



Federal Communications Commission  
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November 4, 2014

Marcia M. Waldron,  
Clerk, United States Court of Appeals  
for the Third Circuit  
21400 United States Courthouse  
601 Market Street  
Philadelphia, PA 19106-1790

Re: *AT&T Corp., et al. v. Core Communications Inc., et al.*, Case Nos. 14-1499 & 14-1664  
(oral argument scheduled for November 19, 2014)

Dear Ms. Waldron:

By letter dated October 23, 2014, the Court invited the Federal Communications Commission (“FCC”), “if [it] wishes to respond,” to file a brief as *amicus curiae* on the following question:

In the absence of an interconnection agreement, does the Pennsylvania Public Utilities Commission have jurisdiction to hear a dispute over compensation due one competitive local exchange carrier for the termination of indirectly exchanged ISP-bound traffic originating with another competitive local exchange carrier?

Although we would like to assist the Court – and have done so on several occasions in recent years in response to other requests for our participation as *amicus curiae*<sup>1</sup> – for the reasons discussed below, at this time we are unable to address the question that the Court poses here.

First, as the Court notes, the jurisdictional question quoted above is “in essential form” the same question that the Ninth Circuit previously posed to the FCC in *AT&T Commc’ns of Cal., Inc. v. Pac-West Telecomm, Inc.*, 651 F.3d 980 (9th Cir. 2011) (“*AT&T v. Pac-West*”). See Amicus Brief for the Federal Communications Commission, *AT&T v. Pac-West*, at 14 (filed Feb. 2, 2011) (“FCC Amicus Br.”) (identifying essentially identical Ninth Circuit request) (JA 386). Although FCC litigation counsel in *AT&T v. Pac-West* were able to address another posed question that is not in dispute here, FCC counsel informed the Ninth Circuit that “[t]he FCC to date has not directly spoken ... in its rules and orders” to the specific jurisdictional question

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<sup>1</sup> See, e.g., Brief for Amicus Curiae Federal Communications Commission, *Verizon Pennsylvania, et al. v. Pennsylvania Pub. Util. Comm’n*, Third Circuit No. 11-2712 (filed April 13, 2012); Brief for Amicus Curiae Federal Communications Commission, *Paetec Communications, Inc., et al. v. MCI Communications Services, Inc.*, Third Circuit Nos. 11-2268 (consolidated with 11-2568) & 11-1204 (consolidated with 11-2569) (filed March 14, 2012).

identified above. FCC Amicus Br. at 29 (JA 401). Accordingly, the agency's amicus brief "d[id] not take a position on th[at] issue." *Id.* We are aware of no intervening action by the FCC in the three-and-a-half years since our *AT&T v. Pac-West* brief was filed that would enable the agency's litigation counsel to speak authoritatively to that issue now.

Second, we cannot address the posed question for the additional reason that precisely the same question is now pending before the FCC in an administrative proceeding commenced by the appellant in this litigation. Specifically, on April 30, 2014, the Pennsylvania Public Utility Commission ("Pa. PUC") filed a petition for declaratory ruling with the FCC seeking clarification "whether the Pa. PUC can adjudicate intercarrier compensation disputes when they arise between ... [CLECs] outside Sections 251 and 252, 47 U.S.C. § 251 and 252, when they involve the exchange of local dial-up Internet traffic, and when the Pa. PUC decision properly enforces the *ISP Remand Order* and is consistent with [FCC] rules." Petition for Declaratory Order of the Pennsylvania Public Utility Commission, WC Docket No. 14-70, at 1 (filed April 30, 2014) (available at <http://apps.fcc.gov/ecfs/document/view?id=7521124305>). The Pa. PUC asked the FCC to find that "the Pa. PUC has jurisdiction to adjudicate such dispute so long as the result is consistent with the *ISP Remand Order* and applicable law." *Id.*; *see also id.* at 24 ("The Pa. PUC seeks definitive clarification that it continues to have jurisdiction to apply *federal law and [FCC]-developed rates* as part of its decisions to resolve such disputes, subject to federal appeal.") (emphasis in original). The formal public comment cycle on that petition closed July 30, 2014,<sup>2</sup> and the agency has not yet completed action on the petition. *See Public Notice*, DA 14-674 (rel. May 16, 2014) (available at [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-14-674A1\\_Rcd.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-14-674A1_Rcd.pdf)). We believe it would be inappropriate for FCC litigation counsel to prejudge the agency's ultimate disposition of the question in an amicus brief.

In sum, although we would like to assist the Court in this matter, regrettably, under current circumstances we are unable to do so.

Respectfully submitted,

/s/ Laurence N. Bourne

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<sup>2</sup> Both appellees and the amicus in this litigation filed comments in response to the petition (which are available at <http://apps.fcc.gov/ecfs/proceeding/view?z=26vmm&name=14-70>).

14-1499 et al.

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

AT&T CORP., ET AL. )  
 )  
v. ) Nos. 14-1499/14-1664  
 )  
CORE COMMUNICATIONS INC., ET AL., )

**CERTIFICATE OF SERVICE**

I, Laurence N. Bourne, hereby certify that on November 4, 2014, I electronically filed the foregoing Letter Brief with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

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