
The Honorable Robert F. Powelson, Chairman *(via first-class mail)*
The Honorable John F. Coleman, Vice Chairman *(via first-class mail)*
The Honorable James H. Cawley, Commissioner *(via first-class mail)*
The Honorable Wayne E. Gardner, Commissioner *(via first-class mail)*
The Honorable Pamela A. Witmer, Commissioner *(via first-class mail)*

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Core Communications, Inc. for Arbitration of Interconnection Rates, Terms and Conditions with The United Telephone Company Of Pennsylvania LLC *d/b/a* Embarq Pennsylvania Pursuant to 47 U.S.C. §252(b)	:	Docket No. A-310922F70002

SUPPLEMENTAL REPLY BRIEF THE UNITED TELEPHONE COMPANY OF PENNSYLVANIA LLC d/b/a CENTURYLINK

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Dated: February 15, 2013

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INTRODUCTION

The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink ("CenturyLink")[1] submits this Supplemental Reply Brief to the Supplemental Initial Brief, Issues Matrix, and Technical Evidentiary Affidavit submitted on behalf of Core Communications, Inc. ("Core") on January 11, 2013. While CenturyLink has submitted pleadings as requested by the Commission's Secretarial Letter, CenturyLink continues to raise concerns with the use of "Technical Affidavits."[2]

A. Potential Impact of the *USF/ICC Transformation Order*

1. Core's threshold view of the *USF/ICC Transformation Order* is deeply flawed.

Core states that the centerpiece of the *USF/ICC Transformation Order*[3] is a comprehensive framework for "the reduction of all ICC charges to zero, or 'bill and keep' over a multi-year period."[4] Core's sweeping threshold view of the *USF/ICC Transformation Order* is misguided.

The FCC did not require all intercarrier compensation rates to move to bill and keep. The *USF/ICC Transformation Order* capped intrastate originating switched access rates for price cap companies, but did not order originating access reductions.[5] The FCC

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[1] During the initial phase of this docket, and occasionally in this Supplemental Brief, CenturyLink is referred to as "Sprint" or at times "Embarq PA." For purposes of this Supplemental Reply Brief and any resulting agreement, any references to "Sprint" or "Embarq PA" should be construed to mean The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink.

[2] *See*, CTL Suppl. I.B. at p. 2.

[3] *See, In re Connect America Fund, et al.*, WC Docket No. 10-90 *et al* (FCC, Rel. November 18, 2011), Report and Order and Further Notice of Proposed Rulemaking, *slip op.* FCC 11-61, 26 FCC Rcd 17663 (2011), and subsequent Reconsideration and Clarification Rulings *(collectively "USF/ICC Transformation Order").*

[4] Core Suppl. I.B. at p. 1 *(emphasis added).*

[5] This Commission also recently stayed provisions of its RLEC switched access decisions pertaining to reform of originating access charges until further Order of the Commission. *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal*

stated an intention to address originating access charges at the conclusion of the transition to the new intercarrier compensation regime.[6] At some future point in time, the FCC may release a further notice of proposed rulemaking on the subject of originating access.

Moreover, while the *USF/ICC Transformation Order* proscribed a transitional path to reduce the level of terminating switched access charges, with the ultimate goal of achieving bill and keep as the compensation scheme for all traffic after the passage of approximately 6 years,[7] the *Order* has not altered the definition of traffic that is subject to terminating access charges nor eliminated the distinction between traffic that is "local" for purposes of applying reciprocal compensation charges and traffic that is interexchange for purposes of applying access charges.[8] Requiring the parties' resulting interconnection agreement on Day 1 to assume the eventual end point of the FCC's transitional glide path, including the imposition of bill and keep on all interexchange traffic, is simply reckless and completely unsupportable.

It is critical that the Commission does not get ahead of the FCC's transitional glide path as Core seeks. The Commission's rulings on the intercarrier compensation issues in this proceeding must be consistent with the FCC's long-standing "end-to-end" analysis and continue to determine the proper jurisdiction for intercarrier compensation

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Service Fund Docket No. I-00040105, *AT&T Communications of Pennsylvania, et al. v. Armstrong Telephone Company – Pennsylvania et al.* Docket No. C-2009-*2098380, et al.*, and *Implementation of the Federal Communications Commission's Order of November 18, 2011 as Amended or Revised and Coordination with Certain Intrastate Matters* Docket No. M-2012-2291824, Opinion and Order at p. 7 ("in view of the further FCC actions contemplated in the area of originating access reform, we will not at this time take any actions affecting intrastate switched carrier access rates for originating traffic.").

[6] *FCC USF/ICC Transformation Order* at ¶ 1298, *slip. op.* at 446-447, 26 FCC Rcd 18109-18110. As the Commission is aware, the FCC's order is subject to appellate review.

[7] The parties have agreed that their interconnection agreement will be effective for an initial 2-year period, but can be continued for another 2-year period unless a party terminates as set forth in the agreement. Joint Exhibit 2 at p. 22. As the Commission is aware, the resulting agreement would be subject to opt-in by other carriers.

[8] CTL Suppl. I.B. at pp. 9-13.

purposes on the physical end points of a call. Contrary to what Core advocates, there was nothing in the FCC's *USF/ICC Transformation Order* that altered the manner in which applicable jurisdiction is determined for intercarrier compensation.

It is evident that Core's flawed positions and efforts to blur distinctions between jurisdictional traffic types have not changed over the intervening years, nor have the traffic balances between the parties changed. Specifically, in the CenturyLink PA markets, Core still terminates overwhelmingly one-way ISP-bound traffic.[9] When distilled, Core's extreme and self-serving positions simply continue Core's past record positions and strategies of seeking:

(1) to broaden the definition of traffic subject to terminating compensation to "all terminating traffic"[10] at Issues 1, 8/VNXX and 8/VoIP. Not surprisingly, this strategy benefits Core as Core still originates little to no traffic terminating to CenturyLink. Clearly, Core's goal in this proceeding is to generate a terminating revenue stream from CenturyLink for the one-way, VNXX-enabled, ISP-bound traffic that Core continues to terminate from CenturyLink;[11]

(2) to advocate a skewed interpretation of the FCC's mirroring rule and other requirements of the *ISP Remand Order* whereby CenturyLink continues to subsidize Core's operations, not only from a transport perspective, but also from the perspective of terminating usage (Issues 6 and 7);

[9] Affidavit of Guy Miller (1/11/2013) at p. 5.
[10] Core Suppl. I.B. at p. 3.
[11] ALJ R.D. at pp. 15-16.

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(3) to seek TELRIC pricing (Issue 10) for facilities used to interconnect with CenturyLink's network when the facilities are carrying virtually all VNXX-enabled interexchange traffic; and

(4) to continue to foist costs and expenses onto CenturyLink regarding Core's "alternative solutions" concerning interconnection (Issues 2 and 9).

The *USF/ICC Transformation Order* simply does not support Core's flawed views that would allow Core to continue to rely upon CenturyLink's network for terminating VNXX-enabled interexchange traffic and to continue to support Core's business plan that is based on a terminating compensation and access avoidance arbitrage.

2. The ALJ's recommendations rejecting Core's positions on the main compensation issues (Issues 1, 6, 7 and 8/VNXX) in this proceeding remain valid and are unaffected by the *USF/ICC Transformation Order.*

Issue 8/VNXX

Core cites to paragraph 761 of the *USF/ICC Transformation Order*, claiming that the FCC "once again" affirmed that Section 251(b)(5) traffic is not limited to local traffic distinctions for VNXX-enabled traffic.[12] CenturyLink has thoroughly addressed this issue and the position that VNXX-enabled ISP-bound traffic is not compensable under Section 251(b)(5), rather this traffic is interexchange traffic and subject to CenturyLink's originating access charges.[13]

As to paragraph 761 and the FCC's *USF/ICC Transformation Order*, despite bringing all telecommunications traffic within the scope of Section 251(b)(5), the FCC continued the application of switched access charges to interexchange traffic that has

[12] Core Suppl. I.B. at p. 2.
[13] CTL M.B. at pp. 51- 62.

historically been subject to access charges. As addressed above, while the *USF/ICC Transformation Order* has set in motion significant changes to the intercarrier compensation scheme for terminating compensation rates, the *Order* has not altered the definition of traffic that is subject to access charges nor eliminated the long-standing end-to-end analysis for determining the jurisdiction of traffic for intercarrier compensation purposes. The ALJ correctly agreed with CenturyLink's position on Issue 8 (VNXX) and determined as follows:

> After reviewing the evidence and law in this case, I find in favor of Embarq for the same reasons that I ruled in its favor on Issue 1. Core's position is not consistent with the ISP Remand Order. The ISP Remand Order addresses ISP-bound traffic only within a local calling area. Core's position is that it includes any ISP-bound traffic, including VNXX traffic. Embarq would have to pay Core reciprocal compensation for all its traffic. Embarq's customers would ultimately bear this burden.[14]

The FCC's *USF/ICC Transformation Order* does not impact the ALJ's recommendations regarding Issue 8 (intercarrier compensation for VNXX traffic). The *USF/ICC Transformation Order* does not explicitly address the issue of intercarrier compensation for VNXX traffic (ISP-bound or otherwise). Indeed, as more fully addressed in CenturyLink's Supplemental Initial Brief, the FCC in the *USF/ICC Transformation Order* makes a number of statements that support CenturyLink's position on the controlling nature of geographic end points for determining appropriate intercarrier compensation.[15]

[14] ALJ RD at p. 33.
[15] CTL Suppl. I.B. at pp.7-12.

