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June 5, 2012

**VIA FEDERAL EXPRESS OVERNIGHT DELIVERY**

Secretary Rosemary Chiavetta  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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JUN 5 2012

**PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU**

**Re: Core Communications, Inc. v. Verizon of Pennsylvania, Inc. and Verizon  
North, LLC  
Docket Nos. C-2011-2253750 and C-2011-2253787**

Dear Secretary Chiavetta:

Enclosed for filing please find the original plus four copies of Core Communications, Inc.'s Reply to New Matter and Answer and New Matter to Counterclaims in the above-referenced matter. A copy of this document has been served upon the parties of record in accordance with the attached Certificate of Service. Upon filing please return a time-stamped copy of this document to me in the enclosed self-addressed stamped envelope.

If you have any questions, please feel free to contact me.

Sincerely,

STEVENS & LEE

  
Michael A. Gruin

Enclosures

cc: Certificate of Service  
Honorable Susan Colwell, Administrative Law Judge

Philadelphia • Reading • Valley Forge • Lehigh Valley • Harrisburg • Lancaster • Scranton  
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JUN 5 2012

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

_____	:	
CORE COMMUNICATIONS, INC.	:	
Complainant	:	
	:	
v.	:	Docket No. C-2011-2253750
	:	Docket No. C-2011-2253787
VERIZON PENNSYLVANIA INC.	:	
and	:	
	:	
VERIZON NORTH, LLC	:	
Respondents	:	
_____	:	

**CORE COMMUNICATIONS, INC.'S REPLY TO VERIZON'S NEW MATTER AND  
COUNTERCLAIMS AND NEW MATTER TO COUNTERCLAIMS**

Pursuant to 52 Pa. Code Sections 5.62 and 5.63, Complainant, Core Communications, Inc. ("Core"), respectfully submits its Reply to New Matter and Counterclaims and New Matter to Counterclaims in the above-captioned matter. This filing responds to the Answer, New Matter, and Counterclaims Seeking Affirmative Relief of Verizon Pennsylvania, Inc. and Verizon North, Inc., (collectively "Verizon") filed on May 16, 2012. In further support thereof, Core avers as follows:

**CORE'S REPLY TO NEW MATTER**

130. Core is not permitted or required to respond to Verizon's Answer as incorporated by reference in paragraph 130 of Verizon's New Matter.

131. Admit that Core and Verizon are party to two interconnection agreements ("ICAs") governing the exchange of traffic in Pennsylvania. Those ICAs speak for themselves. Core denies Verizon's characterization thereof. The testimony of Bret Mingo speaks for itself.

132. Core admits that Verizon received invoices on June 3, 2011. Those invoices speak for themselves. Core denies Verizon's characterization thereof.

133. Core admits that Verizon sent emails dated June 14 and June 24, 2011. Those emails speak for themselves. Core denies Verizon's characterization thereof. Core further denies that it refused to provide data.

134. Core denies that Verizon remains unable to substantiate Core's bills. The ICAs speak for themselves.

135. Core is without knowledge as to when Verizon sent Core the referenced letters. Those letters speak for themselves, and Core denies Verizon's characterization thereof. Core denies that Verizon quantified its disputes. Core states that Verizon simply disputed the entire amount due, without any further analysis.

136. The Core/Verizon North ICA speaks for itself. Core denies Verizon's characterization thereof.

137. The ICAs speak for themselves. Core denies Verizon's characterization thereof.

138. The testimony of Bret Mingo speaks for itself. Core denies Verizon's characterization thereof.

139. The ICAs speak for themselves. Core denies Verizon's characterization thereof.

140. The ICAs speak for themselves. Core denies Verizon's characterization thereof.

141. Core admits that Verizon sent letters or emails dated July 1, 5, 12 and 18, 2011. Those letters speak for themselves. Core denies Verizon's characterization thereof.

142. The Core/Verizon PA ICA speaks for itself. Core denies Verizon's characterization thereof. Core admits that September 28, 2011 is 120 days after May 31, 2011.

143. The Core/Verizon North ICA speaks for itself. Core denies Verizon's characterization thereof.

144. Core admits that it filed its original complaint in this matter on July 22, 2011 and its amended complaint on April 16, 2012. Core denies the remainder of paragraph 144 of Verizon's New Matter.

145. Core denies paragraph 145 of Verizon's New Matter in full.

146. Core denies paragraph 146 of Verizon's New Matter in full. Core states that it has complied with Verizon's request for call detail records ("CDRs") and that Verizon currently has no outstanding request for further records. Core state that it stands ready, willing and able to comply with further, reasonable requests.

147. Core denies paragraph 147 of Verizon's New Matter in full.

148. Core denies paragraph 148 of Verizon's New Matter in full.

149. Core denies paragraph 149 of Verizon's New Matter in full. Core denies that it could have taken action (other than filing its July 16, 2011 Petition for Interim Emergency Relief) to prevent Verizon's unilateral, unjustified and unlawful bad faith, self-help nonpayment. Core denies that entering into Verizon's "Rate Plan B Amendment" would mitigate any damages caused by Verizon's unilateral, unjustified and unlawful bad faith, self-help nonpayment.

