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March 18, 2013

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

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

Dear Secretary Chiavetta:

Enclosed please find the Reply Brief, with Supplemental Proposed Findings of Fact and Conclusions of Law, of the Verizon Companies, filed on behalf of Verizon Pennsylvania LLC and Verizon North LLC (collectively, "Verizon") in the above captioned matter.

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

Very truly yours,

Suzan D. Paiva

SDP/slb

**Via E-Mail and Federal Express**
cc: The Honorable Susan D. Colwell
Attached Certificate of Service

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Verizon's Reply Brief, with Supplemental Proposed Findings of Fact and Conclusions of Law, upon the parties listed below, in accordance with the requirements of §1.54 (relating to service by a party) and 1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 18th day of March, 2013.

**Via E-Mail and Federal Express**

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**BEFORE THE**
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| Core Communications, Inc., | : | |
| | : | |
| Complainant, | : | |
| | : | |
| v. | : | Docket No. C-2011-2253750 |
| | : | Docket No. C-2011-2253787 |
| Verizon Pennsylvania Inc. and | : | |
| Verizon North LLC, | : | |
| Respondents. | : | |

# VERIZON'S POST-HEARING REPLY BRIEF


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Dated: March 18, 2013

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## I. INTRODUCTION

Despite Core's attempts to complicate and confuse, the heart of this case is simple. Core[1] refuses to pay anything for services provided by Verizon[2] while it overcharges Verizon in various ways for Core's own traffic termination services, including by concocting – during the course of this litigation – $30,000,000 in meritless new claims for additional payment for terminating traffic for which Verizon already paid. The facts themselves are largely undisputed, while Core advances various unfounded and convoluted legal arguments and technicalities to excuse its unlawful conduct.

The Commission must put a stop to Core's abuse of the Commission's resources to advocate disingenuous double standards. In July of 2011, the FCC[3]-described "poster boy of reciprocal compensation gamesmanship"[4] ran to this Commission seeking emergency relief from Verizon's alleged "self-help" non-payment of one month of invalid reciprocal compensation bills from Core that totaled approximately $75,000. Core castigated such non-payment as part of an "epidemic" of "self-help" that this Commission has "strongly condemned," and succeeded in obtaining an emergency order requiring Verizon to pay Core's bills pending litigation even while the record has proven that Core is overcharging Verizon.[5] Yet, the record reveals that Core itself has taken the very same "self-help" to new heights *by refusing to pay <u>any</u> of the over $4.5 million Verizon has billed Core for facilities and services since the beginning of the parties' contractual relationship*. Core concedes that it has obtained value from using Verizon's services and admits that it does not

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1 "Core" refers to Core Communications, Inc.

2 "Verizon" refers to Verizon Pennsylvania LLC ("Verizon PA") and Verizon North LLC ("Verizon North").

3 "FCC" refers to the Federal Communications Commission.

4 Response of the Federal Communications Commission to Emergency Motion for a Stay and Motion for Expedited Consideration, *WorldCom, Inc. v. FCC*, No. 01-1218 at 14 (D.C. Cir., June 12, 2001) ("*FCC Stay Response*").

5 *See* "Petition of Core Communications, Inc. for Interim Emergency Order" (July 22, 2011) at ¶ 44.

pay, advancing confusing and meritless excuses as a smokescreen to avoid payment for the facilities and services it uses to effectuate its traffic stimulation business plan.

As to Core's systematic overbilling of Verizon, Core does not deny that it has routinely billed Verizon for third-party originated traffic and that it continues to do so; it merely quibbles with how much of the bills represent third-party traffic, and claims (without support) that it is entitled to bill Verizon for third-party traffic. Core also does not deny double-billing Verizon and other carriers for terminating the same traffic. Instead it blames the victim, criticizing Verizon for not figuring out Core's improper billing scheme sooner.

The record confirms that Core has often gamed the system by double-billing both Verizon and the responsible carrier for the same traffic, claiming in this proceeding that Verizon is financially responsible, but asserting in other pending Commission proceedings that the third party originating the traffic is liable to Core. The Commission's recent decision[6] requiring AT&T to pay Core $284,336 ($0.0007 per minute for terminating 406,194,298 minutes of locally-dialed Internet Service Provider ("ISP")-bound traffic) for which Core already billed and collected payment from Verizon highlights this problem. In the AT&T case, Core claimed that Verizon's billing records allowed it to distinguish Verizon's traffic from AT&T's and denied billing both parties for the same traffic; the record developed here confirms that this was untrue, and that Core actually billed Verizon for every single minute of the subject traffic, in addition to billing AT&T (using records provided by Verizon). The Commission must put an end to Core's use of Commission resources to "double-dip" from multiple parties regarding the same traffic.

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[6] *Core Communications, Inc. v. AT&T Communications of Pennsylvania, LLC and TCG Pittsburgh, Inc.*, Pa. PUC Dockets C-2009-2108186 and C-2009-2108239 (Opinion and Order entered Dec. 5, 2012).

Core's allegation that Verizon asserted claims as "pure[] . . . retaliation"[7] is ironic given that during the course of this case Core manufactured two new outrageous financial claims, turning a proceeding in which Core originally sought to have Verizon chastised by the Commission for withholding approximately $75,000 into a demand for over $30,000,000 from Verizon. Core has again trotted out a series of unsupportable legal positions in its brief – repeatedly rejected by the courts, the FCC and this Commission – in an effort to collect tens of millions of dollars in *additional* intercarrier compensation payments from Verizon for traffic for which Verizon has not only already fully compensated Core, but for which *Verizon is entitled to a multi-million dollar refund* from Core because Core knowingly billed and collected payment from Verizon for the termination of significant amounts of third party traffic for which Verizon was not financially responsible.

Core is an experienced arbitrageur that has long relied on traffic stimulation schemes to profit at the expense of other carriers, rather than earn revenues from the services it provides to its own customers. Verizon, as an incumbent local exchange carrier ("ILEC"), is in the unenviable position of being required to allow Core to lease certain facilities, accept Core's traffic, provide Core with traffic termination and directory listing services, and pay Core's bills, all while Core brazenly abuses these privileges to Verizon's detriment.

The Commission must put a stop to Core's unlawful behavior by denying Core's Amended Complaint against Verizon in its entirety and granting the relief sought in Verizon's New Matter, specifically ordering Core to: (i) pay Verizon for the facilities and services Core has used and continues to use to carry its traffic and serve its customers; (ii) refund all overpayments associated with its erroneous billings to Verizon and cease grossly overcharging Verizon for the termination of traffic that does not originate with Verizon's customers; (iii) deny Core's attempt to collect from

[7] *See* "Main Brief of Core Communications, Inc.," filed January 23, 2013 ("Core Brief") at 2.

Verizon tens of millions of dollars in reciprocal compensation payments through a contorted misconstruction of the FCC's *ISP Remand Order*; (iv) reject Core's efforts to collect on erroneous switched access bills issued to Verizon during the pendency of this case; and (v) deny Core's claim for "lost revenue" damages associated with switched access amounts Core has never billed to Verizon and admits that it never can.

## II. ARGUMENT

### A. Core's Brief Ignores the Record

The parties seem to agree that:

1. The parties' disputes fall into two main categories: Verizon's billings to Core and Core's billings to Verizon;[8] and

2. The parties' interconnection agreements ("ICAs"), along with the tariffs and other documents incorporated therein, establish the parties' respective contractual obligations to each other.[9]

Yet, beyond offering these broad parameters for evaluating the case, Core has made little or no effort to aid the Commission in evaluating the totality of the record. Although 52 Pa. Code § 5.501(a)(3) requires the party with the burden of proof to "*completely address, to the extent possible, every issue raised by the relief sought and the evidence adduced at hearing*" (emphasis added), Core's brief ignores the majority of the record developed over the past year and a half. Instead, the brief largely summarizes Core's own written testimony without considering Verizon's evidence refuting Core's erroneous assertions or Core's own subsequent concessions that key portions of its written testimony were inaccurate. Core also proposes a slew of findings of fact that fail to account for Core's own concessions throughout the case, much less the record developed by

[8] Core Brief at 1.

[9] Core Brief at 3.

Verizon.[10] For example, Core's findings of fact parrot statements it subsequently acknowledged under oath were incorrect,[11] repeat assertions that Core abandoned after Verizon challenged them,[12] and pertain to Verizon affiliates not parties to this proceeding and events allegedly occurring in other states.[13] Such an approach to post-hearing briefing falls far short of any serious effort to "completely address, to the extent possible, every issue raised by the relief sought and the evidence adduced at hearing." As a result, Core's brief and associated proposed findings fail to address the totality of the record or to assist the Commission in synthesizing all of the evidence adduced during this proceeding.