Issues 6 & 7 (Reciprocal Compensation - ISP-Bound Traffic)

Consistent with Core's self-serving and flawed positions as addressed above, Core contends that the same paragraph 761 of the *USF/ICC Transformation Order* justifies a "classification which now includes all terminating telecommunications."[16] Core further contends that the FCC's "expansion of section 251(b) traffic to include traditionally 'access' or 'toll' traffic expands the universe of traffic" which CenturyLink must offer the FCC's mirroring rate of $0.0007/MOU.[17]

It is somewhat difficult to understand Core's argument concerning the effect of the *USF/ICC Transformation Order* on the compensation applicable to ISP-bound traffic. The *USF/ICC Transformation Order* did not alter anything with respect to ISP-bound traffic, other than to make such traffic subject to a glide path leading to an eventual bill & keep framework for terminating compensation. The *ISP Remand Order* itself envisioned the bill and keep end state for such highly imbalanced traffic, and the *USF/ICC Transformation Order* simply established the next steps toward achieving the FCC's goal.

Core's arguments concerning ISP-bound traffic and the compensation framework that applies to such traffic are flawed for a number of additional reasons. First, the *ISP-Remand Order* established a 3:1 ratio as a rebuttable presumption for the relative amounts of voice traffic and ISP-bound traffic, but the presumption only comes into play if the CLEC rejects an offer by the ILEC to apply the *Order's* interim $0.0007/MOU rate to traffic below the 3:1 ratio. Second, even if Core rejected such an offer, with the

[16] *Id.*, at pp. 2-3.
[17] *Id.*, at p. 2.

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intention of charging full reciprocal compensation rates for any ***voice*** traffic that Core terminates, Core would not be able to avail itself of the 3:1 presumption under the *ISP Remand Order* since the presumption is rebuttable. Indeed, Mr. Miller has demonstrated that 96% of the traffic that CenturyLink sends to Core for termination is ISP-bound traffic. Moreover, CenturyLink's data reflects *****BEGIN CONFIDENTIAL***** [redacted] *****END CONFIDENTIAL***** routed by Core to CenturyLink for termination.[18] Finally, the FCC and several federal circuit courts have affirmed that the *ISP Remand Order* only applied to ISP-bound traffic that was terminated to servers located within the same local calling area from which such traffic originated. None of the traffic at issue in this proceeding falls within the ambit of those facts since it is VNXX traffic that is terminated outside of the local calling area.

Core is simply wrong to suggest that the *USF/ICC Transformation Order* broadens the scope of the *ISP Remand Order* and requires VNXX traffic (ISP-bound or voice) to be immediately terminated at the rates that apply to local traffic, whether by virtue of the mirroring rule or otherwise. As CenturyLink has amply demonstrated, the *USF/ICC Transformation Order* did not eliminate distinctions between local and interexchange traffic, nor did it eliminate the different rates that are applicable to the different types of traffic. Further, the *USF/ICC Transformation Order* only placed a cap on originating access rates, but did not make such originating access rates subject to the glide path. This is especially noteworthy because CenturyLink is entitled to charge such originating access for the traffic that Core is terminating to its ISP customers in distant

[18] *See*, Reply Affidavit of Guy Miller at pp. 1-2.

wire centers using VNXX arrangements, as the ALJ correctly concluded. It defies credulity for Core to argue that the Commission should (1) immediately impose a bill and keep framework upon all traffic terminated by CenturyLink while at the same time contending that (2) CenturyLink should have to forego originating access on interexchange VNXX traffic that is terminated by Core, and (3) that Core is not subject to a bill and keep framework for the traffic it terminates and may instead charge CenturyLink for terminating traffic even if that traffic isn't local. As already noted, the *USF/ICC Transformation Order* simply did not create the world that Core imagines, where all its arbitrage-related dreams come true.

As to Core's claims regarding the affect of the *USF/ICC Transformation Order* on the application of FCC's mirroring rule, Core's appears to be regurgitating the same contorted application of the FCC's mirroring rule that it argued in its Main Brief, although now expanded to "all terminating traffic" based on Core's overreaching interpretation of the *USF/ICC Transformation Order*.[19] To be clear, the *ISP Remand Order* requires that if CenturyLink opts-in to the FCC's interim compensation scheme in the *ISP Remand Order* then Core has the option to either accept CenturyLink's opt-in offer to mirror the FCC's $0.0007 rate for both local ISP-bound and local voice traffic, or to reject that mirroring, in which case reciprocal compensation rates apply to all local voice traffic exchanged by the parties (up to a 3:1 ratio for traffic terminated by Core).[20]

Core continues to wrongly interpret that mirroring of terminating rates is a result driven entirely by CenturyLink's election to offer the mirroring option to Core and that

[19] Core Suppl. I.B. at p. 3.
[20] *See, e.g.*, CTL M.B. at pp. 33-35, 37-41.

Core does not have a responsibility to either accept or reject CenturyLink's offer to terminate local voice traffic at the same $0.0007 rate that Core must charge to terminate local ISP-bound traffic. Furthermore, Core is wrong in its apparent interpretation of the *USF/ICC Transformation Order*, insinuating as Core does that because the *Order* has expanded the definition of Section 251(b)(5) traffic to now include "all [interexchange and local] terminating traffic" CenturyLink would be limited to charging $0.0007 for all terminating traffic "should CenturyLink elect to mirror."[21] Core's novel new argument is less than clear. Core's assertion that mirroring "in these new circumstances . . . will hasten reductions in overall intercarrier compensation ("ICC") levels that much sooner," however, should be read in concert with Core's erroneous argument that because the *USF/ICC Transformation Order* has expanded the universe of traffic that legally falls within Section 251(b)(5), there also has been an elimination of access charges and elimination of the need to distinguish between local and interexchange traffic. As discussed above, Core's overbroad interpretation of the *USF/ICC Transformation Order* simply does not stand up to the plain language of the *USF/ICC Transformation Order*.

Affidavit of Bret Mingo

Bret L. Mingo claims to "estimate that some 10-15% of all the traffic Core terminates in Pennsylvania is voice traffic, not ISP-bound traffic."[22] It is interesting upfront to emphasize what Mr. Mingo's carefully worded affidavit omits. Mr. Mingo does not state that Core terminates CenturyLink-originated traffic by such an estimated level. He states this 10-15% estimate applies to "all the traffic Core terminates in

[21] Core Suppl. I.B. at p. 3.
[22] Affidavit of Bret Mingo (1/11/2013) at ¶ 4.

Pennsylvania." This estimate could involve originated traffic from other carriers and thus has no relevance to CenturyLink or to the issues in this proceeding.

Furthermore, as Mr. Guy Miller in his affidavit addresses, CenturyLink's SS7 data indicates that Core is currently only sending CenturyLink ***BEGIN CONFIDENTIAL*** [redacted] ***END CONFIDENTIAL*** in voice minutes per month, making Core's current originating traffic almost irrelevant to the issues addressed in this proceeding.[23] Mr. Guy Miller states, SS7 data stills indicate that well over 96% of the traffic CenturyLink currently sends to Core continues to be ISP-bound traffic.[24] Similiarly, in the record below, virtually all of the traffic originated by CenturyLink and terminated by Core (96.7%) was ISP-bound traffic subject to Section 251(g)'s jurisdictional carve-out in the *ISP Remand Order*.[25] In the intervening years, clearly not much has changed. As Mr. Miller addresses, the SS7 data confirms calls answered by a modem tone.[26] Clearly, Core terminated traffic relative to CenturyLink remains interexchange traffic.

The Commission in rejecting Mr. Mingo's generalized assertions must remain mindful of a key policy objective underlying the *ISP Remand Order*. As the FCC noted:

> We believe that this situation is particularly acute in the case of carriers delivering traffic to ISPs because these customers generate extremely high traffic volumes that are entirely one-directional. Indeed, the weight of the evidence in the current record indicates that precisely the types of market distortions identified above are taking place with respect to this traffic. . . . There is nothing inherently wrong with carriers having substantial traffic imbalances arising from

[23] Reply Affidavit of Mr. Guy Miller at pp. 1-2.
[24] *Id.*, p. 2.
[25] CTL M.B. at pp. 8, 56; CTL R.B. at p. 50. *See also*, 47 U.S.C. §251(g).
[26] The determination of ISP-bound versus voice minutes for traffic between Core and CenturyLink is based on an SS7 system tracking analysis that utilizes both hold times and dialed telephone number.

> a business decision to target specific types of customers. In this case, however, we believe that such decisions are driven by regulatory opportunities that disconnect costs from end-user market decisions. Thus, under the current carrier-to-carrier recovery mechanism, it is conceivable that a carrier could serve an ISP free of charge and recover all of its costs from originating carriers. This result distorts competition by subsidizing one type of service at the expense of others.[27]

Twelve years after the *ISP Remand Order*, this is still the game Core seeks to play with its selective interpretations of FCC orders and its contorted application of the FCC's mirroring rule, including its attempt to blur traffic classifications. The *ISP Remand Order's* objective was to remedy the arbitrage that carriers like Core create with one-directional, high volume traffic due to their exclusive focus on serving ISPs and the accompanying over-reliance upon revenues from intercarrier compensation.

3. Use of physical geographic endpoints of traffic is not a "quixotic quest."

Core attempts to downplay as infeasible or outmoded for "the mobile and web world" the use of geographic end points for determining intercarrier compensation.[28] As addressed in CenturyLink's Supplemental Initial Brief, the *USF/ICC Transformation Order* supports CenturyLink's position that the originating and terminating geographic end points of calls are still controlling for determining intercarrier compensation.[29]

Several prior decisions by this Commission have also reinforced that geographic end points of a call matter and/or that geographic end points dictate compensation requirements. For example, in a 2003 decision concerning a complaint brought by Level 3 and involving a rural ILEC, the Commission ruled that the physical originating and

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[27] *ISP Remand Order*, at ¶ 5 *(emphasis added)*.

[28] Core Suppl. I.B. at p. 7. Further, Core at footnote 2 cites to the Commission's decision in the recent Core/AT&T complaint proceeding. Core admits that the use of an alleged NPA-NXX analysis to determine locally-dialed ISP-bound traffic was not a contested issue.