150. Core denies paragraph 150 of Verizon's New Matter in full. Verizon's unilateral, unjustified and unlawful bad faith, self-help nonpayment—not any action taken by Core—eviscerated the terms of the Commission-approved ICAs.

151. Core denies paragraph 151 of Verizon's New Matter in full.

152. Paragraph 152 of Verizon's New Matter states legal conclusions and no response is required.

153. Core denies paragraph 151 of Verizon's New Matter in full. Core notes that Verizon's entire Answer, New Matter and Counterclaims is completely bereft of any specific, quantifiable or substantiated allegation of overbilling. Core admits that Verizon continue to pay the invoices the Commission specifically ordered Verizon to pay. Core states that Verizon and its affiliates also continue to withhold vast amounts of duly-billed and fully substantiated compensation from Core and its affiliates.

154. Core denies paragraph 154 of Verizon's New Matter in full. Core specifically denies that it failed to maintain call detail records to validate its bills.

155. Paragraph 155 of Verizon's New Matter states legal conclusions and no response is required.

156. Paragraph 156 of Verizon's New Matter is a prayer for relief and no response is required.

## **REPLY TO COUNTERCLAIMS SEEKING AFFIRMATIVE RELIEF**

### **COUNTERCLAIM I**

157. Paragraph 157 of Verizon's Counterclaims incorporates the allegations set forth in the previous paragraphs, and requires no separate response. To the extent a response is required, the allegations set forth in paragraph 157 of Verizon's Counterclaims are denied.

158. Core denies that it owes Verizon any amount. The remaining allegations set forth in paragraph 158 of Verizon's Counterclaims are denied.

159. Core denies that is has paid Verizon "exactly \$30.66" over the past three years.

160. Core is without knowledge regarding whether the amounts included in Verizon's invoices are primarily for high capacity circuits. Core admits that Verizon's invoices are voluminous, comprising hundreds of pages, and that Core does have the invoices that Verizon

sent Core. Core denies that the invoices attached to Verizon's Counterclaims as Exhibit F are true copies of any invoice Verizon has ever sent Core. Core states that Verizon's invoices are not laid out or presented in a comprehensible format that would facilitate an understanding of what rate elements are being billed or at what rate. Core states that it has attempted to order and receive interconnection trunks for the exchange of one-way outbound and access toll connecting trunks pursuant to the ICAs and section 251(c)(2) of the Act since roughly 2003, but that Verizon to date has failed to provide such services, in violation of the ICAs and the Act. Core states that it has steadily disputed Verizon's bills since 2003, by means of voluminous correspondence, including emails, spreadsheets and formal letters, as well as numerous attempts to discuss the billings with the appropriate Verizon personnel face-to-face and telephonically.

161. Core denies the allegations set forth in paragraph 161 of Verizon's Counterclaims in full. Core is without knowledge regarding the specific services and elements included in Verizon's invoices. Core states that Verizon's invoices are not laid out or presented in a comprehensible format, as even a brief review of the sample invoice attached to Verizon's filing demonstrates. Core states that it has issued valid, longstanding disputes with respect to Verizon's bills for interconnection entrance facilities.

162. The Core/Verizon North ICA speaks for itself. No further response is required.

163. The Core/Verizon PA ICA speaks for itself. No further response is required.

164. The Core/Verizon North ICA speaks for itself. Core is without knowledge as to whether Verizon has billed in accordance with its tariffs, and therefore denies Verizon's assertions to that effect. Core denies that the ICA permits Verizon to bill entrance facilities in accordance with its interstate special access tariff FCC No. 1. Core denies that the Commission has any jurisdiction to enforce Verizon's interstate special access tariff FCC No. 1.

165. The Core/Verizon PA ICA speaks for itself. Core denies Verizon's characterization thereof. Core denies that section 1.1 of Attachment I to the Core/Verizon PA ICA contains operative language. Core states that, pursuant to section 1.11 of the Core/Verizon PA Adoption Agreement, Attachment I was replaced and superseded by Appendix 2, the "DETAILED SCHEDULE OF ITEMIZED CHARGES."

166. The referenced orders of the Commission and the FCC speak for themselves. Core denies Verizon's characterizations thereof. Core specifically denies that the 2005 *Triennial Review Remand Order* ("TRRO") has any relevance to the section 251(c)(2) interconnection services Core has attempted procure, or provides any basis for Verizon's billings. Core states that the Supreme Court recently rejected the very legal theory Verizon relies upon, rendering Verizon's position legally untenable. The Court found that:

The *Triennial Review* orders eliminated incumbent LECs' obligation under § 251(c)(3) to provide unbundled access to entrance facilities. But the FCC emphasized in both orders that it did not alter the obligation on incumbent LECs under § 251(c)(2) to provide facilities for interconnection purposes. Because entrance facilities are used for backhauling and interconnection purposes, the FCC effectively eliminated only unbundled access to entrance facilities for backhauling purposes—a nuance it expressly noted in the first *Triennial Review* order. That distinction is neither unusual nor ambiguous. In these cases, the Commission is simply explaining the interconnection obligation that it left undisturbed in the *Triennial Review* orders.<sup>1</sup>

Core is without knowledge as to whether Verizon has billed in accordance with its tariffs, and therefore denies Verizon's assertions to that effect. Core denies that it was required to invoke the Core/Verizon PA ICA's change-of-law clauses in order to obtain the pricing set forth in the ICA itself, which has never been amended, altered or modified in this respect.