### B. Core Cannot Justify Its Failure to Pay Verizon the Millions of Dollars Core Owes but Has Steadfastly Refused to Pay

Core does not deny that it has withheld and continues to withhold all payment on Verizon's bills for its use of Verizon's network, while it continues to use Verizon's facilities and services to carry on its business in Pennsylvania. The undisputed record shows that Verizon has billed, and Core has failed to pay, more than $4.5 million for facilities and services provided in Pennsylvania, and that Core continues to use Verizon's network without paying. VZ Brief at 10. Core dismisses

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[10] Beyond a single citation to Verizon's written testimony, a single reference to the hearing transcript, and references to two paragraphs of Verizon's August 16, 2011 Answer, New Matter and Counterclaims to the *original* complaint that do not appear in Verizon's May 16, 2012 Answer, New Matter and Counterclaims to Core's *amended* complaint (and are therefore not at issue), Core's two hundred and forty three separate proposed findings of fact are nothing more than a cluttered and repetitive summary of Core's written testimony.

[11] For example, Core offers a proposed finding of fact ("PFOF") asserting that there is no EMI field for OCN or CIC (Core PFOF ¶ 201), ignoring the fact that Core witness Mr. Mingo testified on the stand that "we have a mistake here," and that in fact, EMI contains fields for both OCN and CIC. Hearing Transcript ("Tr.") at 373; *see also* VZ Stmt. 1.0 at Ex. 17 (OCN and CIC fields displayed in EMI records).

[12] For example, Core offers a proposed finding of fact asserting that Verizon and Core "agreed" to use MF trunks. Core PFOF ¶ 19. However, when pressed in discovery to substantiate this baseless claim, Core backtracked, stating that Core "takes no position with respect to whether Verizon had any control over Core's choice of MF." VZ Stmt. 2.0 at 7-8 and Ex. 1-R thereto. Similarly, Core offers a proposed finding of fact that Verizon and Core "agreed" to a process for implementing the 3:1 ratio in Pennsylvania (Core PFOF ¶ 32), completely ignoring the fact that the sole document Core produced in discovery to support this assertion was specific to *Maryland*, predated the very existence of Verizon North ICA by two years, and that neither Pennsylvania ICA had been amended to include such an alleged "agreement." VZ Stmt. 2.0 at 35-36 and Ex. 13-R thereto.

[13] *See, e.g.*, Core PFOF 133-36; 154, 158. These matters are not being litigated here, and Verizon rejected Core's attempt to draw Verizon into doing so. It would be inappropriate for this Commission to render any findings or conclusions on matters not before it and over which it has no jurisdiction.

these disputes as being over "services allegedly provided by Verizon," (Core Brief at 2), but this is not a case of services "*allegedly"* provided and used. Core has admitted on the record that it terminates traffic to Verizon and uses (and used, in the case of the now-decommissioned MF trunks) Verizon-provided trunks, and concedes that it has derived value from that use. Core Stmt. 3.0 at 39. There is no question that the services were provided and used, and no question that Core has failed to pay. Indeed, Core has testified that it will not pay Verizon even amounts that Core might concede it owes, unless and until Verizon settles all disputes with Core. Core Stmt. 3.0 at 39.

Core dismisses Verizon's attempt to obtain Commission relief from Core's self-help as "purely … retaliation against Core." Core Brief at 2. Core's inaccurate and ironic label fails to consider the substance of the matter: Verizon has the right to be paid for the facilities and services it provides to Core and, having been brought into this case by Core, may seek relief from this Commission as an injured party. *See* 66 Pa. C.S. § 701. Where, as here, the evidentiary record shows that Verizon provided services to Core for which payment is due, and further shows that Core's disputes are baseless, the Commission must require Core to pay Verizon, together with the late payment charges Core agreed to in the ICAs.

### 1. Core Does Not Address Its Failure to Pay Verizon's Bills for Intercarrier Compensation and Directory Listings

Core's brief does not even address Core's failure to pay Verizon's bills for intercarrier compensation and directory listings. As outlined in Verizon's brief, Core has failed to pay more than $93,000 in intercarrier compensation charges for traffic termination services (traffic sent from Core to Verizon for termination) and $32,685.91 in directory listing services rendered by Verizon. Core admits that it has been sending traffic to Verizon for termination since 2010 and continues to send traffic. VZ Stmt. 1.0 at 62 and Ex. 1 thereto; Core Stmt. 3.0 at 39. Core concedes that it has never paid Verizon's intercarrier compensation bills for terminating this traffic and continues to

withhold all such payment. Core Stmt. 3.0 at 39. Nor does Core deny that it has failed to pay Verizon's bills for directory listing charges. Yet, Core raises no colorable dispute with the substance of either subset of charges – indeed Core does not even mention them in its brief.

The Commission should find Core's behavior particularly troubling since the basis for Core's original complaint and petition for emergency relief was Verizon's withholding of payment on the very same type of intercarrier compensation bills (for traffic allegedly flowing in the opposite direction, from Verizon to Core). Core claims to collect over half its operating revenue from Verizon's payment of Core's intercarrier compensation bills,[14] but, when the shoe is on the other foot, Core refuses to pay and proffers no excuse. Core's brief does not even attempt to explain why its failure to pay intercarrier compensation to Verizon is not part of the very "epidemic" of "self-help" that Core argues this Commission has "strongly condemned,"[15] as well as a violation of the ICAs and the law.[16]

### 2. Core's Arguments Do Not Excuse Its Failure to Pay Verizon's Bills for Facilities Provided to Core

Verizon's brief explained that Core has withheld all payment for trunking facilities – both the one-way Local Interconnection Trunk Groups ("LITGs") that carry local and non-Feature Group D intraLATA toll traffic from Core's network to Verizon's, as well as the two-way Access Toll Connecting Trunks ("ATCTs") that Core ordered to carry traffic exchanged between Core and interexchange carriers ("IXCs") that connect to Verizon's access tandems. VZ Brief at 10-11.

Core attempts to justify its failure to pay anything for its use of Verizon's facilities on two grounds: (1) it claims Verizon billed the wrong rate, and (2) it claims that the trunks did not

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[14] *See* April 16, 2012 "Amended Complaint of Core Communications, Inc." at ¶ 45.

[15] *See* "Petition of Core Communications, Inc. for Interim Emergency Order" (July 22, 2011) at ¶ 44.

[16] Core's non-payment constitutes a breach of the parties' ICAs, and its failure to pay switched access charges additionally violates 66 Pa. C.S. § 3017(b). VZ Brief at 26-27. The Commission should order Core to pay Verizon for these services.

function correctly. Core Brief at 17. As discussed in Verizon's brief, neither argument excuses Core's failure to pay.

### a. Core's Contention That Verizon Has Charged the Wrong Rate Does Not Justify Core's Failure to Pay

Core's first excuse is that it "has attempted to order local interconnection services from Verizon for years," but that Verizon has provisioned a different service that was intended for IXCs. Core Brief at 18. Core claims that Verizon should have provisioned "interconnection trunks" priced at TELRIC rates. *Id*. at 19. But Core simply repeats the assertions contained in its written testimony and does not bother to address, much less refute, the contrary evidence submitted by Verizon.

First, Verizon's witnesses explained in detail why the service Core ordered and used was actually a tariffed access service. Core benefitted financially by using special access circuits powered by Verizon equipment on both ends because Core was able to avoid investing in the equipment and collocation space that would have been required to use unbundled dedicated transport to carry traffic between its network and Verizon's. VZ Brief at 13-14; *see also* VZ Stmt. 3.0 at 24. Had Core ordered the less expensive unbundled dedicated transport facilities, which prior to the FCC's *Triennial Review Order* were required to be made available at TELRIC rates,[17] Core would have had to do more work and to deploy more of its own equipment to do so (and chose not to). VZ Brief at 14; VZ Stmt. 3.0 at 23-25. In short, Verizon treated Core's trunk orders as orders for access facilities because *the trunks Core ordered were access facilities*, not because Core used

[17] As detailed in Verizon's brief, until the FCC's initial orders implementing the Telecommunications Act of 1996 ("Act"), entrance facilities were available only as access facilities. With the passage of the Act, they also became available as unbundled network elements ("UNEs") under 47 U.S.C. § 251(c)(3), at TELRIC rates. However, the FCC later "delisted" entrance facilities as UNEs (meaning it removed them from the list of UNEs available to competitive providers at TELRIC rates) in 2003. Verizon Brief at 13-14. This Commission recognized the change in law and approved Verizon PA's amendment to its UNE Tariff 216 to reflect that entrance facilities were no longer available as UNEs and instead would be available at "special access rates … under Verizon's tariffs." *Verizon Pennsylvania Inc. Tariff for Other Telephone Companies (Tariff No. 216) Discontinue CLEC Access to Unbundled Entrance Facilities*, Docket No. R-00050800 (Opinion and Order entered February 10, 2006) ("*Tariff 216 Order*").

the Access Service Request ("ASR") system to order them. Core's brief simply ignores this evidence.