[29] CTL Suppl. I.B. at pp. 9-10.

terminating point of the call, in that case interstate, was determinative rather than Level 3's number assignment practices.[30] Moreover, in the US LEC / Verizon arbitration involving VNXX issues, the Commission disregarded the associated rate center fiction of VNXX and stated as follows:

> Although the calls that are made to VNXX telephone numbers appear to be local to the end-user caller, the location of the calling and called parties leads us to conclude that they are in the nature of interexchange calls that TA-96 would remove from reciprocal compensation obligations. Based on an "end-to-end" analysis of a VNXX call, the physical locations of the caller and called party are in two different exchanges that may not be local to each other. As a result, we are of the opinion that calls to VNXX telephone numbers should not be subject to reciprocal compensation. As noted by the FCC, it has traditionally determined the jurisdictional nature of a call by its origination and termination points or end points, and not by its telephone number assignment. [Citation omitted.][31]

The Commission in the 2003 US LEC arbitration proceeded to cite verbatim to a Florida Public Service Commission decision as follows:

> We believe that the classification of traffic as either local or toll has historically been, and should continue to be, determined based upon the end points of a particular call. We believe this is true regardless of whether a call is rated as local for the originating end user (e.g., 1-800 service is toll traffic even though the originating customer does not pay the toll charges) . . . We agree with BellSouth witness Ruscilli that calls to virtual NXX customers located outside the local calling area to which the NPA/NSS is assigned are not local calls.[32]

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[30] *Level 3 Communications, LLC v. Marianna and Scenery Hill Telephone Co.*, 98 PA PUC 1 (2003), slip op. at p. 9. The Level 3 decision involved calls terminated outside the local exchange on an interstate toll basis (calls originated in Pennsylvania and terminated in Maryland.)

[31] *Petition of US LEC of Pennsylvania, Inc. for Arbitration with Verizon Pennsylvania Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. A-310814F7000, Opinion and Order entered April 18, 2003, at pp. 61-62 ("*US LEC*").

[32] *Id., at pp. 62-63. See also, Petition of Global NAPs South, Inc. For Arbitration pursuant to 47 U.S.C. §252(b) of Interconnection Rates, Terms and Conditions with Verizon Pennsylvania Inc.*, Docket No. A-310771F7000, Opinion and Order entered April 21, 2003, at pp. 45-49.

The Commission ruled that a call using a VNXX number assigned to an interexchange location is not a local call for voice traffic (and excluded ISP traffic).[33] The Commission, however, directed that, as an interim determination, such traffic be compensated on a "bill and keep" basis.[34]

Finally, Core claims that in the Commission's recent Core/AT&T case, the Commission accepted an uncontested NPA-NXX analysis used to identify "locally-dialed ISP-bound traffic" and resolve related compensation issues.[35] The Core/AT&T complaint case cited by Core is inapposite to the proper determination of jurisdiction and rating of traffic exchanged between an ILEC and a CLEC. [36] CLEC calling scopes are generally wider than that of ILECs.[37] Indeed, in the *RTC/Core CLEC certification case* discussed below, the Commission in relying upon Core's representations, noted that "all calls handled by Core originate and terminate on a local basis in the same LATA."[38] While arguably a potentially common point in a CLEC-to-CLEC dispute whereby those CLECs have LATA-wide carrier local scopes, any such analysis that may have been used by AT&T and Core is irrelevant to this ILEC/CLEC arbitration.

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[33] *Id.*, at 57, fn. 46 ("The *ISP Remand Order* has virtually preempted state commission rate authority over intercarrier compensation for ISP-bound traffic. Thus, our determination is limited to voice traffic only.").
[34] *US LEC, supra,* at p. 58.
[35] Core Suppl. I.B. at p. 7, fn. 2.
[36] *Core Communications, Inc. v. AT&T Communications of PA, LLC and TCG Pittsburgh, Inc.,* Docket Nos. C-2009-2108186, C-2009-2108239, Opinion and Order, entered December 5, 2012 ("*Core v. AT&T*"). AT&T has filed an action in Federal Court (Eastern District), docketed at Case No. 2:12-cv-07157. Petitions for reconsiderations are also pending before the Commission.
[37] Reply Affidavit of Guy Miller at p. 4.
[38] *RTC/Core CLEC Certification Order, infra,* at p. 31. *See also, Rural Telephone Company Coalition v. Pennsylvania Public Utility Commission,* 941 A.2d 751, 758 fn. 10 ("...Core defines a prescribed local calling area as LATA-wide.").

4. The FCC's *USF/ICC Transformation Order* does not support inclusion of VoIP traffic (Issue 8) into Core's compensation scheme.

Core seeks to further expand Core's definition of traffic subject to reciprocal compensation (Issue 1) to include all VoIP traffic (Issue 8/VoIP). Core now proposes a new definition of "Non-Access Reciprocal Compensation" so as to apply reciprocal compensation to toll VoIP-PSTN traffic, citing paragraph 943 of the *USF/ICC Transformation Order.*[39] Per Core, the *USF/ICC Transformation Order* creates a rule that includes "locally-dialed VOIP-PSTN traffic...and mandate[s] that the parties compensate each other at TELRIC rates."[40]

The FCC did not "mandate that the parties compensate each other at TELRIC rates" for locally-dialed VoIP-PSTN traffic as Core contends.[41] However, the *USF/ICC Transformation Order* did establish "transitional rules specifying, prospectively, the default compensation for VoIP-PSTN traffic."[42] Specifically, the FCC's transitional rules specify the appropriate access rates and reciprocal compensation default rates for "toll" and "non-toll" VoIP traffic, respectively. As CenturyLink explained in its Supplemental Initial Brief, CenturyLink has provided Core with CenturyLink's standard interconnection agreement language to implement the VoIP traffic compensation scheme in the *USF/ICC Transformation Order.*[43] The VoIP language proposed to Core, and set forth at Attachment A, is consistent with the *USF/ICC Transformation Order's* requirement that the access charge regime applies to interexchange "toll" VoIP traffic

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[39] Core Suppl. I.B. at p. 3.
[40] *Id.*, at at p 4, *also citing* 47 C.F.R. §51.701(b).
[41] Core claims that while "toll" VoIP traffic is addressed in tariff filings, "other VoIP-PSTN traffic" should be addressed in the parties' interconnection agreement – *i.e.*, should be subject to TELRIC pricing per Core. Core Suppl. I.B. at p. 4.
[42] *USF/ICC Transformation Order*, ¶¶ 943 – 945. *See also*, 47 C.F.R. §913.
[43] *See generally*, CTL Suppl. I.B. at pp. 12-13.

(albeit capped at interstate access rates) and utilizes measures and proxies to determine geographic endpoints. As Mr. Guy Miller notes in his accompanying affidavit, other carriers in Pennsylvania and elsewhere have agreed to CenturyLink's amended VoIP language.[44]

Issue No. 8 (VoIP compensation) is resolved given the FCC's *USF/ICC Transformation Order*. CenturyLink's proposed contract language to implement the FCC's *USF/ICC Transformation Order* should be approved.

B. Potential Impacts of Other FCC and State PUC or Court Decisions

1. The *AT&T v. Pac-W* case cited by Core regarding Issues 6 and 7 is inapplicable.

As discussed above in connection with Core's arguments about the impact of the *USF/ICC Transformation Order*, CenturyLink maintains that Core is not permitted to charge CenturyLink $.01/MOU for Section 251(b)(5) traffic while being permitted to pay CenturyLink $0.0007/MOUs for the same type of traffic. This was characterized in the arbitration below as a dispute over the "mirroring rule" in the FCC's *ISP Remand Order*. None of CenturyLink's Pennsylvania interconnection agreements contain a mirroring rule as Core seeks in this case.[45]

Core now claims that a Ninth Circuit Court Court of Appeals decision in *AT&T Communications of Cal., Inc. v. Pac-W. Telecomm, Inc.*, 651F3rd 980 (9th Cir. 2011) ("*AT&T v. Pac-W*") supports Core's view of the FCC's mirroring rule because the Court

[44] Reply Affidavit of Guy Miller at p. 6.
[45] *Id.*

made a finding that "the *ISP Remand Order* imposed a special rule on ILECs only."[46] The Ninth Circuit Court of Appeal's decision in *AT&T v. Pac-W* did find that the FCC's mirroring rule does not apply to CLECs, but the holding in that case certainly does not support Core's argument that it can charge CenturyLink a much higher terminating rate for alleged Section 251(b)(5) traffic when CenturyLink is capped at charging $0.0007 for the same type of traffic.

In order to discuss the implications, or lack thereof, of the *AT&T v. Pac-W* decision it is necessary to recap the parties' positions on the proper application of the interim compensation scheme in the *ISP Remand Order,* including the application of the "mirroring rule." When the FCC established an interim $0.0007 rate for local ISP-bound traffic, it also created a "mirroring rule" at Paragraph 89 of the *ISP Remand Order.* Under the mirroring rule, to the extent the ILEC decides to adopt the FCC's rate regime in a state,[47] as CenturyLink has done in Pennsylvania, CenturyLink first must "offer" to exchange all traffic (local ISP-bound traffic and Section 251(b)(5) local voice traffic) at the $0.0007/MOU rate in that state. If Core accepts CenturyLink's opt-in offer, it creates a mirroring effect. That is, both CenturyLink and Core would pay and receive $0.0007/MOU for both local ISP-bound traffic and Section 251(b)(5) traffic. If Core rejects CenturyLink's opt-in offer, local ISP-bound traffic exchanged between Core and CenturyLink is subject to the FCC's $.0007/MOU, and any other traffic exchanged between the parties which is not deemed to be ISP bound (i.e., traffic below the 3:1 ratio)

[46] Core Supp. I.B. at p. 6, *citing* 651 F.3d at 987. The *AT&T v. Pac-W* case was recently addressed by this Commission in the *Core v. AT&T* case, *infra*, with the Commission in part finding that the nature of the alleged VoIP/ISP-bound traffic matters and must be ascertained. *Core v. AT&T, infra*, Opinion and Order, entered December 5, 2012 at pp. 54-55.