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<sup>1</sup> Talk America, Inc. v. Michigan Bell Tel. Co., 131 S. Ct. 2254, 2264-65, 180 L. Ed. 2d 96 (2011). (Internal quotations omitted).



167. The Core/Verizon North ICA speaks for itself. Core is without knowledge as to whether Verizon has billed Core in accordance with its tariffs, and demands strict proof thereof.

168. Core is without knowledge as to the statements set forth in paragraph 168 of Verizon's Counterclaims, and demands strict proof thereof.

169. Core is without knowledge as to whether Verizon has billed Core in accordance with its tariffs, and demands strict proof thereof. The referenced case is a legal authority which speaks for itself. Core denies Verizon's characterization thereof.

170. Core denies that it owes Verizon any amount. Core denies that it is obligated to pay for special access services it never ordered. The remaining allegations set forth in this paragraph are denied.

171. Core denies that it has not properly disputed amounts billed pursuant to the ICAs. Core states that Verizon's special access bills and other bills were not issued pursuant to the ICAs, a fact which Verizon itself acknowledges. Verizon Counterclaims, ¶¶ 164, 166, 167 and 169.

172. The ICAs speak for themselves. Core denies Verizon's characterizations thereof. Core denies that it will attempt to use the dispute resolution procedures of the ICA as a shield. Core states that Verizon's special access bills were not issued pursuant to the ICAs, as Verizon itself admits in footnote 18 to paragraph 172 of Verizon's Counterclaims.

173. Core denies that it has never disputed Verizon's billings. Core states that it has disputed Verizon's billings in their entirety, for valid and longstanding reasons, since at least 2003. Core states that it has no obligation to pay for special access services that it never ordered.

174. Core denies that it has never disputed Verizon's billings. Core states that it has disputed Verizon's billings in their entirety, for valid and longstanding reasons, since at least

2003. Core states that it has no obligation to pay for special access services that it never ordered. Core denies that special access bills even pertain to the same rate elements as those set forth in the ICAs.

175. Core denies that it has never disputed Verizon's billings. Core states that it has disputed Verizon's billings in their entirety, for valid and longstanding reasons, since at least 2003. Core states that it has no obligation to pay for special access services that it never ordered. Core denies that special access bills even pertain to the same rate elements as those set forth in the ICA. Core states that Verizon sets forth no legal basis for its assertions.

176. This paragraph sets forth a hypothetical scenario, and no response is required. To the extent a response is required, Core states that Verizon has never provisioned entrance facilities at TELRIC rates pursuant to the ICAs. Core further states that Verizon has never issued an invoice for local interconnection services, to include entrance facilities and related dedicated transport, pursuant to the ICAs.

177. Core denies paragraph 177 of Verizon's Counterclaims in full.

178. Core denies paragraph 178 of Verizon's Counterclaims in full. Core states that it has stood ready, willing and able to pay for entrance facilities provisioned by Verizon for local interconnection purposes pursuant to the ICAs, since at least 2003. Core states that, for reasons of its own, Verizon has steadily and intentionally refused to do so.

## **COUNTERCLAIM II**

179. Paragraph 179 of Verizon's Counterclaims incorporates the allegations set forth in the previous paragraphs, and requires no separate response. To the extent a response is required, the allegations set forth in paragraph 179 of Verizon's Counterclaims are denied.

180. The statute speaks for itself. No further response is required.

181. The statute speaks for itself. No further response is required.

182. Core admits the first sentence of paragraph 182 of Verizon's Counterclaims. The remainder of this paragraph contains legal conclusions, and no response is required thereto.

183. Core denies paragraph 183 of Verizon's Counterclaims in full.

184. Core denies paragraph 184 of Verizon's Counterclaims in full.

185. Core denies paragraph 185 of Verizon's Counterclaims in full.

186. Core denies paragraph 186 of Verizon's Counterclaims in full.

### **COUNTERCLAIM III**

187. Paragraph 187 of Verizon's Counterclaims incorporates the allegations set forth in the previous paragraphs, and requires no separate response. To the extent a response is required, the allegations set forth in paragraph 187 of Verizon's Counterclaims are denied.

188. State and federal law, and the ICAs, speak for themselves. Core denies Verizon's characterizations thereof.

189. The Verizon North ICA and Amendment Number 2 thereof speak for themselves. Core denies Verizon's characterizations thereof.

190. The Verizon PA ICA speaks for itself. Core denies Verizon's characterizations thereof.

191. Core's Amended Complaint speaks for itself. Core denies Verizon's characterizations thereof. The testimony of Bret Mingo speaks for itself. Core denies Verizon's characterizations thereof.

192. Core admits that its invoices include the total MOUs billed, the applicable rate, and the product of the MOUs and rate. Core denies the remainder of this paragraph.