Second, Core attempts to muddle the issue of the appropriate rates for these facilities by referencing the United States Supreme Court's 2011 decision in *Talk America Inc. v. Michigan Bell Tel. Co.*, 131 S.Ct. 2254, 2258 (2011)("*Talk America*").[18] *Talk America* held that some, but not all, entrance facilities (the facilities that connect a competitive LEC's network with the incumbent LEC's network) qualify as interconnection facilities under § 251(c)(2), which a competitive local exchange carrier ("CLEC") such as Core can buy at TELRIC rates, *provided its ICA so allows*. In Core's view, *Talk America* requires all of Verizon's charges for LITGs and ATCTs obtained by Core to be re-rated retroactively down to TELRIC rates without regard to the terms of its ICAs, and without need for an amendment to the ICAs.[19] But Core misses several levels of nuance with respect to the application of *Talk America* to the facts of this case.

Most fundamentally, although *Talk America* holds that a CLEC is entitled to ICA terms that would allow it to purchase TELRIC-rated local interconnection facilities, in the end, the terms of the ICA applicable to the relationship between the parties at issue controls. As the FCC explained in its *CoreComm Order*, the provisions of 47 U.S.C. § 251 are not self-executing and a carrier cannot complain if it adopted an ICA that gives it fewer rights than are available under § 251: when a CLEC voluntarily opts into an agreement that "does not provide" a service that federal law allows

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[18] *See also* VZ Stmt. 1.0 at 39-40.

[19] *Talk America* involved a proceeding to amend the terms of Michigan Bell's existing contracts with its competitors, and not the interpretation of an existing agreement. *See Michigan Bell Tel. Co. v. Lark*, 06-cv-11982, 2007 U.S. Dist. LEXIS 71272 at **12-14 (E.D. Mich., Sept. 26, 2007) (describing the history of the case, which began before the Michigan Public Service Commission and raised the question of how Michigan Bell's existing contracts with competitive LECs should be amended to account for the FCC's Triennial Review and Triennial Review Remand orders). The fact that *Talk America* involved amending an ICA, rather than interpreting an existing ICA, is a critical distinction given the *CoreComm Order*'s finding, discussed *infra*, that a competitor cannot rely on Section 251 duties to circumvent the terms of its ICA.

it to obtain, it has "effectively waived any right to insist" that it receive that service.[20] If the applicable ICA does not provide for TELRIC-rated interconnection facilities, then Core cannot rely on the *Talk America* decision to override the terms of the ICA and create a right to TELRIC-rated interconnection facilities going back to the beginning of time. At most, *Talk America* would allow Core to invoke the ICA's change-of-law provisions to seek to amend the ICA going forward. VZ Brief at 16-17.

Although Core attempts to argue that the ICAs already entitle it to TELRIC-rated interconnection facilities, that argument does not survive scrutiny. Core cites various provisions of the underlying adopted ICAs, but they are simply generic provisions relating to Core's ability to purchase transport and two-way trunking and general language regarding performance in good faith and in compliance with applicable law. Core Brief at 20. Of course, applicable law includes the requirement that Core seek amendments to implement changes in law, and applicable law provides that Core has "effectively waived any right to insist" that it receive a service not found in its ICAs. *CoreComm Order*, ¶ 32. Core cites no provision of either ICA that entitles it to purchase § 251(c)(2) entrance facilities or establishes TELRIC rates for such facilities, because there is none. VZ Brief at 16. Verizon's brief outlined the relevant ICA provisions, which are found primarily in the *adoption agreements* through which Core entered into ICAs with Verizon (which Core ignores). Section 2.2 of the Verizon PA ICA Adoption Agreement allowed Verizon to cease providing delisted UNEs upon written notice, which was provided with regard to entrance facilities (as the Commission has held, and as Core admits[21]). VZ Brief at 14-15. Paragraph I.B. of the Verizon

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[20] Memorandum Opinion and Order, *CoreComm Communications, Inc. v. SBC Communications, Inc.*, 18 FCC Rcd 7568, ¶ 32 (2003) ("*CoreComm Order*"), *recon. denied*, 19 FCC Rcd 8447 (2004) ("*CoreComm Reconsideration Order*"), *vacated on other grounds*, *SBC Communications Inc. v. FCC*, 407 F.3d 1223 (D.C. Cir. 2005).

[21] This Commission recognized that "Verizon provided notice to CLECs on June 20, 2005, notifying that it would discontinue Entrance Facilities within ninety (90) days and that thereafter CLECs may not obtain Entrance Facilities as an unbundled element." *See PUC v. Verizon Pennsylvania Inc.*, Docket No. R-00050800 (Opinion and Order

North ICA Adoption Agreement and footnote 1 to Appendix A thereto, as well as Amendment No. 1 to the Verizon North ICA Adoption Agreement at §§ 2.4 and 2.5, have the same effect. VZ Brief at 15. As a result of these provisions, which Core does not address, TELRIC-rated unbundled entrance facilities ceased to be available as UNEs under the ICAs once the law changed and the FCC delisted them as UNEs, and no other ICA term provides for TELRIC-rated entrance facilities as Section 251(c)(2) interconnection facilities.

Similarly, Core ignores the provisions of the ICAs that establish access rates as the pricing for the ATCTs. Verizon PA ICA Adoption Agreement at Appendix 2 (Pricing), FN 1; Verizon North ICA at Part V, § 3.2.2 and Verizon North ICA Adoption Agreement at Amendment 1, §§ 2.4 and 2.5; *see also* VZ Brief at 16. Finally, Core ignores the change of law provisions of the ICAs that it never invoked once the *Talk America* decision was issued. Verizon PA ICA at Part A, §§ 2.2 and 2.4; Verizon North ICA at General Terms & Conditions ("GT&C"), §§ 8.3 and 8.4. As Verizon explained in its brief, these ICA provisions do not allow Core to unilaterally refuse to pay based on the *Talk America* decision. VZ Brief at 17. Core must follow the change of law provisions of the underlying agreements, which to date it has not done. Therefore, under the ICAs, the only way Core could have purchased entrance facilities from Verizon is at the rates incorporated into the ICAs – Verizon's tariffed access rates.

Verizon also explained in its initial brief why Core's reading of *Talk America* as permitting TELRIC rates for *all* entrance facilities is overreaching and wrong, and why the Supreme Court and the FCC amicus brief to which the Court deferred both require a finding that the ATCTs used by Core to exchange traffic with IXCs are not "local interconnection facilities," despite Core's claims. The majority of the facilities for which Core has incurred past due charges were ATCTs used to

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entered September 29, 2005); s*ee also* Core Stmt. 3.0 at 37 and Ex. R-22 thereto (discussing and attaching Verizon letter delisting entrance facilities).

exchange *interexchange* traffic with carriers other than Verizon, not *local* traffic, and were therefore not "local interconnection facilities." VZ Brief at 17-19.

In short, neither the ICAs nor the *Talk America* decision absolves Core from paying for the facilities at issue at the access rates that properly apply. But even if there were merit to Core's argument that the facilities should have been priced at TELRIC – which there is not – Core fails to explain how this justifies Core's refusal to pay *anything at all* for the use of these trunks. Core admits that it used and continues to use trunking facilities leased from Verizon while withholding all payment. Core Stmt. 3.0 at 39. It is undisputed that Core has not even paid Verizon the lower TELRIC rates that Core incorrectly asserts apply to these facilities, even though the ICAs obligate Core to pay, at minimum, the portion of Verizon's bills that Core does not dispute. VZ Brief at 12. Core attempts to evade this failure by claiming that "Verizon itself has declined to undertake the task of rerating its own access bills – even though it argues Core should have paid for them at TELRIC." Core Brief at 21. Verizon squarely addressed this untruth at the evidentiary hearing in this case. Verizon *did* in fact provide Core with a TELRIC re-rate, at Core's request (Tr. 582) – a fact elicited at hearing precisely because Core was attempting to use the confidentiality of the mediation process as a sword, rather than a shield, and insinuated that it could not have made a payment at TELRIC rates because it had no way to know what amount that would be. In addition, Verizon's witness testified at hearing that, contrary to Core's assertion (Core Brief at 21), Core was fully capable of performing a TELRIC re-rate for itself. Tr. 493-95; 500; 580-582 and VZ Redirect Ex. 1.

Despite Verizon performing the TELRIC re-rate calculation for Core, and Core being fully able to do the same for itself if it wanted to check Verizon's calculation, Core still has not paid even that amount. Core argues that unless and until Verizon capitulates to Core's position and officially reissues these bills at TELRIC rates it is not going to pay. Core Brief at 20-21. But Core offers no legal authority or ICA provision permitting it to pay *nothing* because it disagreed with the rates reflected in

Verizon's invoices, and Core is in breach of the ICAs' obligation to pay at least the undisputed amounts. VZ Brief at 12 and FN 19.