[47] *ISP Remand Order,* ¶ 89.

is subject to reciprocal compensation set forth in the pricing attachment.[48] In either case, the FCC has made clear that whether or not CenturyLink's opt-in offer is accepted or rejected, both CenturyLink and Core pay and receive the same rate for the same type of traffic.[49]

The proper application of the interim compensation scheme in the *ISP Remand Order*, including the "mirroring rule," is explained in detail in CenturyLink's Main Brief.[50] First, Core's interpretation of the mirroring rule ignores the language and the context of the *ISP Remand Order*, particularly the FCC's use of the word "offer" to describe what an ILEC must do if it wants to take advantage of the $0.0007 rate cap for local ISP-bound traffic, and the FCC's requirement that the ILEC must "offer to *exchange all* traffic subject to Section 251(b)(5)" at the same rate.[51] If the FCC had intended to only apply the rate cap to Section 251(b)(5) traffic terminated by the ILEC, as Core argues, the FCC would have said "terminated by the ILEC" rather than "exchange all" such Section 251(b)(5) traffic.

Second, the fact that Core itself sought forbearance from the application of the mirroring rule demonstrates that Core believes that the proper application of the rule limits the rates that Core can charge.[52] Third, as addressed above, Core's position on the mirroring rule is inconsistent with the FCC's continuing objectives as stated in the *ISP Remand Order*, in the *Core Forbearance Order*, and in the *USF/ICC Transformation Order* that intercarrier compensation arbitrage resulting from disparate rates for the same

[48] *Id.*
[49] *Id.*
[50] *See*, CTL M.B. at pp. 54-55.
[51] *ISP Remand Order*, ¶ 89.
[52] CTL M.B at pp. 38-39.

traffic should be eliminated. Fourth, and most important, Core's position is inconsistent with the FCC's other applicable intercarrier compensation rules, notably the FCC's rules on symmetrical reciprocal compensation. The FCC's reciprocal compensation regulations at 47 C.F.R. § 51.711 in pertinent part provide as follows:

> (a) Rates for transport and termination of telecommunications traffic shall be symmetrical, except as provided in paragraphs (b) and (c) of this section. (1) For purposes of this subpart, symmetrical rates are rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC for transport and termination of telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services...
>
> (b) A state commission may establish asymmetrical rates for transport and termination of telecommunications traffic only if the carrier other than the incumbent LEC ... proves to the state commission on the basis of a cost study using the forward-looking economic cost based pricing methodology ... that the forward-looking costs for a network efficiently configured and operated by the carrier other than the incumbent LEC (or the smaller of two incumbent LECs), exceed the costs incurred by the incumbent LEC ... and, consequently, that such that a higher rate is justified.[53]

Under 51.711, therefore, CenturyLink and Core must both pay and receive the same rate for the same category of traffic, absent a showing of higher costs: "[r]ates for transport and termination of telecommunications traffic shall be symmetrical." Core's view would unlawfully allow Core to effectively opt-out of the *ISP Remand Order* and the FCC's symmetry rules by allowing Core to set asymmetrical reciprocal compensation rates for transport and termination that Core charges CenturyLink for the same traffic.[54]

[53] 47 C.F.R §51.711. The FCC's rule addresses rates for transport and termination of "Non-Access Telecommunications Traffic."

[54] As addressed throughout the record and in briefs, CenturyLink maintains that Core is not providing Non-Access Telecommunications Traffic. Therefore, if the Judge and the Commission decide that Core is not

Nothing in the *USF/ICC Transformation Order* affects the ALJ's analysis that led to his rejection of Core's attempt to charge higher terminating rates to CenturyLink under Core's one-sided application of the FCC's mirroring rule. Similarly, nothing in the *AT&T v. Pac-West* decision supports Core's argument that if CenturyLink offers to exchange all Section 251(b)(5) traffic at $0.0007, then CenturyLink is automatically capped at that rate, even for traffic below the 3:1 ratio, while Core may charge CenturyLink a reciprocal compensation rate of $0.01/MOU for terminating not only such traffic below the 3:1 ratio but also potentially any Section 251(b)(5) local voice traffic originated by CenturyLink.

The *AT&T v. Pac-West* case involved a dispute between two CLECs over the applicability of the *ISP Remand Order's* interim intercarrier compensation scheme when two CLECs interconnect. The Ninth Circuit Court of Appeals found that the mirroring rule does not apply to CLECs, but that in general the *ISP Remand Order's* interim intercarrier compensation scheme does apply when two CLECs interconnect.[55] Application of the FCC's mirroring rule in the context of ILEC/CLEC interconnection was not addressed. The Ninth Circuit Court of Appeals never specifically addressed the proposition that Core is advancing here – i.e., for an ILEC to cap the rate that it pays for the termination of ISP-bound traffic the ILEC *must* cap the rate that it charges for terminating Section 251(b)(5) traffic, even as to traffic below the 3:1 threshold under circumstances where the CLEC has rejected an offer from the ILEC to apply $.0007 per MOU to such traffic, and the CLEC seemingly intends to charge an asymmetrical higher

terminating Non-Access Telecommunications Traffic (Issue 8), *i.e.*, Core's VNXX traffic is interexchange traffic, then Core's position on the mirroring rule is readily dismissed.

[55] *AT&T v. Pac-West, supra,* at pp. 996-999.

reciprocal compensation rate on such traffic below the 3:1 ratio. The Court also never discussed the FCC's symmetry rule (47 C.F.R. § 51.711) as addressed above.

However, the Ninth Circuit Court of Appeals did use language in its decision that supports CenturyLink's view that the mirroring rule is effectuated via an "offer" process. While discussing the lower court's reasoning for its decision, the Court twice refers to a "mirroring offer" to describe the requirements of the FCC's *ISP Remand Order*.[56] In the final analysis, even though the Ninth Circuit Court of Appeals states that the mirroring rule does not apply to CLECs, the Court does not address nor support Core's arguments for imposing a disparate and asymmetrical compensation scheme on CenturyLink. Indeed, one bedrock principle that clearly emanates from the FCC's intercarrier compensation orders, including the *USF/ICC Transformation Order*, is that regulatory arbitrage resulting from the application of different rates across providers for the same traffic types has led to market place distortions that should be eliminated.[57] What Core is proposing by its interpretation of the mirroring rule is the creation of another opportunity for arbitrage. The Commission should reject Core's position and should adopt CenturyLink's position calling for Core to either agree to apply the $0.0007 rate to all traffic, or else the reciprocal compensation rate applies to Section 251(b)(5) traffic exchanged between the parties (up to 3:1 in the case of Core).

[56] *Id.*, at p. 993.
[57] *See, e.g., USF/ICC Transformation Order*, at ¶ 752.

2. Core's reliance upon the *Palmerton v. Global NAPs* and the *RTC/Core certification* decisions is misplaced as these decisions are not dispositive of the compensation requirements (Issue 8/VNXX) between interconnecting carriers.

Palmerton v. Global NAPs

Core cites to the Commission's 2010 *Palmerton v. Global NAPs* decision and claims that this case impacts Issue 8/VNXX.[58] Per Core, the Commission in *Palmerton* approved a "NPA-NXX" analysis for jurisdictionalizing traffic, which Core then suggests constitutes Commission approval of "industry practice" "for intercarrier compensation purposes."[59] Core's view clearly is that the Commission in *Palmerton v. Global NAPs* rejected rating of calls based upon geographic end points for determining compensation between interconnecting carriers.

If *Palmerton v. Global NAPs* is germane to this proceeding at all it is for the purpose of demonstrating Core's penchant for over-broad interpretations of regulatory decisions in order to force those decisions into the unnatural position of supporting Core's arguments. *Palmerton v. Global NAPS* was initiated as a formal complaint filed by Palmerton, an ILEC, seeking to enforce its intrastate access tariffs involving Palmerton's termination of calls indirectly transmitted to Palmerton by GNAPs.[60] These calls in large part involved VoIP calls in a variety of communication protocols.[61]

The fundamental dispute in *Palmerton v. Global NAPs* was over Global NAPs' unwillingness to pay tariffed switched access charges for interexchange traffic.

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[58] Core Suppl. I.B. at pp. 6-7.
[59] *Id.*
[60] *See, Palmerton Telephone Company vs. Global Naps South, Inc. Global Naps Pennsylvania, Inc. Global Naps, Inc. and other affiliates,* Docket No. C-2009-2093336, Opinion and Order entered March 16, 2010, at p. 31.
[61] *Id.*

Palmerton presented a traffic study of GNAPs' incoming traffic in order to classify VoIP calls as either local or toll in response to GNAPs' assertion that it was impossible in a mobile world to know the calling customer's location and to bill accurately.[62] Palmerton's traffic study used NPA-NXXs of registered rate centers that were the physical locations of GNAPs' switches used for the routing of the VoIP traffic.[63] The Commission approved the use of NPA-NXXs for jurisdictionalizing the VoIP traffic at issue in the *Palmerton v. Global NAPs* case as such NPA-NXX call data was the best information available to Palmerton and was reasonable for Palmerton to use under the circumstances.

Similarly, the VoIP language proposed by CenturyLink (Issue 8/VoIP and Attachment A) also recognizes the need to use a proxy such as NPA-NXX for jurisdictionalizing VoIP traffic, which is consistent with the Global NAPs holding. However, it is wrong to suggest, as Core does, that the *Palmerton v. Global NAPs* decision requires carriers to ignore geographic end points for all types of traffic (e.g. TDM, ISP-bound, etc.) even when the NPA-NXXs of such traffic are known to be *unreliable* as a proxy for the end points of such traffic.