193. Core's Amended Complaint speaks for itself. Core denies Verizon's characterizations thereof.

194. Core's Amended Complaint speaks for itself. Core denies Verizon's characterizations thereof. The testimony of Bret Mingo speaks for itself. Core denies Verizon's characterizations thereof.

195. Core denies paragraph 195 of Verizon's Counterclaims in full.

196. The Core/Verizon PA ICA speaks for itself. No further response is required.

197. The Core/Verizon PA ICA speaks for itself. Core denies Verizon's characterizations thereof.

198. Core admits that it has provided Verizon with CDRs relating to the traffic Verizon sends Core. Core denies the remainder of paragraph 198 of Verizon's Counterclaims. Core states that it has complied with Verizon's request for CDRs and that Verizon currently has no outstanding request for further records. Core states that it stands ready, willing and able to comply with further, reasonable requests.

199. Core admits that it has provided Verizon with CDRs relating to the traffic Core sends Verizon. Core denies that the ICAs or applicable law require Core to provide CDRs relating to its outbound traffic to Verizon. Core is without information to admit or deny the remaining allegations in paragraph 199 of Verizon's Counterclaims, and demands strict proof thereof. Core states that Verizon has never shared any of the figures listed therein with Core.

200. Core admits that it and Verizon used MF signaling to interconnect with each other for many years. Core denies the remainder of this paragraph.

201. Core denies paragraph 201 of Verizon's Counterclaims in full. Core states that all of the traffic Verizon sends Core is billable to Verizon, unless Verizon provides reasonably reliable indications that some specific, other carrier is responsible for a portion of that traffic.

202. Core denies paragraph 202 of Verizon's Counterclaims in full.

203. Core denies paragraph 203 of Verizon's Counterclaims in full.

#### **COUNTERCLAIM IV**

204. Paragraph 204 of Verizon's Counterclaims incorporates the allegations set forth in the previous paragraphs, and requires no separate response. To the extent a response is required, the allegations set forth in paragraph 204 of Verizon's Counterclaims are denied.

205. The Core/Verizon North ICA speaks for itself. No further response is required.

206. The Core/Verizon North ICA speaks for itself. No further response is required.

207. Core denies that Verizon ever invoked or desired to invoke the audit provisions of the Core/Verizon North ICA.

208. Core denies that Verizon ever invoked or desired to invoke the audit provisions of the Core/Verizon North ICA.

209. The Core/Verizon North ICA speaks for itself. No further response is required.

210. Denied in full. Core states that it has complied with Verizon's request for CDRs and that Verizon currently has no outstanding request for further records. Core state that it stands ready, willing and able to comply with further, reasonable requests.

211. The Core/Verizon PA ICA speaks for itself. No further response is required.

212. The Core/Verizon PA ICA speaks for itself. No further response is required.

213. Core denies that Verizon ever invoked or desired to invoke the audit provisions of the Core/Verizon PA ICA.

214. Core denies that Verizon ever invoked or desired to invoke the audit provisions of the Core/Verizon PA ICA.

215. The Core/Verizon PA ICA speaks for itself. No further response is required.

216. Denied in full. Core states that it has complied with Verizon's request for CDRs and that Verizon currently has no outstanding request for further records. Core state that it stands ready, willing and able to comply with further, reasonable requests.

### **COUNTERCLAIM V**

217. Paragraph 217 of Verizon's Counterclaims incorporates the allegations set forth in the previous paragraphs, and requires no separate response. To the extent a response is required, the allegations set forth in paragraph 217 of Verizon's Counterclaims are denied.

218. The ICAs speak for themselves. No further response is required.

219. Core denies paragraph 219 of Verizon's Counterclaims in full. The Commission approves ICAs, not specific procedures.

220. The Core/Verizon North ICA speaks for itself. No further response is required.

221. The Core/Verizon North ICA speaks for itself. No further response is required.

222. Core admits Verizon sent a letter dated July 1, 2011. Core denies the remainder of paragraph 222 of Verizon's Counterclaims. The Commission has already recognized that "Verizon has instituted what amounts to a "self-help" remedy by unilaterally deciding to withhold payment to Core for the traffic at issue without providing a factual or legal basis for such unilateral action."<sup>2</sup>

223. Verizon's letters speak for themselves. Core denies Verizon's characterizations thereof. The Commission has already recognized that "Verizon has instituted what amounts to a

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<sup>2</sup> Opinion & Order, *Core Communications, Inc. v. Verizon Pennsylvania Inc. and Verizon North LLC, Pa. P.U.C. Docket No. P-2011-2253650*, at 16 ("*Material Question Order*").