**b. Core's Functionality Criticisms Are Baseless and Do Not Justify Core's Failure to Pay**

Core continues to trot out the same old list of reasons why it claims the trunks failed to function properly, allegedly relieving Core of any obligation to pay for them, but it again completely ignores the detailed contrary evidence submitted by Verizon refuting all of Core's functionality arguments. Core Brief at 23-25. Core even ignores its own concessions during the course of the case that Verizon was correct on some of these points. *Id*. Verizon has already refuted those contentions and responds again briefly here.

The first deficiency in Core's "functionality" argument is its failure to explain how, as a matter of law, it is even relevant. If there were any technical merit to Core's "functionality" claims – and Verizon's evidence squarely proves there is not – Core has failed to cite a single legal authority to support its faulty assumption that the facility quality claims it has raised, even if true, would absolve Core from the need to pay anything for the subject facilities. VZ Brief at 20. The Commission should reject any notion that Core's claims regarding "facility quality" absolve it from the need to pay Verizon for them.

The second deficiency in Core's "functionality" argument is that the record does not support it as a matter of fact. Core's laundry list of supposed defects with the trunking supplied by Verizon is not supported by the totality of the record – most of which Core's brief ignores.

*First*, Core continues to accuse Verizon of sending all types of traffic over both the sets of trunks (Core Brief at 26), but Verizon rebutted these allegations and explained that the parties' ICAs expressly permit the routing of non-equal access intraLATA toll traffic over the LITGs – a

point Core subsequently conceded. Core Stmt. 3.0 at 51.[22] Verizon also explained that it does not alter the routing of calls, but rather delivers them based solely on the trunks over which they arrived.[23] VZ Brief at 20-21. Core cited no record evidence for its assertion of traffic mixing beyond Core's erroneous written testimony, which (as noted above) Core later disavowed. Core also fails to acknowledge its admission that it has no way to discern whether a call is locally-dialed or not (Tr. 372), precluding it from claiming that locally-dialed traffic was mixed with interexchange traffic on a particular trunk (*see, e.g.*, Core PFOF ¶ 228). As Verizon explained, some of Core's confusion on this issue is likely due to the fact that Core itself erroneously mis-categorized some ATCTs as LITGs. VZ Stmt. 3.0 at 64-66. The weight of the record plainly shows that Verizon did not improperly mix traffic carried over the LITGs and ATCTs, and that this "functionality" complaint is baseless.

*Second*, Core continues to assert – incorrectly – that the MF trunks it obtained from Verizon were "useless"[24] because Verizon "never enabled these trunks to pass ANI/CPN to and from Core's end users (even though it [sic] technically feasible and quite easy to do so)."[25] Core Brief at 23. Core does not address the extensive evidence refuting its argument. VZ Brief at 21-23. In short, Core chose to use MF signaling,[26] even though Signaling System 7 ("SS7") was the industry standard protocol at the time, and despite the fact that the key attribute of the older MF signaling

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[22] This concession in Core's rebuttal testimony did not stop it from tendering an incorrect proposed finding of fact to the contrary, relying on its erroneous direct testimony. *See* Core PFOF ¶ 15.

[23] As such, Core's proposed finding of fact that Verizon routed traffic based on CIC codes is flatly incorrect. *See* Core PFOF ¶ 212.

[24] Core's claim in this regard is belied by the millions of minutes of traffic successfully transmitted over the MF trunks that were established to carry traffic from Verizon to Core.

[25] "CPN" refers to Calling Party Number, which is generally referred to as Automatic Number Identification, or "ANI," in the MF signaling context. VZ Stmt. 1.0 at 58.

[26] As noted above, Core's proposed findings of fact include the incorrect assertion that Verizon and Core "agreed" to use MF trunks. Core PFOF ¶ 19. Verizon vigorously disputed the suggestion that it had any say in Core's decision to use MF trunks and noted that it was not entitled to refuse to provision the MF trunks that Core ordered, and Core backtracked in responding to discovery, stating that Core "takes no position with respect to whether Verizon had any control over Core's choice of MF." VZ Stmt. 2.0 at 7-8 and Ex. 1-R thereto.

protocol is that it does not transmit calling party detail in the terminating direction. VZ Brief at 22. Verizon did not "refuse" to transmit the ANI/CPN information (Core Brief at 23); it was simply not technically feasible to transmit it over the MF trunks Core chose to use, except on originating Feature Group D calls (long distance calls routed from Core to an IXC), a point the FCC has acknowledged and that is independently supported by several technical standards documents in the record in this proceeding. VZ Brief at 22-23; Core Exhibit SR-2 at ¶ 716; VZ Stmt. 1.0 at 59 and Ex. 19 (two separate Telcordia standards). In contrast to this extensive evidence refuting Core's claim, all Core has offered is the wholly unsupported assertion of Mr. Mingo, and the repeated argument in its brief that fails to acknowledge the contrary evidence.

Likewise, Core's continued insistence that the ICAs require Verizon to pass ANI/CPN over the MF trunks is baseless. Core Brief at 23. The ICA provisions Core cites simply do not support its assertion. Core first cites Att. IV, § 7.3 of the Verizon PA ICA. Core Brief at 23, FN 89. Attachment IV, § 7 of the Verizon PA ICA addresses "Usage Measurement," and while § 7.3 thereof does refer to passing "CPN" for billing purposes, Core ignores §§ 7.4 and 7.5 that follow, which address how the receiving party should handle billing when CPN is not passed on specified percentages of calls. Taken together, these provisions demonstrate that failure to pass CPN is not a breach of the ICA – rather, alternate provisions of the ICA govern how billing is to be accomplished depending on how much CPN is passed. Core's citation to Att. III, § 11.1.6 of the Verizon PA ICA only proves Verizon's point, as it references outpulsing ANI over MF trunks only "where available." The Verizon PA ICA thus expressly acknowledges that ANI is not always available over MF trunks, as is the case for all traffic *terminating* to Core. Finally, Core's citation to Att. IV, § 3.3 of the Verizon PA ICA is inapt, as that section is limited to SS7 trunking and does not apply to MF trunking. Core offers no citation at all to the Verizon North ICA, because there is no such

provision. In short, neither ICA supports Core's position. The weight of the evidence supports Verizon's position on this issue and this "functionality" complaint is also baseless.

*Third*, Core continues to argue that Verizon does not pass the Carrier Identification Code ("CIC") or Operating Carrier Number ("OCN") of the party originating the traffic in the SS7 call signaling stream. Core Brief at 24. But Core again fails to acknowledge or refute the relevant evidence offered by Verizon. Importantly, Core offers no provision of either ICA that requires Verizon to provide CIC/OCN in the call signaling stream, as opposed to in the EMI records specifically generated for billing purposes, as there is none. *Id*. Verizon's brief addressed this issue in detail. VZ Brief at 23-25. As noted therein, while it is true that Verizon does not provide CIC/OCN *in the call signaling stream*, Verizon includes the originating party's CIC/OCN *in the EMI records* provided to Core, consistent with the parties' ICAs and the industry standard guidelines incorporated therein. *Id*. at 23; *see also* VZ Stmt. 1.0 at 52-54, 57, 59-60; VZ Stmt. 2.0 at 18-19 and Exhibit 4-R.[27] Thus, consistent with industry standards, Verizon instead uses the terminating call records generated at its tandem switch to populate the CIC or OCN of the carrier that delivered the call to the tandem switch on the EMI that Verizon generates and provides to Core. VZ Stmt. 1.0 at 53. This allows Core to identify the carrier responsible for compensating Core for the termination of the traffic. Core's grievance that it does not instead receive the information via the call signaling stream is unfounded and this "functionality" complaint is baseless

*Fourth*, Core reiterates its complaint that Verizon allegedly inappropriately inserts Core's CIC into the EMI records that Verizon generates and provides to other carriers, asserting that this makes Core's outbound, locally-dialed traffic appear to be toll traffic to the carriers who receive the

[27] Repeating erroneous assertions made in its written testimony, Core offers a proposed finding of fact asserting that there is no EMI field for OCN or CIC (Core PFOF 201), ignoring the fact that Core witness Mr. Mingo testified at hearing that "we have a mistake here" and confirmed that EMI records contain fields for both OCN and CIC. Tr. 373; *see also* VZ Stmt. 1.0 at Ex. 17 (EMI record formats displaying OCN and CIC fields). Verizon provides the CIC and OCN in the EMI records because there is no CIC, OCN, or other indicator present in the call signaling stream that could be used to identify the carrier that sent the call to the Verizon tandem. VZ Stmt. 1.0 at 52.