Thus, the Commission's ruling in *Palmerton v. Global NAPs* cannot be read as a rejection of precedent that the jurisdictionalization of traffic is based on geographic end points. This Commission when determining arbitration rights under the Act has clearly and consistently found: "We believe that the classification of traffic as either local or toll

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[62] *Id.*, at pp. 38-39.

[63] *Id. See also,* Palmerton Exceptions at pp. 3, 4. ("Each telephone number...is formally assigned...to a registered rate center (the physical location of a switch)...). https//www.puc.state.pa.us/pcdocs/1052613.tif

has historically been, and should continue to be, determined based upon the end points of a particular call."[64]

The Commission's ruling also cannot be read as an endorsement of the use of NPA-NXX's that do not accurately reflect the geographic end points of a call, which is what the use of VNXXs represent. VNXX-enabled calling was *never* at issue in *Palmerton v. Global NAPs.* The *Palmerton v. Global NAPs* case did not involve GNAPs' use of VNXX-enabled traffic as employed by Core in this proceeding.

It is particularly ironic that Core would cite to the *Palmerton v. Global NAPs* decision because it seems clear to CenturyLink that the Commission's decision in that case was motivated by a desire to prevent Global NAPs from avoiding switched access charges by claiming that geographic end points cannot be accurately determined, an argument the Commission rejected and an argument that Core has made in this case. In *Palmerton v. Global NAPs,* the Commission supported the use of NPA-NXXs to ensure that switched access charges would be properly assessed, whereas Core proposes the use of VNXXs specifically to avoid switched access charges. The Commission's *Palmerton v. Global NAPs* decision supports CenturyLink's position on the intercarrier compensation issues in this case.

RTC/Core CLEC Certification Case and Commonwealth Court Appeal

Core's matrix at page 3 cites to page 758 of the Commonwealth Court's order discussing Core's use of VNXX.[65] The Commonwealth Court affirmed the Commission's

[64] *US LEC, supra,* at pp. 62-63. *See also,* Judge Salapa's Recommended Decision which also addressed Commission decisions regarding use of geographic end points to determine compensation between interconnecting carriers under the Act. ALJ R.D. at pp. 31-32.

[65] Core Matrix (1/11/2013) at p. 3 (Issue 8/VNXX). CenturyLink was not a party to the RTC/Core certification proceeding or the appeal.

determination to grant Core a certificate of public convenience as a competitive local exchange carrier (CLEC) in certain RLEC companies' service territories. Core improperly seeks to expand this decision on Core's eligibility to be certified as a CLEC, which involved *in part* an examination of Core's use of VNXX, to create binding precedent for intercarrier compensation obligations under the Act.

CenturyLink previously addressed the Court's decision.[66] Core's position, if adopted, would constitute a case of first impression.

The Commission in its Opinion and Order in this *RTC/Core CLEC certification case*[67] made no finding regarding the appropriate intercarrier compensation for ISP-bound VNXX traffic. In granting Core's Exceptions to the ALJ's Recommended Decision, the Commission itself made a point of citing to its own *VNXX Statement of Policy* wherein the Commission expressly declined to reach any conclusions "on the issue of intercarrier compensation for traffic that moves over VNXX arrangements."[68] Further, in granting Core's Exceptions in the *RTC/Core CLEC certification case*, the Commission apparently relied upon Core's representations that it did not "exclusively" use VNXX arrangements.[69] In connection with Core's application for CLEC certification, neither the Commission nor the Commonwealth Court was presented with the issue of the appropriate intercarrier compensation due for ISP-bound VNXX traffic. Compensation issues, as a matter of law, were not decided in the *RTC/Core CLEC certification case*.

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[66] *See*, CenturyLink's Supplemental Reply Comments, at pp. 10-13 (Dec. 6, 2009).

[67] *Application of Core Communications, Inc. for Authority to Amend its Existing Certificate of Public Convenience and Necessity and to Expand Core's Pennsylvania Operations to Include the Provision of Competitive Residential and Business Local Exchange Telecommunications Throughout the Commonwealth of Pennsylvania* Docket No. A-310922F0002AMA, Opinion and Order entered December 4, 2006 ("*RTC/Core CLEC certification case*").

[68] *RTC/Core CLEC certification case*, at p. 29.

[69] *Id.*, at pp. 27, 31.

The Commission is not bound to find in this case that VNXX use dictates compensation requirements between interconnecting carriers under Section 251 of the Act.

Core's suggestion of extending the *RTC/Core CLEC certification case* to this arbitration proceeding would create unfortunate legal and policy implications. That is, if Core is correct, then this Commission in the context of a certification proceeding essentially prejudges intercarrier compensation issues. The result is unacceptable. The *RTC/Core CLEC certification case* does not mandate compensation requirements under the Act.

Finally, it is important to note that the Commonwealth Court's decision contains very little discussion of VNXX.[70] As the quote appearing in Core's matrix (page 3) reveals, the Court affirmed the Commission insofar as Core's placement of its NXXs within the LATA, but outside the rural carrier's local calling area, rendered the call local in nature. Thus, the most that can be said from the *RTC/Core CLEC certification case* is that an entity is capable of being certificated CLEC in Pennsylvania based upon a showing of calls between NXXs assigned in the same LATA. This result clearly does not control the determination of intercarrier compensation rights and obligations under Sections 251 and 252 of the Act as required in this arbitration case.

[70] The only discussion of VNXX appears at page 753, FN 4, of the Commonwealth Court's decision.

3. *Talk America* impacts Section 251(c)(2) interconnection for telephone exchange services, but Core does not provide telephone exchange services and thus is not entitled to entrance facilities at TELRIC rates (Issue 10).

Core seeks to obtain certain interconnecting facilities from CenturyLink and Core claims TELRIC rates are required for such "entrance facilities" (Issue 10) as a result of the United States Supreme Court *Talk America* decision.[71] CenturyLink disagrees.

Not all "entrance facilities" are required to be provided at cost-based or TELRIC pricing. First, the decision in *Talk America v. Michigan Bell Telephone Co.* 131 S.Ct. 2254 (2011) ("*Talk America*") held that the FCC was entitled to deference regarding the FCC's decision in its TRRO order[72] that entrance facilities are not among the network elements that ILECs, such as CenturyLink, are required to unbundle and to provide to CLECs at cost-based rates pursuant to Section 251(c)(3).[73] While the FCC in its TRRO order did not alter a CLEC's ability to obtain interconnection facilities pursuant to Section 251(c)(2) at TELRIC pricing, this cost standard only applies to interconnection facilities obtained under Section 251(c)(2) for the exchange of telephone exchange service (i.e., "local traffic"). Specifically, TELRIC is not the appropriate cost standard for facilities carrying interexchange VNXX traffic. As the record demonstrated, virtually all of traffic originated by CenturyLink and terminated by Core (96.7%) was

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[71] Core Suppl. I.B. at pp. 5-6. Mr. Bret Mingo also claims that CenturyLink's special access tariffs "would be very expensive." Affidavit of Bret Mingo (1/11/2013) at ¶14. The legal requirements govern. The traffic at issue is still interexchange traffic under the legal requirements.

[72] *In the Matter of Unbundled Access to Network Element Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers.* Order on Remand, Released February 4, 2005, 20 FCC Rcd 2533 (2005), at ¶¶ 137, 138.

[73] *Id.*, 131 S.Ct. at 2258. Further, as CenturyLink noted in its Supplemental Initial Brief, the implications of the ruling of non-impairment might be applicable only to the limited extent that facilities are used to "backhaul" UNEs.

interexchange traffic.[74] As Mr. Guy Miller's affidavits further demonstrate, approximately 96% of the traffic CenturyLink is currently sending to Core continues to ISP-bound traffic.[75] Core still is not in the business of providing telephone exchange service or exchange access service to end users within the CenturyLink service territories.[76] Therefore, Core has failed to demonstrate that it is entitled to entrance facilities at TELRIC or cost-based pricing for use under any of its "alternative POI proposals."[77]

The ALJ correctly required Core to interconnect on CenturyLink's network and pay CenturyLink's tariff rates for entrance facilities.[78] Accordingly, this issue is partially resolved in that CenturyLink's proposed language should be modified to simply reflect the result in the *Talk America* decision and the distinction for the different uses of interconnection facilities to exchange different types of traffic.

While CenturyLink is agreeable to including language in the agreement for TELRIC pricing, that is only to the extent those facilities are wholly used by Core to provide telephone exchange service or exchange access service to end users within the CenturyLink service territories.

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[74] CTL M.B. at pp. 8, 56; CTL R.B. at p. 50. *See also*, 47 U.S.C. §251(g).
[75] Affidavit of Guy Miller (1/11/2013) at p.6.
[76] Reply Affidavit of Guy Miller at p.2.
[77] CenturyLink throughout this proceeding has maintained that if Core alters its business model and begins offering a telecommunications service, Core would be entitled to receive interconnection pursuant to 251(c)(2). As a result of Core's positions on VoIP and Core's potential to broaden its business plans, CenturyLink in good faith prepared and submitted a cost study for entrance facilities in the record below. CenturyLink's entrance facility rates effectively determine the Total Element Long Run Incremental Cost (TELRIC) of transmission facilities associated with dedicated DS1 and DS3 entrance facilities. *See*, CTL St. 4.0, Exh. KWD-1 at 1. *See also*, Tr. at 136. *See also*, CTL Exhibit KWD- 3 through and including KWD-5 (EQ PA witness Dickerson Oral Surrebuttal Exhibits).
[78] ALJ RD at p. 39.