“self-help” remedy by unilaterally deciding to withhold payment to Core for the traffic at issue without providing a factual or legal basis for such unilateral action.”<sup>3</sup>

224. The Core/Verizon North ICA speaks for itself. Core denies Verizon’s characterizations thereof.

225. Core denies paragraph 225 of Verizon’s Counterclaims in full.

226. Core denies paragraph 226 of Verizon’s Counterclaims in full.

227. The Core/Verizon North ICA speaks for itself. No further response is required.

228. The Core/Verizon North ICA speaks for itself. No further response is required.

229. The Core/Verizon North ICA speaks for itself. Core denies Verizon’s characterizations thereof.

230. Core admits that it initiated a proceeding before the Commission. Core denies the remainder of this paragraph.

231. The Core/Verizon North ICA speaks for itself. Core denies Verizon’s characterizations thereof.

232. The Core/Verizon North ICA speaks for itself. Core denies Verizon’s characterizations thereof.

233. The Core/Verizon PA ICA speaks for itself. Core denies Verizon’s characterizations thereof.

234. Core admits Verizon sent a letter dated July 1, 2011. Core denies the remainder of paragraph 234 of Verizon’s Counterclaims. The Commission has already recognized that “Verizon has instituted what amounts to a “self-help” remedy by unilaterally deciding to

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<sup>3</sup> *Id.*

withhold payment to Core for the traffic at issue without providing a factual or legal basis for such unilateral action.”<sup>4</sup>

235. The Core/Verizon PA ICA speaks for itself. No further response is required.

236. Core denies paragraph 236 of Verizon’s Counterclaims in full.

237. The Core/Verizon PA ICA speaks for itself. Core denies Verizon’s characterizations thereof.

238. Core denies paragraph 238 of Verizon’s Counterclaims in full.

239. Core admits Verizon sent a letter dated April 13, 2012. Core denies that it is required to initiate billing disputes with respect to its own bills. Core states that Verizon subsequently explained that the April 13 letter was intended to dispute multiple bills in multiple states, including Pennsylvania, pursuant to multiple ICAs, even though that was not initially clear.

240. Core denies that it is required to initiate billing disputes with respect to Verizon’s failure to mirror rates in compliance with paragraph 89 of the *ISP Remand Order*.

241. Core denies paragraph 241 of Verizon’s Counterclaims in full.

#### COUNTERCLAIM VI

242. Paragraph 242 of Verizon’s Counterclaims incorporates the allegations set forth in the previous paragraphs, and requires no separate response. To the extent a response is required, the allegations set forth in paragraph 242 of Verizon’s Counterclaims are denied.

243. The Core/Verizon North ICA speaks for itself. No further response is required.

244. The Core/Verizon PA ICA speaks for itself. No further response is required.

245. The ICAs speak for themselves. Core denies Verizon’s characterizations thereof.

246. Core denies paragraph 246 of Verizon’s Counterclaims in full.

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<sup>4</sup> *Id.*



247. Core denies paragraph 247 of Verizon's Counterclaims in full. Core states that Verizon has ignored the timelines set forth in the ICAs for billing disputes.

248. Core denies paragraph 248 of Verizon's Counterclaims in full.

249. Core denies paragraph 249 of Verizon's Counterclaims in full.

250. Core denies paragraph 250 of Verizon's Counterclaims in full.

251. Core denies paragraph 251 of Verizon's Counterclaims in full.

252. Core denies paragraph 252 of Verizon's Counterclaims in full.

253. Core denies paragraph 253 of Verizon's Counterclaims in full.

A-J. The paragraphs labeled "A" through "J" on pages 49-50 of Verizon's filing constitute a prayer for relief to which no response is required. To the extent a response is required, the allegations set forth in this paragraph are denied.

#### **CORE'S NEW MATTER TO VERIZON'S COUNTERCLAIMS**

254. The Commission has already recognized that "Verizon has instituted what amounts to a "self-help" remedy by unilaterally deciding to withhold payment to Core for the traffic at issue without providing a factual or legal basis for such unilateral action."<sup>5</sup> Verizon has never had a valid basis of any kind for its putative disputes. Rather, at the beginning of 2011, Verizon made a business decision to withhold all intercarrier compensation from Core and its affiliates in order to put Core out of business, an effort that very nearly succeeded. As of today, Verizon and its affiliates are withholding at least \$1,213,889.65 in switched access charges and at least \$361,486.57 in intercarrier compensation charges for locally-dialed traffic from Core and its affiliates. These amounts do not include Core's claims in Counts II and III of the Amended Complaint in this case or the same or analogous claims Core and its affiliates may have in other

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<sup>5</sup> Opinion & Order, *Core Communications, Inc. v. Verizon Pennsylvania Inc. and Verizon North LLC*, Pa. P.U.C. Docket No. P-2011-2253650, at 16 ("Material Question Order").

states. Verizon took these actions (at least in part) in retaliation for Core's victory over Verizon in the U.S. Court of Appeals for the Fourth Circuit, which found that Verizon had unlawfully delayed interconnection with Core and remanded the case to the federal District Court in Baltimore, Maryland for a determination of damages flowing from Verizon's delays.<sup>6</sup> That case is now proceeding at full bore in that court. Verizon's current goal is to divert Core's resources away from reaching a successful verdict for damages in that case, and to continue to starve Core's operations through massive and coordinated self-help nonpayment.