Verizon EMI (Core Brief at 24), an argument Verizon thoroughly refuted. VZ Brief at 25-26. Core failed to acknowledge or rebut Verizon's testimony dispelling Core's unsupported assertion that the presence of a CIC on an EMI record indicates that access charges apply to the call, given that CICs are assigned to *both* interexchange carriers *and* local exchange carriers. VZ Redirect Ex. 2. Indeed, Core itself has a CIC, as do the AT&T CLECs involved in AT&T case. Furthermore, consistent with Multiple Exchange Carrier Access Billing ("MECAB") industry standards for the billing of intercarrier usage charges, CIC codes and OCNs exist merely to denote the ***i****dentity* of the carrier responsible for the traffic at issue, not to denote the *jurisdiction* of that traffic for purposes of intercarrier compensation. VZ Stmt. 2.0 at 12 (emphasis in original); *see also* VZ Stmt. 3.0 at 22-23; VZ Brief at 24-25. When asked in discovery to produce any documentation substantiating Mr. Mingo's assertions to the contrary, Core was unable to produce anything. VZ Stmt. 3.0 at 23 and Ex. 5-SR. Moreover, Core was forced to admit that it was *never* incorrectly billed due to the presence of its CIC on an EMI record (and had it been, it would have been an issue between Core and the third party, not Verizon). VZ Stmt. 3.0 at 23 and Ex. 5-SR. The Commission should reject Core's attempt to evade payment for the ATCTs and LITGs on the basis of specious complaints about the presence of Core's CIC on EMI records generated by Verizon. This "functionality" complaint is also baseless.

### 3. Even if Core Prevails in Part on Its Statute of Limitations Arguments, It Still Owes Verizon Millions of Dollars for Amounts Accruing after August 2007

Faced with its failure to pay millions of dollars in bills from Verizon, Core attempts to avoid paying owed charges based on various statute of limitations arguments. Core Brief at 21-23. But Core's legal arguments on the statute of limitations are overreaching and largely wrong and Core does not satisfy its burden of proof on its affirmative defense invoking the statute of limitations.

*See Weinberg v. Commw. State Bd. of Examiners of Pub. Accountants*, 509 Pa. 143, 148, 501 A.2d 239, 242 (Pa. 1985).

As an initial matter, a finding that Core has breached the parties' ICAs by wrongfully refusing to pay Verizon for years is a separate issue from ordering Core to pay specific amounts to Verizon. No statute of limitation bars the Commission from finding that Core has breached the ICAs by improperly failing to pay all of the invoices summarized in Exhibit 13 to VZ Stmt. 1.0. The statute of limitations argument bears only on what amounts the Commission has authority to require Core to pay.

Core argues that 42 Pa. C.S. § 5525 bars claims for intrastate charges arising more than four years before the filing of Verizon's August 16, 2011 counterclaims and that 47 U.S.C. § 415 bars "Verizon's interstate access claims" arising more than two years before that date. Core Brief at 22. As discussed below, the only relevant statute of limitations with respect to Verizon's ICA-enforcement counterclaims is 42 Pa. C.S. § 5525. Verizon agrees that this Commission cannot require payment of amounts billed prior to August 16, 2007. But that still leaves five and a half years of bills never paid by Core. The record reflects that the portion of Verizon's billing rendered from August 16, 2007 through August 6, 2012 is $3,687,677.22.[28] VZ Stmt. 1.0 at Ex. 13. Of course, Core has continued to ignore Verizon's bills after that date, so the entire amount owed by Core by the date of the Commission's order will be even larger, and can only be quantified once the order date is known. Thus, the Commission has authority to enforce payment of a substantial portion of Verizon's billings.

Core's attempt to cut off some of Verizon's bills at two years by categorizing some of Verizon's claims as "interstate" is wrong. The applicable statute of limitations for this state

[28] This figure was calculated by excluding all amounts reflected in VZ Stmt. 1.0, Exhibit 13 that were invoiced prior to August 16, 2007.

contract action is the four year period under Pennsylvania law. Core's argument that 47 U.S.C. § 415 bars recovery of amounts due for interstate facilities and services provided by Verizon to Core before August 16, 2009 misapprehends the nature of Verizon's claims. Verizon is not bringing federal tariff enforcement proceedings before this Commission; Verizon is seeking to enforce state commission-approved ICAs whose price schedules incorporate the rates set forth in Verizon's federal and state tariffs for the facilities and access services Core obtained from Verizon pursuant to those ICAs. As Core itself argued in its preliminary objections to Verizon's Amended Counterclaims, "[o]f course the case is different where the ICA itself specifically incorporates provisions of an FCC tariff by reference."[29] *See also Castro v. Collecto, Inc.*, 634 F.3d 779, 784-786 (5th Cir. 2011) (Congress has stated no clear intent to preempt state statutes of limitations with 47 U.S.C. § 415(a)).

Core cannot dispute that the ICAs incorporate these tariffed rates. As to the facilities at issue, Section 1.11 of the Verizon PA ICA Adoption Agreement states that rates and associated terms in the pricing schedule attached thereto would "replace and supersede in their entirety" the original ICA's rates and associated terms. While Section II.C. of that ICA's pricing schedule facially provides that that "Entrance Facilities" should be available as "Unbundled Transport" at a specified UNE rate, footnote 1 provides that "the rates and charges set forth in Exhibit A shall apply *until such time as they are replaced by new rates as may be approved or allowed into effect by the Commission from time to time pursuant to the FCC Regulations*" (emphasis added). As discussed above, in 2006, the Commission permitted Verizon PA to amend its UNE tariff in compliance with the FCC's *Triennial Review Remand Order*[30] to reflect that entrance facilities were no longer

[29] *See* "Core Communications, Inc.'s Preliminary Objections to the Counterclaims of Verizon Pennsylvania, Inc. and Verizon North, LLC" (June 5, 2012) at 8, FN 4.

[30] *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533 (Feb. 4, 2005).

available as UNEs and instead would be available at "special access rates . . . under Verizon's tariffs,"[31] and Verizon PA has therefore properly been billing Core for entrance facilities at tariffed access rates, pursuant to the terms of the parties' ICA.

As discussed above, Section I.C. of Appendix A to the Verizon North ICA Adoption Agreement provides that "Entrance Facility and Transport for Interconnection" should be billed at rates set by Verizon's "Intrastate Special Access Tariff," and Sections 2.4.1 and 3.11.1.1 of Amendment No. 1 of that Adoption Agreement incorporate Verizon's tariffed access rates. Thus, pursuant to the terms of the ICA, Verizon North has billed entrance facilities to Core at intrastate access rates in accordance with its Tariff PA-P.U.C.–No. 9, and interstate access rates pursuant to its tariff F.C.C. No. 1. Because the state-approved ICAs incorporate the rates set forth in Verizon's federal and state tariffs, the two-year federal statute of limitations does not apply.

Since the traffic termination services provided by Verizon to Core were all rendered *after* Core began sending outbound traffic to Verizon in August 2010, and Verizon filed its counterclaims a year later, none of the $93,000 due from Core for traffic termination services is time-barred under any theory. *See* VZ Stmt. 1.0 at 62-63. Likewise, since Core only began using directory listing services in May 2010, none of the $32,685.91 in directory listing charges that Verizon billed to Core is time-barred either. VZ Stmt. 1.0 at Ex. 12.

**4. Core's "Bill Authentication" Claims Are Specious**

Core attempts to evade paying Verizon's bills on another technicality by challenging the authentication of Verizon's billings, but its argument is specious. The cross examination to which Core cites in support of its allegation that Verizon's bills could not be authenticated was specific to the witness's familiarity with the format of Verizon's access bills *to Core in particular*. Tr. 495. Verizon's witness indicated familiarity with Verizon's access bills *generally*, as "[t]he structure is

[31] *See Tariff 216 Order*.

basically the same" regardless of the particular entity being billed. *Id*. Core also ignores Verizon's detailed testimony: (1) explaining the three categories of facilities and services that Verizon provides to Core; (2) confirming that the facilities and services were provided pursuant to the parties' ICAs and the tariffs incorporated therein; (3) providing citations to the relevant ICA and tariff sections under which the facilities and services were ordered and billed and at what rates; (4) stating that Verizon bills Core monthly for these facilities and services; (5) affirming that Verizon's bills are fully compliant with applicable industry standards of the Ordering and Billing Forum ("OBF") of the Alliance for Telecommunications Industry Solutions ("ATIS"); (6) noting that the ICAs require Core to pay at least undisputed amounts; and (7) stating that because the physical bills themselves are exceedingly voluminous, Verizon compiled and provided a spreadsheet (Verizon Stmt. 1.0 at Ex. 13) detailing each bill issued to Core and payment made by Core for services rendered by Verizon in Pennsylvania. VZ Stmt. 1.0 at 30-39, 43, 61-65. That spreadsheet lists the Core Billing Account Number (BAN), invoice number, bill date, invoiced amount, total due, and total past due for every invoice issued to Core in Pennsylvania, with all applied credits and payments reflected in red text. VZ Stmt. 1.0 at Ex. 13. At hearing, Verizon's witness authenticated this exhibit and confirmed that the amounts shown had been billed to Core. Tr. 467-71. Core confirmed that there was no dispute that Verizon had issued the referenced invoices. Tr. 471-72. Thus, Core's "authentication" argument is unfounded.