C. Core's Statements Regarding Other Carrier Agreements

Core asserts that it has entered into three traffic exchange agreements with other Pennsylvania CLECs whereby the contracting parties agreed to determine jurisdiction and rating of traffic based upon NPA-NXX of the calling and called parties.[79] Core incorrectly analogizes CLEC calling scopes to that of ILEC tariffed local calling areas. As Mr. Miller's attached affidavit notes, calling scopes for CLECs and ILECs differ.[80] It is not relevant that AT&T and Core (both CLECs in Pennsylvania) recently agreed to the use of NPA-NXX to determine locally-dialed ISP-bound traffic in a complaint case pending before the Commission.[81]

Mr. Bret Mingo also states that he is unaware of other "reliable or workable" methods to determine jurisdiction and rating of calls.[82] He is wrong.[83] The FCC's *ISP Remand Order* recognized that carriers may be unable to identify ISP-bound traffic. The *ISP Remand Order* established a rebuttable presumption to calculate the number of ISP-bound minutes.[84] Minutes that exceed a 3:1 ratio of terminating to originating traffic are presumed to be ISP-bound traffic. Minutes below the 3:1 ratio are presumed to be local voice traffic. As a result, parties to an interconnection agreement have a workable method by which to determine what portion of traffic underlying the agreement is local Section 251(b)(5) traffic versus local ISP-bound traffic.[85] Moreover, notwithstanding

[79] Core Suppl. I.B.at p. 7.
[80] Reply Affidavit of Guy Miller at p. 4.
[81] Core Suppl. I.B. at p. 7, FN 2.
[82] Affidavit of Bret Mingo (1/11/2013) at ¶ 18.
[83] It is important to note, however, that identifying Section 251(b)(5) traffic becomes moot if Core accepts CenturyLink's offer to cap the rates for such traffic so that it mirrors the $0.0007 rate for ISP-bound traffic.
[84] *ISP Remand Order*, at ¶ 79.
[85] Detailed traffic analyses as undertaken by CenturyLink in the record could be another means by which to determine what portion of traffic underlying the agreement is local voice traffic versus local ISP-bound

availability of the 3:1 approach, CenturyLink currently has the capability to rebut the 3:1 presumption by determining ISP-bound traffic using SS7 data and other manual dialing approaches.[86] Similarly, to distinguish toll VOIP-PSTN traffic VoIP-PSTN traffic, the FCC in the USF/ICC Transformation Order noted that the industry supplements call detail information as appropriate with the use of jurisdictional factors.[87] Thus, based on industry practice that is consistent with the FCC's findings, "reliable and workable" methods do exist to determine the proper jurisdiction for intercarrier compensation purposes.

D. Core interconnection "solutions" andAffidavit (Issues 2, 9 & 3)

Core proposes alternative "solutions" which Core believes resolve "most, if not all, of the interconnection concerns that CenturyLink raised."[88] Core's proposals are far from "solutions" and do not in any way resolve Issues 2 (POI) and 9 (Indirect Traffic/Volume Limits).[89]

Core's proposed alternative solutions consist of an agreement to interconnect at CenturyLink's three tandems (Butler, Carlisle and Chambersburg) in two LATAs (LATAs 234 and 226, respectively). However, Core states it will not "agree" to interconnect on CenturyLink's network at CenturyLink's Bedford tandem in LATA 230. For LATA 230, Core would require CenturyLink to interconnect "at the Verizon tandem

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traffic. ISP-bound traffic would be subject to the FCC's $.0007/MOU as addressed by CenturyLink above regarding Issues 6 and 7 and the FCC's mirroring rule.

[86] Reply Affidavit of Guy Miller at p. 5.

[87] *Id.*, at pp. 5-6.

[88] *Id.*, at p. 8.

[89] Core's position on Issue 9 appears to remain the same. Core desires to avoid explicit language in the agreement imposing definitive traffic volume thresholds that would require Core to stop relying upon indirect arrangements once volume thresholds are triggered. CenturyLink continues to oppose Core's position. CTL Suppl. I.B. at pp. 23-25.

in Altoona."[90] This would leave LATA 230 without any POI on CenturyLink's network even though all of CenturyLink's end offices in LATA 230 subtend the tandem in Bedford.

It is telling that after years of maintaining the extreme position that Core does not have to interconnect on CenturyLink's network (a position that no other CLEC apparently espouses), Core now agrees to directly interconnect at almost all of CenturyLink's tandems. However, nowhere in Core's pleadings does Core address the legality of its proposed "solution" for "interconnection" in LATA 230. This is because Core's interconnection proposal for LATA 230 is unlawful. Where Core must establish its POI is governed by the provisions of the 1996 Act, FCC regulations, and binding precedent that deal with interconnection.[91] Commission precedent also dictates at least one POI per LATA.[92] The binding legal requirements firmly support CenturyLink's position that location of an interconnection point must be on the ILEC's network. These requirements are blatantly disregarded under Core's so-called alternative for LATA 230.

Second, Core wrongly suggests that CenturyLink's network somehow consists of facilities that CenturyLink has "into the Altoona tandem."[93] The Act requires ILECs like CenturyLink to provide interconnection "at any technically feasible point within the ILEC's network." Section 51.305(a) of the FCC's rules provides that the ILEC "shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC's network . . . [a]t any technically feasible point

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[90] Affidavit of Bret Mingo (1/11/2013) at ¶ 18.
[91] *See* 47 U.S.C. §251(c)(2)(B) and 47 C.F.R. §51.305(a)(2) and CenturyLink's Supplemental I.B., at p. 22 & FN 54.
[92] *US LEC, supra,* Opinion and Order entered January 18, 2006, at pp. 5-6.
[93] Affidavit of Bret Mingo (1/11/2013) at ¶ 18.

within the incumbent LEC's network"[94] Section 251(h)(1(A) of the Act defines "incumbent local exchange carrier" in pertinent part as:

> For purposes of this section, the term 'incumbent local exchange carrier' means, with respect to an area, the local exchange carrier that – (A) on February 8, 1996, provided telephone exchange service in such area..."[95]

Consequently, the CenturyLink ILEC network by definition can only extend within the Commission-approved local exchanges as defined in CenturyLink's tariffs. Altoona is in Verizon's service territory. The portion of interexchange facilities used to exchange traffic as between CenturyLink and Verizon that lie within Verizon's territory in Altoona are not CenturyLink-owned facilities.[96]

Furthermore, CenturyLink cannot be required to extend its network facilities outside of CenturyLink's territory to directly interconnect with Core. The Act requires ILECs like CenturyLink to provide interconnection "at any technically feasible point within the ILEC's network."[97] Section 51.305(a) of the FCC's rules provides that the ILEC "shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC's network . . . [a]t any technically feasible point within the incumbent LEC's network"[98] As such, Core's proposal regarding CenturyLink facilities at Altoona, like Core's dual POI proposal,

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[94] 47 C.F.R. §51.305(a) *(emphasis added). See also*, FCC *First Report and Order*, ¶198 ("We further conclude that the obligations imposed by section 251(c)(2) and 251(c)(3) include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection or access to network elements." *(emphasis added)*).

[95] 47 U.S.C. §251(h)(1)(A) *(emphasis added).*

[96] Typically two ILECs exchanging interexchange traffic establish a meet point at their respective exchange boundaries that is the demarcation of each ILEC's ownership and financial responsibility for interexchange facilities.

[97] 47 U.S.C. §251(c)(2)(B).

[98] 47 C.F.R. §51.305(a) *(emphasis added). See also*, FCC *First Report and Order*, ¶198 ("We further conclude that the obligations imposed by section 251(c)(2) and 251(c)(3) include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection or access to network elements." *(emphasis added)*).

contravenes the 1996 Act because it does not require Core to interconnect on CenturyLink's network and it would require CenturyLink to provide Core with a level of interconnection that is superior to what CenturyLink provides itself for local exchange traffic.[99]

Core claims direct interconnection on CenturyLink's network in the Bedford tandem would be "cost prohibitive" for Core as Core would have to purchase transport from Altoona to Bedford for "traffic in both directions."[100] Core also claims that CenturyLink's special access tariffs "would be very expensive."[101]

The relative differences between special access pricing for entrance facilities and TELRIC/cost based rates are not legally relevant. As with Core's claims of direct interconnection in LATA 230 being "cost prohibitive," the Act's legal requirement of direct interconnection is based on sound policy that allows the CLEC to balance the competing considerations of where it places its switches (the ILEC is not required to reconfigure its network) and how much transport expense the CLEC will incur. As Mr. Guy Miller further notes, the Act does not guarantee a CLEC the ability to compete in every market, much less the ability to compete in a manner allegedly cost effective for the CLEC.[102] In addition, TELRIC or cost-based interconnection facilities are only available for certain types of traffic as addressed herein and CenturyLink's prior pleadings. Core is not legally entitled to alternative interconnection arrangement that

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[99] 47 U.S.C §251(c) (2).

[100] Affidavit of Bret Mingo (1/11/2013) at ¶ 18. As addressed above, in the record, and in Mr. Guy Miller's attached affidavit, the traffic is not "in both directions." Moreover, Core's affidavit does not state that alternative transport arrangements are unavailable relative to the Altoona/Bedford tandems. Mr. Mingo merely asserts Core's desire not to pay transport costs that Core alleges and deems are prohibitive.