### **Core's Billings to Verizon**

255. Almost a year after it initially withheld payment from Core for services rendered, Verizon still has no valid basis to contest Core's bills. In July, 2011, Verizon withheld intercarrier compensation from Core on the vague and unsubstantiated bases that "review of the facts available to Verizon indicates that the traffic billed by Core to Verizon at reciprocal compensation rates is not in fact compensable to Core as reciprocal compensation" and that Core "overstated the quantity of traffic and has billed in excess of any rates that would apply." Verizon New Matter, at ¶ 135. The Commission has already recognized that Verizon's initial "disputes" rang hollow, finding that Verizon "withh[e]ld payment to Core for the traffic at issue without providing a factual or legal basis for such unilateral action."<sup>7</sup>

256. Subsequently, Verizon changed its tune, claiming that essentially all of the calls Verizon sent Core were directed to just a handful of telephone numbers on Core's network, leading Verizon to the conclusion that Core was self-generating "terminating minutes solely for

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<sup>6</sup> *Verizon Maryland, Inc. v. Core Communications, Inc.*, 405 F. App'x 706, 714 (4th Cir. 2010) ("we find that Verizon had a duty to provide Core with the requested interconnection and therefore breached its contract. The district court's grant of summary judgment is reversed and this matter is remanded for further proceedings consistent with this decision including a determination of damages.").

<sup>7</sup> Opinion & Order, *Core Communications, Inc. v. Verizon Pennsylvania Inc. and Verizon North LLC, Pa.* P.U.C. Docket No. P-2011-2253650, at 16 ("*Material Question Order*").

the purpose of inflating reciprocal compensation.” Verizon August 16, 2011 New Matter, at ¶ 115. In its latest attempt to camouflage its flagrant refusal to pay, Verizon has abandoned this slanderous allegation without explanation or even so much as a simple acknowledgement of error.

257. Shifting course once again, Verizon now claims that “it appears that” a portion of Verizon’s traffic to Core “is not originated by” Verizon, and that further unspecified portions of Verizon’s traffic is destined for “locally-numbered calling cards, chat lines and other services that involve Core acting as an interexchange carrier.” Verizon New Matter, at ¶ 201. Yet again, Verizon provides no legal or factual basis that would justify withholding 100% of the intercarrier compensation billed by Core, either now or in July, 2011.

258. In lodging these latest allegations, Verizon fails to specify *inter alia* (1) who is responsible for the traffic it sends Core, (2) how Verizon permitted such transmission to occur, (3) whether Verizon was compensated for delivering traffic to Core’s network on behalf of other carriers; or (4) the relevance, legal or factual, of the line of business in which Core’s customers are engaged. It is now patently obvious that Verizon has been on a fishing expedition ever since its initial “dispute” letter, searching for any hook it can find. Yet Verizon is no closer now to identifying a legitimate dispute of Core’s billings than it was in July 2011.<sup>8</sup>

259. As set forth in more detail in Core’s Amended Complaint, ¶¶ 76-80 and 107-119, all of the traffic Verizon sends Core is billable to Verizon, unless Verizon provides reasonably reliable information indicating that some specific, other carrier is responsible for a portion of that traffic. For example, if such traffic is not billable as reciprocal compensation traffic, it may still be billable as switched access traffic. Verizon’s implicit claim, that it may deliver traffic for

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<sup>8</sup> Core reserves all of its rights to contest Verizon’s allegations with respect to Core’s billings, once Verizon articulates those allegations with more than the cursory description set forth in its New Matter and Counterclaims.

termination on Core's network without paying for services rendered, is unlawful and runs afoul to the Commission's policy of requiring delivering carriers to pay terminating carriers appropriate compensation.<sup>9</sup>

### **Verizon's Billings to Core**

260. Core has attempted to order and receive interconnection trunks from Verizon for the exchange of one-way outbound and exchange access trunks pursuant to the ICAs and section 251(c)(2) of the Act since roughly 2003, but Verizon to date has failed to provide such services, in violation of the ICAs and the Act.

261. Section 251(c)(2) of the Act provides that incumbent LECs such as Verizon have:

The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network--

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the carrier's network;

(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title.<sup>10</sup>

262. Section 252(d)(1) of the Act provides that:

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<sup>9</sup> See, e.g., Opinion & Order, *Palmerton Telephone Company v. Global NAPs South, Inc., et al.*, Pa. P.U.C. Docket No. C-2009-2093336, at 25 (March 16, 2010) ("In view of the specific facts that have been presented, GNAPs' non-payment of intrastate carrier access charges to Palmerton cannot be condoned as a matter of law and as a matter of sound regulatory policy. This conclusion is based on existing Pennsylvania and federal law and this Commission's subject matter jurisdiction to resolve intercarrier compensation disputes.")

<sup>10</sup> 47 U.S.C.A. § 251(c)(2).

Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251 of this title, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section—

(A) shall be--

(i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and

(ii) nondiscriminatory, and

(B) may include a reasonable profit.<sup>11</sup>

263. The Supreme Court has found that:

§ 251(c)(2) mandates that incumbent LECs “provide ... interconnection” between their networks and competitive LECs’ facilities. This ensures that customers on a competitor’s network can call customers on the incumbent’s network, and vice versa. The interconnection duty is independent of the unbundling rules and not subject to impairment analysis. It is undisputed that both unbundled network elements and interconnection must be provided at cost-based rates.<sup>12</sup>

264. The ICAs implement the Act. *See, egs.*, Core/Verizon PA ICA, at Part A-1 (“the Parties intend the rates, terms and conditions of this Agreement, and their performance of obligations thereunder, to comply with the Act...”); *and see*, Core/Verizon North ICA, at 6 (“Sections 251 and 252 of the Communications Act of 1934 as amended by the Telecommunications Act of 1996... have specific requirements for interconnection... and the Parties intend to comply with these requirements.”).