Core continues to misrepresent the record regarding the availability of billing detail and Verizon's recordkeeping. Core asserts that Verizon "no longer maintains any billing detail at all for charges prior to January 1, 2008," "does not store any records relating to its intercarrier compensation bills to Core for more than five (5) days," and repeatedly refused to provide call detail records upon request. Core Brief at 21-22. Core's brief and accompanying proposed findings

of fact disingenuously and willfully ignore the Verizon testimony on these subjects.[32] As Verizon testified:

> **Q. CORE CLAIMS THAT VERIZON "HAS NO BILLING DETAIL FOR ANY AMOUNTS IT CLAIMS FOR SERVICES ALLEGEDLY RENDERED PRIOR TO JANUARY 1, 2008." IS THIS TRUE?**
>
> A. No. Core is summarizing Verizon's discovery response inaccurately. Core already had in its possession full copies of bills from Verizon (and Verizon offered to provide copies of any bills that Core was missing), but repeatedly issued discovery requests demanding that Verizon conduct an analysis of those bills that Core was equally capable of performing itself. Verizon objected to this, but agreed to respond to the extent that it could do so without having to perform an unduly burdensome special study or compilation that Core could undertake itself. Thus, while billing detail prior to January 1, 2008 was no longer readily available in on-line systems that Verizon could query without undue burden (precluding Verizon from providing the detail sought in the manner requested for periods prior to January 1, 2008), that billing detail is still available via manual review of full bill copies, which Core is equally capable of doing. *See* Core Exhibit R-12.[33]

In other words, complete bill detail remains available to both Core and Verizon by reference to full bill copies, just not in a query-ready on-line database. Verizon was not required to undertake the manual bill review Core was demanding in discovery, as Core was equally capable of doing it.

Core similarly misrepresents the record regarding Verizon's recordkeeping and production of call detail records. Verizon's testimony corrected Core's erroneous assertions:

> **Q. AT PAGE 7, LINE 28 THROUGH PAGE 10, LINE 5 OF HIS TESTIMONY, MR. VAN DE VERG COMPLAINS OF "EVIDENTIARY ISSUES" IN THIS CASE. IS HIS RENDITION OF EVENTS RELATING TO VERIZON'S RESPONSES TO CORE'S DISCOVERY ACCURATE?**
>
> **A.** … Similarly, at page 10, lines 1-3 of his direct testimony, Mr. Van de Verg asserts that Verizon "does not keep records relating to traffic it terminates on behalf of Core for more than five days, at which time they disappear into an inaccessible archive." This is an inaccurate summary of the referenced discovery response, which stated as follows:

[32] *See, e.g.*, Core PFOF 47, 140-41, 143.

[33] VZ Stmt. 3.0 at 17-18.

> In addition to the information informally provided to Core on August 1, 2012 and August 6, 2012 regarding why it is onerous and unduly burdensome to respond to this interrogatory, and in addition to offering a proposed narrowing thereof, Verizon states that with respect to the switch records for locally dialed traffic delivered by Core for termination on Verizon's network, the length of time such records are kept readily accessible in active on-line systems is approximately five days, after which point, new data replaces the old. Records older than five days are moved to tape and archived, but as explained in informal communications with Core's counsel, retrieving records that have been archived is exceedingly onerous for any extended period of time. Moreover, the retrieval process consumes enormous production system resources and places Verizon's CABS system at significant risk of negative impact to ongoing billing activities, which would be a hugely detrimental, business-affecting event. As a result, Verizon proposed that Core select a recent (within the past month) non-holiday Wednesday and Verizon would provide the usage record file of that date.
>
> *See* Exhibit CFV-8.

Mr. Van de Verg also omits a lengthy e-mail back-and-forth between Verizon's counsel and Core's – including Mr. Van de Verg – that is incorporated in the above response and further explains why the request at issue was unduly burdensome and onerous as drafted (including the four-year period it covered), and why Verizon's narrowing proposal would address Core's two professed reasons for making the request without creating undue burden and the significant likelihood of crashing Verizon's billing systems in conjunction with responding, which would be a "hugely detrimental, business-affecting event." That detailed discussion is attached at **Exhibit 19-R.** Thus, while Core "believes that Verizon should keep and produce the same or similar records Core does" (Van de Verg Direct at page 9, lines 9-10), Core fails to recognize the reality that the amount of traffic carried by Verizon eclipses that carried by Core, and Verizon's records systems are not the same as Core's. The matter ultimately appears moot, as Core did not pursue Verizon's narrowing proposal.[34]

In other words, even though Core already had a complete set of Verizon EMI records, it had demanded that Verizon undertake the significant risk of crashing its billing systems by retrieving the same data from archival storage. As part of the meet-and-confer process, Verizon offered a narrowing alternative that accommodated Core's professed reasons for seeking the data, but Core elected not to take Verizon up on that offer or to continue to

[34] VZ Stmt. 2.0 at 55-57 and Ex. 19-R thereto.

negotiate other alternatives. Core also did not move to compel a response to its original request, and cannot now be heard to complain.

### C. Core's Brief Fails to Refute the Evidence Showing That Core Has Systematically Overcharged Verizon for Traffic Termination

Core claims that its "reciprocal compensation invoices are fully supported by the ICAs and the extensive factual record in these proceedings" (Core Brief at 9), but that statement simply does not square with the record. Verizon's brief detailed Core's systematic overbilling of Verizon for intercarrier compensation, explaining that for years Verizon has paid bills inflated by Core's chronic overstatement of the number of minutes that were properly billable to and compensable by Verizon. VZ Brief at 27-48. Core simply repeats the tired mantra that Verizon breached the parties' ICAs by withholding payment on approximately $75,000 of Core invoices without justification. Core Brief at 9-12. However, even while admitting that it bears the burden of proof to justify its billings (*id*. at 8-9), Core once again makes no effort to synthesize the totality of the record or respond to Verizon's detailed analysis of why Core's bills are invalid.

Core accuses Verizon of changing its "rationale" for why Core's bills are invalid "multiple times" as the litigation progressed. Core Brief at 7. But the more details Verizon was able to uncover through discovery, the more flaws it discovered in Core's bills. That does not mean Verizon lacked a reasonable basis to believe Core was overbilling when Verizon first disputed the bills. Verizon explained in its testimony exactly what it had reason to suspect at that time. VZ Stmt. 2.0 at 46-57. But after the record was fully developed and Core was forced to produce information in discovery, Verizon had learned that Core committed the improper billing practices Core lists on page 7 of its brief, and more. There is no question that Core "inflated the volume of traffic," Core "billed Verizon for third party traffic," Core "billed Verizon the wrong rate" and Core "double-billed Verizon for traffic billed to third parties," among many other overbillings discussed

in the record. Core Brief at 7. And Core did not "directly and completely refute[] each of these theories" as it claims. *Id.* Core overbilled Verizon in multiple ways (and even double-billed Verizon and other carriers for the same traffic), and Core has not come forward with evidence to justify its misconduct, as discussed below.

### 1. Core Must Refund Amounts That It Billed Verizon for Terminating Third-Party Originated Traffic

#### a. Core Admits That It Charged Verizon for Terminating Other Carriers' Traffic

The record demonstrates in two independent ways that Core has been billing Verizon for third-party originated traffic. First, Core acknowledges that it bills Verizon for 100% of the minutes of use that come to Core over the LITGs, and Verizon's uncontroverted testimony established that the traffic delivered over the LITGs includes local and intraLATA toll traffic originated by other carriers and merely transited by Verizon. VZ Brief at 29. This evidence alone is enough to establish that Core has billed Verizon for third party traffic. Second, Verizon also performed a separate analysis of 18 months of call detail records provided by Core in discovery for calls terminated over the SS7 trunks to determine how much of it was originated by third party carriers, which verified conclusively that Core had billed Verizon for third-party originated traffic, and that 35% of the MOUs for which Core billed Verizon during that 18 month period actually originated from telephone numbers for which Verizon was not the local service provider at the time of the call. VZ Brief at 28. Verizon summarized the record evidence explaining how it verified that Core had charged Verizon for traffic originated by other carriers by enriching call detail records provided by Core to identify which carrier had actually acted as the local service provider at the time of each call. VZ Brief at 28-29. Verizon also outlined the record evidence showing that Core's testimony independently corroborated Verizon's conclusions. *Id*. at 29.