[101] *Id.*

[102] Reply Affidavit of Guy Miller, at p. 3.

avoid these legal requirements simply because Core alleges the requirements are "very expensive."[103]

CenturyLink supports the ALJ's recommendations related to interconnection requirements (Issues 2 and 9). Core should be required to establish a minimum of one POI on CenturyLink's network within each LATA, including LATA 230 (Bedford), and when volumes of traffic exchanged at an end office exceed a DS1 threshold (Issue 9). As addressed in CenturyLink's January 11, 2013 pleadings, an additional POI is needed at LATA 226 (Carlisle and Chambersburg) given the factual circumstances in this case. Core has already agreed to POIs in LATA 226 given "relatively cheap transport options."[104]

Finally, Core in its matrix at Issue 3 continues to propose that Core be permitted to collocate within CenturyLink's tandem and end offices in order to interconnect with those offices.[105] Core's position at Issue 3 is a fall-out of Core's positions on Issue 2 (POI). CenturyLink continues to oppose Core's proposal as unnecessary and reckless given Core's alternative proposal regarding Altoona. The CenturyLink/Core interconnection agreement should not include unnecessary collocation language implicating a third-party carrier's facilities and/or network simply to accommodate Core's "alternative" interconnection proposals. As the ALJ recommended,[106] the collocation language already existing in language agreed to by Core and CenturyLink is

[103] In connection with Core's original dual POI proposal, the matrix attached to Core's Supplemental I.B. again raises Core's flawed argument that the FCC's reciprocal compensation rule 47 C.F.R. 51.703(b) somehow governs the issue of location of POIs. CenturyLink thoroughly rebutted this argument in its Main Brief at pages 16-18.

[104] Affidavit of Bret Mingo (1/11/2013) at ¶¶ 16, 20.

[105] Core Matrix at p. 2 (Issue 2), *citing* 47 C.F.R. §51.703(b). *See also* ALJ R.D. at pp. 20-21, rejecting Core's misplaced reliance upon the Verizon Wireless / ALLTEL decision.

[106] ALJ R.D. at p. 22.

sufficient and does not create confusion and additional issues down the road.

E. Other Core Statements (Issue 4)

Core makes a statement that Issue 4 is resolvable simply by replacing "existing facility" for the phrase "loop interconnection."[107] CenturyLink has agreed with Core that it can utilize existing facilities with spare capacity for interconnection purposes. However, CenturyLink maintains that the contract language does not have to be altered as Core proposes, with its additional terms and conditions on service intervals, to allow this interconnection process utilizing existing facilities. Accordingly, the Commission should reject Core's proposed additional language as unnecessary.

WHEREFORE, for the foregoing reasons, CenturyLink respectfully requests that the Commission adopt CenturyLink's positions.

Respectfully Submitted,

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Dated: February 15, 2013

[107] Core Suppl. I.B. at p. 7.

ATTACHMENT A

CENTURYLINK'S VOIP PROPOSED ICA LANGUAGE

ATTACHMENT A – CENTURYLINK VOIP PROPOSED ICA LANGUAGE

2.100. Local VoIP-PSTN Traffic is VoIP-PSTN Traffic that physically originates and terminates within the CenturyLink local calling area, or mandatory extended area service (EAS) area, as defined by the Commission or, if not defined by the Commission, then as defined in existing CenturyLink Tariffs, and shall be considered to be "Local Traffic" as such term is used in this Agreement.

2.158. Toll VoIP-PSTN Traffic is VoIP-PSTN Traffic that physically originates and terminates in different CenturyLink local calling areas, or mandatory extended area service (EAS) areas, as defined by the Commission or, if not defined by the Commission, then as defined in existing CenturyLink Tariffs.

2.166. VoIP-PSTN Traffic includes any traffic referred to in the Agreement as "VoIP" or "VoIP Traffic" or "IP Enabled Voice Traffic", and traffic which is exchanged between a CenturyLink end user and the CLEC end user in Time Division Multiplexing ("TDM") format that originates from and/or terminates to a Party's end user customer in Internet Protocol ("IP") format, as determined in the order issued by the Federal Communications Commission in Docket No. 01-92, In the Matter of Developing a Unified Intercarrier Compensation Regime, effective December 29, 2011 ("FCC Order" or "Order"").

66.1.2. VoIP-PSTN Traffic. All voice calls exchanged between the Parties originating from or terminating to the PSTN shall be jurisdictionalized and compensated in the same manner (e.g., reciprocal compensation, interstate access, and intrastate access) regardless of the technology used to originate, terminate, or transport the call, including voice calls that are transmitted in part via the public Internet or a private IP network (VoIP) that originate from or terminate to the PSTN.

a. Local VoIP-PSTN Traffic. CLEC and CenturyLink will exchange Local VoIP-PSTN Traffic on the same basis and at the same rates as Local Traffic which is not VoIP-PSTN Traffic. VoIP-PSTN Traffic will be identified as either Local or non-Local by using the originating and terminating call detail information of each call unless the Parties specifically agree otherwise. This call jurisdiction method described herein is intended by the Parties as a proxy to determine the jurisdiction of a call (i.e. the actual geographic end points of the call) and the Parties acknowledge that there may be some circumstances where the actual geographic end points of a particular call may be difficult or impossible to determine. At any time during the term of this Agreement, CLEC and CenturyLink may agree on alternate methods to establish call jurisdiction for Local VoIP-PSTN Traffic based on

regulatory or technological evolution. The Parties agree that it is in the best interest of both Parties to work together in an effort to continue to improve the accuracy of jurisdictional data and such efforts shall not be unreasonably withheld by either Party. This paragraph shall not be controlling nor affect the determination of the proper jurisdiction or the geographic end points of any traffic which is not VoIP-PSTN Traffic, including without limitation, any VNXX Traffic

b. Toll VoIP-PSTN Traffic.

1. CLEC and CenturyLink will exchange Toll VoIP-PSTN Traffic, including any Toll VoIP-PSTN Traffic which transits a CenturyLink Tandem, at each Party's interstate access rates. Any non-Local Traffic which is not Toll VoIP-PSTN Traffic shall be routed in accordance with Section 65.2.. VoIP-PSTN Traffic will be identified as either Local Traffic or non-Local Traffic by using the originating and terminating call detail information of each call unless the Parties specifically agree otherwise. This call jurisdiction method described herein is intended by the Parties as a proxy to determine the jurisdiction of a call (i.e. the actual geographic end points of the call) and the Parties acknowledge that there may be some circumstances where the actual geographic end points of a particular call may be difficult or impossible to determine. At any time during the term of this Agreement, CLEC and CenturyLink may agree on alternate methods to establish call jurisdiction for Toll VoIP-PSTN Traffic based on regulatory or technological evolution. The Parties agree that it is in the best interest of both Parties to work together in an effort to continue to improve the accuracy of jurisdictional data and such efforts shall not be unreasonably withheld by either Party.

2. Toll VoIP-PSTN which is intrastate non-Local Traffic will be exchanged at each Party's interstate access tariff rates. Both Parties will use the Contract Percentage VoIP Usage (Contract-PVU) factor in Table One to determine the amount of intrastate non-Local Traffic exchanged by the Parties that shall be deemed as Toll VoIP-PSTN Traffic subject to interstate access rates. The Parties shall also apply the Contract-PVU factor to any intrastate non-Local Traffic, which transits a CenturyLink Tandem, and the resulting portion of such traffic shall also be exchanged at interstate switched access tariff rate. The Contract-PVU factor may be updated by a further Amendment mutually negotiated by the Parties.

3. The Contract-PVU factor shall be the percentage of total terminating intrastate non-Local Traffic which is Toll VoIP-PSTN Traffic, that in the absence of such Contract-PVU, would be billed at intrastate access rates. The Contract-PVU factor shall be based on information such as the number of the CLEC's retail VoIP subscriptions in the state (e.g. as reported on FCC Form 477), traffic studies, actual call detail, or other relevant and verifiable information which will be exchanged by the parties. The Contract-PVU factor may be updated by an amendment mutually negotiated by the Parties.

4. The facilities, or portion thereof, leased by CLEC from CenturyLink which are used to exchange Toll VoIP-PSTN Traffic shall be subject to access tariff rates. CenturyLink reserves the right to amend this agreement to define an additional Toll VoIP-PSTN usage percentage if such factor is necessary.

5. Any factors established by the Parties under Section 66.1.2 shall be based on the particular characteristics of the traffic exchanged within the State between CLEC and CenturyLink and shall not be subject to adoption by anyone not a Party to this Agreement, or apply to any other service areas.

c. CenturyLink shall provide billing adjustments on a quarterly basis until such time as billing system modifications can be implemented to apply the applicable rate to all Toll VoIP-PSTN Traffic on an automated basis.

PA PUC Docket No. A-310922F7002

PUBLIC VERSION

STATE OF LOUISIANA)

)

PARISH OF OUACHITA)

REPLY TECHNICAL AFFIDAVIT OF GUY MILLER

I, Guy Miller, do on oath depose and state that the facts contained in the following statements on Behalf of The United Telephone Company of Pennsylvania d/b/a Sprint (now CenturyLink) are true and correct to the best of my knowledge and belief.

This Reply Technical Affidavit is produced for Docket No. A-310922F7002, Petition of Core Communications Inc. ("Core") for Arbitration of Interconnection Rates, Terms and Conditions Pursuant to 47 USC Section 252, Subparagraph B with The United Telephone Company of Pennsylvania d/b/a Sprint (subsequently "Embarq," now "CenturyLink"). In this Affidavit, I will Respond to comments made by Bret Mingo in Core's Technical Affidavit.