265. When it applied for and received authority to provide long distance services, Verizon made an additional commitment to provide competitors with interconnection at cost-

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<sup>11</sup> 47 U.S.C.A. § 252(d)(1).

<sup>12</sup> *Talk Am., Inc. v. Michigan Bell Tel. Co.*, 131 S. Ct. 2254, 2258, 180 L. Ed. 2d 96 (2011).

based rates. *See*, 47 U.S.C. § 271(c)(2)(B)(i)(requiring Verizon to provide “[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1) of this title.”).

266. Although Verizon North never completed a TELRIC study or otherwise sought to provide cost-based rates in compliance with the Act, Verizon PA specifically committed to provide Core with entrance facilities and related transport for local interconnection purposes at cost-based rates, based on a Commission-approved TELRIC study, as set forth in Appendix 2 to the Core/Verizon PA ICA (“DETAILED SCHEDULE OF ITEMIZED CHARGES”), at pp. 2-4.

267. Verizon has ignored or refused Core’s requests for cost-based local interconnection since 2003. Instead, Verizon has consistently and intentionally provisioned, and billed Core for, a different service, i.e., special access services designed for interexchange carriers.

268. The billings that Verizon references in its Counterclaims have been erroneous and unjustified since they were initiated. Core has steadily and consistently disputed Verizon’s billing since 2003, by means of voluminous correspondence, including emails, spreadsheets and formal letters, as well as numerous attempts to discuss the billings with the appropriate Verizon personnel face-to-face and telephonically.

269. Despite Core’s numerous and continuing efforts to resolve its disputes, Verizon has steadfastly refused to even consider Core’s disputes, much less work to resolve them in good faith.

270. Verizon has billed Core using interstate and intrastate switched access rates and rate elements, even though the trunks are section 251(c)(2) interconnection facilities for the transport of telephone exchange and exchange access traffic and should therefore be priced at

TELRIC rates and using TELRIC rate elements, consistent with the language of the Act, FCC rules and regulations, the ICA and the recent Supreme Court decision in *Talk America*.

271. In its Counterclaims, ¶ 166, Verizon relies on the FCC's 2005 *TRRO* to justify the outrageously high special access rates it seeks to collect from Core.

272. The *TRRO* has no relevance to the section 251(c)(2) interconnection services Core has attempted procure, nor does it provide any basis for Verizon's billings to Core. Indeed, the Supreme Court recently rejected the very legal theory Verizon sets forth in paragraph 166 of its Counterclaims, rendering Verizon's position legally untenable.<sup>13</sup>

273. Pursuant to the Supreme Court's direction, section 251(c)(2) interconnection remains available to CLECs at the Commission-approved TELRIC rates set forth in the Core/Verizon PA ICA, rather than unregulated special access rates that Verizon seeks to charge.

274. As relevant to interconnection, the *TRRO* did not alter Verizon's obligation to provide Core with local interconnection facilities, including entrance facilities and related dedicated transport, at cost-based TELRIC rates pursuant to the ICAs, and the ICAs were not altered in any material way.

275. Core's disputes of Verizon billings are not limited to pricing concerns. Verizon has failed to configure the trunks in the manner that Core requested and the ICAs require.

276. The ICAs require the Parties to pass calling party number ("CPN") to each other to facilitate proper rating and billing of calls. Section 7.3 of Attachment IV to the Core/Verizon PA ICA provides that "each party shall pass calling party number ("CPN") information on each call carried over the traffic exchange trunks... no later than December 31, 1998." Section 2.6 of

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<sup>13</sup> *Talk America*, 131 S. Ct., at 2264 (2011).

Part V of the Core/Verizon North ICA provides that “each Party shall pass Calling Party Number (“CPN”) on at least ninety percent (90%) of calls carried over the Traffic Exchange Trunks.”).

277. For many years, Verizon provisioned one-way outbound and two-way access toll connecting trunks using multi-frequency (“MF”) signaling. Core disputes Verizon’s billings for MF outbound trunks in their entirety. Despite numerous requests, Verizon never enabled these trunks to pass the CPN of Core’s end users, rendering these trunks useless. In addition, Verizon designated these trunks as special access trunks, making Core’s outbound local traffic appear to be toll in nature. Core also disputes Verizon’s billings for MF access toll connecting trunks in their entirety. Verizon never enabled these trunks to pass CPN to or from Core, rendering these trunks useless. As a result, Core has disconnected all of the MF trunks Verizon provisioned.

278. Verizon’s failure to provision trunks capable of passing CPN violates the applicable provisions of the ICAs.

279. The ICAs require the Parties to segregate local interconnection traffic onto local trunk groups, and exchange access traffic onto separate trunk groups. Core/Verizon PA ICA, Att. IV, § 1.1 (providing separate trunk groups for “Local Traffic” on one group and “equal access traffic between [Core] and purchasers of [Verizon’s] switched Exchange Access Services” on another group.); *and*, Core/Verizon North ICA, Part V, § 1.2 (providing separate trunk groups for “Reciprocal Compensation Traffic” on one group and “Exchange Access traffic” on another group.).