In its own brief, Core does not deny billing Verizon for traffic originated by other carriers.

Instead, Core argues that third-party traffic constituted a lesser percentage of the total than Verizon asserts and argues that the ICAs entitle it to bill Verizon for traffic originated by other parties (and apparently, also to bill the originating party for the same traffic). Both of these arguments are baseless.

**b. The Record Supports a Finding That 35% of the Billed Minutes Were Third-Party Originated Traffic**

Core's first line of attack is to criticize the analysis under which Verizon determined that 35% of the minutes in the 18 months of call detail provided by Core originated from other carriers. Core argues that Verizon's call record enrichment process – which Core refers to as an "LNP lookup" analysis – is not an appropriate process for billing third party carriers. Core Brief at 25-27. Core's argument is a red herring: Verizon did not propose this process as a method for Core to bill third parties, but rather, used it as a means of proving the extent of Core's improper billing to Verizon. Tr. 590-91. The call enrichment analysis offers a useful method of verifying the presence of substantial amounts of third-party originated traffic in the calls billed to Verizon, to corroborate Core's admission that it bills Verizon for third party traffic. Core does not deny the presence of third party traffic in the call detail records. Verizon's witness Mr. Munsell explained that Verizon also used the enrichment process as a tool to demonstrate that Core could have avoided billing Verizon for third party traffic, but billed Verizon for that traffic anyway. *Id*. Mr. Munsell confirmed that Verizon had *not* offered the process as a means of Core rendering bills to the third party carriers responsible for compensating Core for that traffic. *Id*.

Core has put forth no evidence to show that Verizon's enrichment of the call detail records was somehow erroneous or failed accurately to capture the originating carriers. Instead, it proffers evidence that it claims shows the percentage of third party traffic in the minutes billed to Verizon was smaller than Verizon's study found. Core asserts that "Verizon does not send nearly enough

EMI" to support the claim that 35% of the traffic originated with third parties. Core Brief at 26. Core cites the chart on pages 64-65 of Core Stmt. 3.0, which purports to show the percentage of minutes for which Verizon provided EMI records as compared to the total minutes delivered over the LITGs. *Id*. at 27.

Core presumes that the amount of third-party originated traffic is no larger than the percent of EMI depicted on this chart for each period, but Core's reasoning is flawed on several levels. First, it erroneously presumes that there would be an EMI record for every minute of third-party originated traffic. But Verizon has explained that the ICAs – which Core itself asserts are the controlling documents[35] – require Verizon to provide Core with EMI records *only* for a specific subset of interexchange calls – namely, those that IXCs route to Core via Verizon's tandem switches. VZ Stmt. 2.0 at 21-22; Verizon PA ICA at Att. VIII, Section 3.1.3; Verizon North ICA at Part V, Section 3.3. The ICAs do not require Verizon to provide EMI records for interexchange calls that a CLEC or wireless provider may route to Core via the Verizon network, nor do they require Verizon to provide EMI for calls from Verizon's end users or from non-IXCs, such as CLECs, wireless carriers and rural ILECs. *Id*. Thus, there is no contractual basis for Core to expect Verizon to have provided EMI for 100% of the third-party calls in order to support its calculation of Core's overcharges.

While Verizon provides more EMI than the ICAs actually require by also providing EMI for calls from CLECs and wireless carriers, it historically was not able to provide EMI for calls originated by rural ILECs ("RLEC"), and has only recently been able to start sending EMI for some of those calls. Core Stmt. 1.0 at 13-14; *see also* VZ Stmt. 1.0 at 48; VZ Stmt. 3.0 at 40-41, 52-53; Core Stmt. 4.0 at 6-7. Therefore, the record does not support Core's conclusion that the percent of

[35] Core states that "the starting point for the analysis of the claims and counterclaims in this case is the ICAs in place between the parties." Core Brief at 3.

EMI (presuming the percentages stated in Core's testimony are even accurate, which cannot be proven) equals the percent of third party traffic. Indeed, because the record shows that Core knew it was receiving RLEC-originated traffic (Core Stmt. 1.0 at 13-14; Core Stmt. 4.0 at 6-7), and because the record shows that Verizon was not obligated or even able to send EMI for all RLEC-originated traffic (VZ Stmt. 3.0 at 53), it stands to reason that the total percentage of third party traffic for which Core billed Verizon would be *larger* than the percentage of EMI minutes depicted on Core's chart.

Core next tries to argue that the percentage of third party traffic billed to Verizon would actually be less than the percentage of EMI listed in Core's chart, because Core speculates that most of the EMI would relate to traffic coming over the ATCTs, for which it asserts it did not bill Verizon. But Core's speculation that most traffic for which it received an EMI record must necessarily be IXC traffic and must have been carried over the ATCTs[36] is also unsupported. Since calls placed to Core were mostly (and in the earlier days *exclusively*) ISP-bound calls, it is much more likely that they would have been locally-dialed, since the calling parties would not wish to incur toll charges (as Core itself confirmed at hearing; Tr. 317), making it likely that most of the EMI relates to calls from CLECs and (more recently) some RLECs carried over the LITGs. As noted above, the evidence also shows that Core mislabeled some ATCTs as LITGs and therefore was billing Verizon for IXC traffic. VZ Stmt. 3.0 at 64-66. Core's complaint that the Verizon EMI records do not identify over which set of trunks calls were carried (Core Brief at 26) is similarly specious, as Core witness Mr. Mingo admitted on cross examination at hearing that the ICAs do not require this. Tr. 283-84; 336.

[36] *See, e.g.*, Core Brief at 27 ("It stands to reason that most of the minutes recorded in the EMI were sent to Core over the ATCs, not the LITGs, since ATCs are designed for transmission of traffic to Core from IXCs.").

While Core's EMI evidence confirms generally that Core has been billing Verizon for third party traffic, it is not reliable evidence to be used to quantify how much third party traffic has been improperly billed.[37] Core's evidence must be read in conjunction with the rest of the record. Since the record shows that some RLEC-originated local and intraLATA toll calls did not come with EMI, and implementation of call recording on RLEC trunks is still in process, and since Verizon's independent analysis of the call detail records produced by Core for a similar period based on an exhaustive look-up of the originating local carrier for every single call shows 35% of the traffic originating with other carriers, it is not reasonable to conclude that third party traffic was as small a percentage as Core asserts. Verizon's 35% analysis is the best evidence of the amount of third party traffic being billed, and Verizon is entitled to a $2,725,140 refund of past overpayments to Core as a result. VZ Stmt. 3.0 at 67-69.

Core's gripe that Verizon revised the percentage of Core overbillings from 28% to 35% in its surrebuttal testimony is also unfounded. Core Brief at 25, FN 100 ("We leave it to the Commission to judge the propriety of substantially amending and increasing one's damages claim in surrebuttal testimony."); *see also id.* at 11. Core conveniently forgets that Core itself criticized Verizon's 28% figure as being based upon too small a sample, stating that it was "based on data from a five-month period earlier this year ... [b]ut there is a good reason to believe the 28% figure is even less accurate for older traffic." Core Stmt. 3.0 at 66. In direct response to this criticism, Verizon expanded the data set to an 18-month period encompassing the "older traffic" mentioned by Core. VZ Stmt. 3.0 at 68-69. When Verizon included the older time period the effect was the

[37] For example, Core's chart shows it received EMI (and therefore that the traffic originated with a third party carrier) for from 5.4% to 8% of the minutes billed to Verizon in 2012, all of which would have been delivered over the LITGs (since the ATCTs were disconnected by that time, and Core stated that it continues to bill Verizon 100% of the LITG minutes). Core Stmt. 3.0 at 64-65. Thus, Core effectively admits that it overbilled Verizon by at least that percentage.

opposite of what Core predicted – the degree of Core's overbilling increased to 35%.[38] *Id*. Having complained that the initial data set was too small, Core cannot be heard to complain that analysis of a significantly larger data set revealed an even higher degree of error in its billings to Verizon.

Forced to concede that it has been billing Verizon for third-party originated traffic for years, Core suggests – without citing to a basis in the ICAs – that Verizon "could have" taken certain steps to "avoid" Core's billing errors (Core Brief at 27). Verizon cannot have violated the ICAs by not doing something they do not require, and the invented responsibilities cannot justify Core's chronic non-payment and refusal to refund overpayments. The record shows that Core well knew that it was receiving substantial amounts of third-party originated traffic through Verizon's tandems. VZ Stmt. 1.0 at 48, 61, 75-76; VZ Stmt. 2.0 at 17-18, 43; VZ Stmt. 3.0 at 42, 45, 48-50 and Exs. 9-SR, 11-SR, 12-SR and 13-SR; Tr. 250. Core is the party that should have taken steps to cease improperly billing Verizon in violation of the ICAs. The record shows that Core could have used traffic exchange agreements and billing factors to do so, but instead it never attempted to eliminate third party traffic from the minutes billed to Verizon. VZ Stmt. 2.0 at 23.