In his Technical Affidavit, Mr. Mingo estimates that currently 10-15% of "all the traffic Core terminates" in Pennsylvania is voice and not ISP-bound.[1] Mr. Mingo also estimates that Core originates roughly six million MOUs to other carriers in Pennsylvania.[2] To begin, Mr. Mingo's claims regarding Core's originating traffic are general and not specific to the amount of traffic that Core sends to CenturyLink. Not only does Mr. Mingo fail to provide any basis for his estimates, but CenturyLink's SS7

[1] Mingo Technical Affidavit at paragraph 4.
[2] *Id.* at paragraph 6.

data indicates that in December 2012 Core only originated ***BEGIN CONFIDENTIAL*** ***END CONFIDENTIAL*** Local/Intrastate voice MOUs to CenturyLink, making Core's current originating traffic almost irrelevant to the issues currently being addressed. Also, as I stated in my affidavit of January 11, 2013, CenturyLink's determination of ISP vs. voice minutes is solely for traffic between Core and CenturyLink and is based on an SS7 system tracking analysis which flags ISP traffic based on both hold times and dialed telephone number, and also on a program that confirms calls answered by a modem tone. This SS7 data indicates that as of January 2013, 96% of the traffic that CenturyLink sends to Core continues to be ISP-bound traffic.[3]

Throughout Mr. Mingo's affidavit, Core frames Issue 2 as a balancing of transport costs between CenturyLink and Core.[4] Core characterizes CenturyLink's objection to Core's proposals as simply based upon CenturyLink's objection to paying transports costs.[5] Core says that CenturyLink's "concern" (as Core has framed it) should become ameliorated with Core's alternative POI proposal. Mr. Mingo further asserts that CenturyLink's special access services are expensive[6] and that connection to Bedford tandem is "cost prohibitive" for Core.[7] Core therefore "offers" to interconnect at Verizon's Altoona tandem. Verizon is a third party to this issue whose interests and concerns are neither validly asserted nor addressed by Core's proposal.

Further, Core completely ignores the legal requirements that govern interconnection as well as the intent of the federal Telecommunications Act of 1996 (the "Act"). 47 CFR 305 (a) (4) states that interconnection must be "[o]n terms and conditions that are just, reasonable, and *nondiscriminatory* in

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[3] This 96% figure was inadvertently rendered subject to confidential treatment in my affidavit accompanying CenturyLink's Supplemental Initial Brief. As the record below did not accord confidential treatment to this total, it should not be accorded confidential treatment in these affidavits.

[4] *Id.* at paragraphs 16 and 20.

[5] *Id.* at paragraph 20.

[6] *Id.* at paragraph 14.

[7] *Id.* at paragraph 18. Core's representation concerning interconnection is not complete. Core only mentions special access in Mr. Mingo's testimony. CenturyLink would like to clarify that under CenturyLink's interconnection proposal, the underlying trunks will need to be ordered as a tariffed switched transport service.

accordance with the terms and conditions of *any* agreement, the requirements of sections 251 and 252 of the Act, and the Commission's rules including, but not limited to, *offering such terms and conditions equally to all requesting telecommunications carriers*, and offering such terms and conditions that are no less favorable than the terms and conditions upon which the incumbent LEC provides such interconnection to itself. ..." [emphasis added.]

In my Technical Affidavit of January 11, 2013, I demonstrated that CenturyLink's interconnection agreements ("ICAs") consistently require the CLEC to establish a POI at each CenturyLink tandem switch. In addition, the CLEC must further establish a direct end office ("EO") trunk at a CenturyLink EO within a tandem serving area when total traffic volumes exchanged between that particular EO and the CLEC exceeds a specific DS-1 threshold. Finally, that the CLEC is responsible for engineering, maintaining and paying for its network on its side of the POI. CenturyLink's position on interconnection with Core is therefore just, reasonable, nondiscriminatory and consistent with the terms and conditions that it offers equally to other requesting telecommunications carriers.

To further address Mr. Mingo's assertions regarding "prohibitive" costs to Core, it must be noted that the Act does not guarantee a CLEC the ability to compete in every market much less the ability to compete in a cost effective manner. Some markets are simply more expensive to serve than others. A CLEC must condition its ability to serve a market on a valid business model rather than a model that assigns unfair transport burdens to the ILEC. As FCC Commissioner James Quello noted in his Statement to the FCC's Local Competition Order:

> "To those companies that seek to offer competitive local telephone service, I would say: the rules we adopt today attempt to provide the regulatory assistance you need to enter a market in which your competitor not only possesses a monopoly, but also controls the facilities upon which you must depend to compete. But even so, *our rules are pro-competition, not pro-competitor.* They are intended to make it possible for you to enter the market on fair and

equitable terms, but not to so alter the market that *entry occurs even where it otherwise might not.* We have opened the door, but we have not paved the way." [emphasis added]

Should Core desire to enter markets that are more expensive to serve, the Local Competition Order contemplates that Core should bear the costs, and not be permitted to impose them upon CenturyLink.

¶ 199 "....Of course, a requesting carrier that wishes a "technically feasible" but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit."

Mr. Mingo also says Core has negotiated three traffic exchange agreements with other CLECs in Pennsylvania in which call jurisdiction for intercarrier compensation purposes is based upon NPA-NXX of the calling and called parties.[8] What Core (a CLEC) may have negotiated with other CLECs is not relevant to this issue or this proceeding. Agreements between CLECs are not bound by the same rules and obligations that cover CLEC agreements with ILECs. 47 CFR Section 51.301, for example, only applies to agreements between incumbent LECs and requesting CLECs, not to CLEC to CLEC agreements.[9] Further, CLECs are free to set calling scopes without regard to any concerns other than recovery of their costs, whereas ILEC calling scopes are set by Commission approved tariffs that were historically based on established exchanges and regulatory cost recovery models. Finally, ILEC retail local calling scopes were historically established based upon a community of interest and are outlined in the ILEC's tariff. However, a CLEC basic calling scope is often LATA-wide or larger.

[8] *Id.* at paragraphs 22 and 23.

[9] § 51.301 Duty to negotiate. (a) An incumbent LEC shall negotiate in good faith the terms and conditions of *agreements to fulfill the duties established by sections 251 (b) and (c) of the Act.* (b) A *requesting* telecommunications carrier shall negotiate in good faith the terms and conditions of agreements described in paragraph (a) of this section.

Mr. Mingo further states he is unaware of any "reliable or workable" method to determine jurisdiction and rating of calls other than using an NPA-NXX analysis.[10] Notwithstanding Mr. Mingo's claim, for years, the telecommunications industry has utilized carrier-specific billing factors to establish the proper traffic jurisdiction for intercarrier compensation purposes. In some cases, these factors have been negotiated based on good faith assertions; in other cases, factors are set after performing a traffic study over a set period of time.

The FCC's longstanding "end to end analysis" continues to be the industry method for determining the jurisdiction for intercarrier compensation purposes. Because this remains the case , it is often necessary to develop billing factors to ensure the proper intercarrier compensation is applied, particularly when the "to and/or from" telephone numbers are known to not correspond with the physical end points of the call, such as a VNXX numbering scheme. The *ISP Remand Order*, for example, established a rebuttable presumption to devise billing factors for the number of ISP-bound minutes. All minutes that exceed a 3:1 ratio of terminating to originating traffic are presumed to be ISP-bound traffic. Minutes below the 3:1 ratio are presumed to be local voice traffic. A review of CenturyLink's ICAs in Pennsylvania and in other states in which CenturyLink ILEC affiliates operate shows that this rebuttable 3:1 approach has been utilized with numerous CLECs over the years. Notwithstanding the approach, CenturyLink currently has the capability to rebut the 3:1 presumption by determining ISP-bound traffic using SS7 and other manual dialing approaches. As I earlier stated, CenturyLink has used this current validation method in regards to identification of Core's traffic.

Regarding VoIP traffic jurisdiction specifically, the FCC recognized in Paragraph 962 of its November 18, 2011 *ICC/USF Transformation Order* that the calling and called telephone numbers do not always reflect the actual geographic end points of a VoIP call. The FCC's discussion makes clear that a

[10] Mingo Technical Affidavit at paragraph 24.

carrier cannot use telephone numbers in a manner which changes the jurisdiction of a call in order to avoid intercarrier compensation.

> FCC 11-161 Section 962: "Contrary to some proposals, however, we do not require the use of particular call detail information to dispositively distinguish toll VoIP-PSTN traffic from other VoIP-PSTN traffic, given the recognized limitations of such information. For example, the Commission has recognized that *telephone numbers do not always reflect the actual geographic end points of a call*. Further, although our phantom traffic rules are designed to ensure the transmission of accurate information that can help enable proper billing of intercarrier compensation, standing alone, those rules do not ensure the transmission of sufficient information to determine the jurisdiction of calls in all instances. Rather, *consistent with the tariffing regime for access charges* discussed above, carriers today supplement call detail information as appropriate with the *use of jurisdictional factors* or the like when the jurisdiction of traffic cannot otherwise be determined. We find this approach appropriate here, as well." [emphasis added]

Based on industry practice that is consistent with the FCC's findings, CenturyLink can offer Core "reliable and workable" methods to determine jurisdiction and the rating of calls which would allow the proper intercarrier compensation to be applied for wholesale billing purposes.

In my review of CenturyLink's Pennsylvania ICAs, I found none that contain a mirroring rule as Core interprets and seeks in this case. Further, I did find that other carriers in Pennsylvania and elsewhere have agreed to a standard version of CenturyLink's amended VoIP language; including the use of billing factors where necessary and appropriate. The amended VoIP language essentially states that Local VoIP-PSTN Traffic is VoIP-PSTN Traffic that physically originates and terminates within the CenturyLink local calling area or defined mandatory extended area service (EAS) area. Toll VoIP-PSTN Traffic is VoIP-PSTN Traffic that physically originates and terminates in different CenturyLink local calling areas or defined mandatory extended area service (EAS) areas.

This concludes my Reply Technical Affidavit.

GUY MILLER

SIGNED AND SWORN TO BEFORE ME THIS 15th day of February, 2013.

Notary Public

My Commission expires:

September

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Core Communications, Inc. for Arbitration of Interconnection Rates, Terms and Conditions with The United Telephone Company Of Pennsylvania *d/b/a* Embarq Pennsylvania (now d/b/a CenturyLink) Pursuant to 47 U.S.C. §252(b)	:	Docket No. A-310922F70002

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of January, 2013, served, via electronic and first-class mail, a true copy of the forgoing pleading upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54:

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