280. Beginning in late 2009, Core attempted to order new trunks using Signaling System 7 (“SS7”) instead of MF. While these newer SS7 trunks do pass CPN, they are deficient in other respects. On the SS7 one-way outbound trunks, Verizon is inserting Core’s carrier



identification code (“CIC”) into the call stream, making Core’s outbound local traffic appear to be toll in nature to the carriers that receive Core’s traffic through Verizon’s tandems.

281. Verizon’s failure to segregate local traffic onto local trunk groups violates the relevant provisions of the ICAs.

282. The ICAs require the parties to transmit certain information necessary to bill third-party carriers as appropriate. Section 3.2 of Attachment IV to the Core/Verizon PA ICA provides that “network signaling information such as... CIC/OZZ information... will be provided by either Party wherever such information is needed for call routing or billing.”

283. On the SS7 two-way access toll connecting trunks, Verizon is not transmitting third-party carriers’ CIC or operating carrier number (“OCN”) in the call stream, making it difficult or impossible for Core to properly bill and collect appropriate switched access charges from carriers.

284. Verizon’s failure to provide trunks capable of passing CIC and OCN where necessary for billing violates the applicable provisions of the ICAs.

285. Verizon has never issued Core any invoice for the cost-based local interconnection services Core has requested pursuant to the Act and the ICAs.

286. Core is not obligated to pay Verizon any amount unless and until Verizon issues an invoice reflecting services Core has actually ordered and Verizon has actually provisioned. Core notes that nowhere in its Answer, New Matter and Counterclaims does Verizon ever allege that Core ordered special access services from Verizon. Instead, Verizon alleges that Core should pay for services it did not order at rates it did not bargain for.

#### **Additional Affirmative Defenses**

287. Verizon’s Counterclaims are barred by the doctrine of accord and satisfaction.

288. Verizon's Counterclaims are barred for lack of Commission jurisdiction.
289. Verizon's Counterclaims are barred by laches.
290. Verizon's Counterclaims are barred by the doctrine of res judicata.
291. Verizon Counterclaims are barred by set off and recoupment.
292. Verizon's Counterclaims are barred by the applicable statute of limitations.
293. Verizon's Counterclaims are barred by the doctrine of unclean hands.
294. Verizon's Counterclaims are barred by the doctrines of waiver and estoppel.
295. Verizon's Counterclaims are barred because Verizon has failed to mitigate its damages.

WHEREFORE, for the foregoing reasons, Core respectfully requests that the Commission dismiss Verizon's Counterclaims.

Respectfully submitted,



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*Counsel for Complainant Core  
Communications, Inc.*

June 5, 2012

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

CORE COMMUNICATIONS, INC.  
Complainant

v.

VERIZON PENNSYLVANIA INC.  
and

VERIZON NORTH, LLC  
Respondents

Docket No. C-2011-2253750

Docket No. C-2011-2253787

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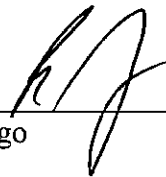
PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

VERIFICATION

I, Bret Mingo, President of Core Communications, Inc., verify that the statements and the factual allegations contained in the foregoing Reply to New Matter and Answer and New Matter to Counterclaims are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.

6/4/2012  
Date

Bret Mingo



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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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CORE COMMUNICATIONS, INC.  
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Docket No. C-2011-2253750  
Docket No. C-2011-2253787

CERTIFICATE OF SERVICE

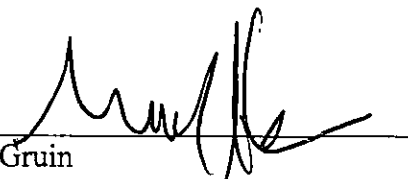
I hereby certify that I have this day served by First Class U.S. Mail and Electronic Mail a true and correct copy of the foregoing Reply to New Matter and Answer and New Matter to Counterclaims upon the parties listed below, in accordance with the requirements of § 1.54 (relating to service by a party):

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June 5, 2012

  
\_\_\_\_\_  
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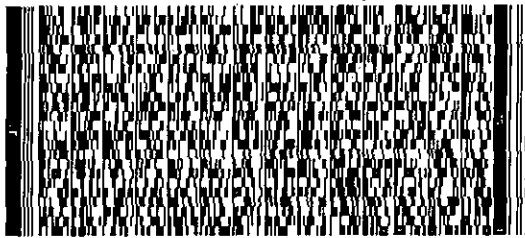


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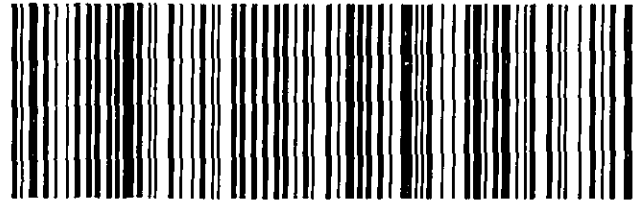


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