**c. Core Does Not Send Verizon "Transit" Traffic**

Having been forced to admit that it bills Verizon for third-party originated traffic, Core attempts to confuse the record by claiming that "Verizon takes no steps whatsoever to 'weed out' third party 'transited' traffic which Core may be transmitting over the LITGs," suggesting that Core is entitled to bill Verizon for all traffic delivered by Verizon over LITGs in the same manner that Verizon bills Core for all traffic delivered to it by Core over LITGs. Core Brief at 27; *see also id*. at

[38] Core also continues to accuse Verizon of purposeful error relative to some earlier analysis of Core's invalid billings, citing paragraphs of Verizon's original answer that were excluded from its answer to Core's amended complaint upon discovery of the inadvertent error (Core Brief at 11; Core PFOF at 108, 116-117), and ignoring Verizon's explanations of its inadvertent mistake (both in Verizon's written testimony and at hearing). VZ Stmt. 2.0 at 52; Tr. 522-23. Verizon has been nothing but up front in correcting the record, and Core's pursuit of factual findings of malice and willful misrepresentation on Verizon's part is nothing short of vindictive.

10. But this is an apples-to-oranges comparison and another example of Core ignoring the record evidence that undercuts its argument.

Verizon's witnesses explained in detail why the billing is different when traffic is delivered by a tandem provider, like Verizon, versus being delivered by an entity like Core that does not operate tandem switches. Core deliberately chose to establish LITGs not only from Verizon's end offices, but also from Verizon's tandem switches. This arrangement with the tandems allows Core to avoid the cost of interconnecting directly with other carriers and instead to receive traffic indirectly from any other carrier similarly connected to the tandem, a process known as "indirect interconnection" – one with which Core is very familiar based on its pleadings in other proceedings before this Commission. VZ Stmt. 3.0 at 45-54 and Exs. 8-SR through 13-SR. But Core does not operate any tandem switches and is not a transit service provider; to the contrary, Core confirmed in both discovery and on cross-examination that it does not transit traffic for third parties. Tr. 298-99; VZ Stmt. 2.0 at 24 and Ex. 6-R thereto; VZ Stmt. 3.0 at 42 and Ex. 7-SR thereto. Therefore, all traffic coming to Verizon from Core is Core-originated. Since Core is sending no transit traffic, there is no "weeding out" for Verizon to do.

**d. Core May Not Bill Verizon for Third Party-Originated Traffic**

Core continues to assert incorrectly that it is entitled to bill Verizon reciprocal compensation for every minute of traffic carried over the LITGs, regardless of the party originating it. As explained in Verizon's brief, the ICAs are clear that Core is entitled to bill Verizon reciprocal compensation only on "Local Traffic" (in the case of Verizon PA) and "Reciprocal Compensation Traffic" (in the case of Verizon North). VZ Brief at 30-31 (providing detailed ICA citations). In both instances, the definitions of these terms *explicitly exclude third party-originated traffic*. *Id*. Verizon also pointed out that Core had taken the opposite position in other Commission proceedings in which it was seeking to compel payment from the third party carriers that originated

the traffic (including XO, Choice One and AT&T). *Id*. at 31-33. In those instances, Core asserted that the party responsible for compensating it was the third party that originated the calls at issue. *Id*.

Moreover, the ICA provisions that Core cites in defense of billing Verizon for every minute of traffic carried over the LITGs are inapposite. Core cites Attachment IV, § 1.1.1 of the Verizon PA ICA (Core Brief at 10, FN 8), but that provision merely addresses the provisioning of trunk arrangements, not billing. It certainly does not authorize Core to bill Verizon as the "sending carrier" (Core's term) of third party-originated traffic. Similarly, Part V, § 1.2 of the Verizon North ICA, also cited by Core (*id*.), addresses only "the architecture for Interconnection of the Parties' facilities and equipment" for trunking arrangements, not billing of intercarrier compensation. Core also cites "§ 7.2" of the Verizon PA ICA (Core Brief at 10, FN 9), but Attachment IV, § 7.2 thereof simply states that the measurement of MOUs will be in actual conversation seconds and the monthly total will be rounded up to the next whole minute. It does not allow Core to bill Verizon reciprocal compensation for third party-originated traffic that is excluded from the definition of "Local Traffic" under the ICA. Core's citation to "§ 2.6.2" of the Verizon North ICA (*id*.) is similarly inapposite: Part V, § 2.6.2 of the Verizon North ICA describes an automated billing process that uses CPN to classify traffic and bill it at the applicable rate depending on the type of traffic. It does not allow Core to bill Verizon reciprocal compensation on traffic that does not meet the definition of "Reciprocal Compensation Traffic" under the ICA.

**e. Verizon's Claim for a Refund of Past Overpayments Is Not a Prohibited Damages Claim**

Core asserts that Verizon's calculation of a minimum refund of $2,725,140 due as a result of this overbilling by Core and attendant overpayment by Verizon constitutes a "hypothetical damages theory" for damages that the Commission cannot award. Core Brief at 25. Core is wrong. Verizon

seeks a refund of amounts improperly billed to and collected from Verizon pursuant to the parties' ICAs, relief that is squarely within the Commission's purview. *See, e.g.*, 66 Pa. C.S. § 1312(a) (granting Commission "the power and authority to make an order requiring the public utility to refund the amount of any excess paid by any patron," plus interest, when the Commission "determine[s] that any rate received by a public utility was unjust or unreasonable"); *Palla v. Peoples Natural Gas Co. LLC*, 2012 Pa. PUC LEXIS 1305 at *24, 27 (Pa. PUC Aug. 2, 2012) ("The Commission has the authority to require Peoples to refund the excess amount paid by the Complainant. *66 Pa. C.S.A. § 1312(a)*."); *Duquesne Light Co. v. PUC*, 117 Pa. Commw. 28, 543 A.2d 196 (1988).

As to the specific refund amount calculated, Verizon was constrained by Core's failure to generate the call records required by the ICAs for any calls placed over the MF trunks (VZ Brief at 35), and in any event, Verizon's refund calculation is extremely conservative given that it does not account for the financial impact of an array of other flaws with Core's bills. *Id*. at 38. For example, it includes no refunds for reciprocal compensation paid by Verizon on virtual NXX ("VNXX") calls initiated by Verizon end users to Core's Internet Service Provider ("ISP") customers (which are its main customer base). VZ Brief at 34-36; 38.

Core concedes that it has the burden to prove the validity of its bills. Core Brief at 8-9. Core cannot demonstrate that *any* of its bills are accurate, and is certainly not entitled to keep amounts wrongfully collected because its own failure to generate required call records has prevented Verizon from quantifying precisely how incorrect Core's bills were. The Commission would be well justified in requiring Core to refund all amounts collected under these flawed and improper bills, but Verizon has offered a less draconian alternative. The $2,725,140 figure is less than what Verizon is actually entitled to, but Verizon is certainly entitled to a refund of *at least* that much, as well as 35% of the amounts paid by Verizon since June 2012, together with interest at the

legal rate of 6% per annum.[39] The Commission should also direct Core immediately to cease billing Verizon for traffic originated by other carriers.

### 2. Core's Brief Fails to Address Its Other Billing Flaws

Although Verizon provided extensive testimony detailing the flaws in Core's process for "guesstimating" its reciprocal compensation billings to Verizon for traffic carried over the MF trunks (rather than following the process required by the ICAs), Core's only response in its brief is the conclusory assertion that "[a]lthough Verizon has quibbled with Core's MF trunks sampling technique … Core has demonstrated that its minute counts are reliable and predictable." Core Brief at 10.

As detailed in Verizon's brief, Core failed to create the Automated Message Accounting ("AMA") call records required by the ICAs for traffic carried on the MF trunks (even though it was technically feasible to do so), and instead used an unreliable estimate of the billable minutes as the basis for its invoices. VZ Brief at 34-36. Core originally claimed to have sampled the traffic on the MF trunks at *five* minute intervals. VZ Stmt. 1.0 at 67-68 and Ex. 22. Core later claimed to have used *ten* minute intervals. Core Stmt. 4.0 at 11. Core simply ignored Verizon's testimony that a review of the actual data Core provided reflected the use of *erratic ten to thirteen minute* intervals. VZ Stmt. 2.0 at 30-31.

Core adjusted the MOU estimates generated by its erratic "sampling" process *upwards* using an arbitrary factor created without the aid of any studies or documentation. VZ Brief at 35. Core included MOU carried over the ATCTs,[40] for which it should not have billed Verizon reciprocal

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[39] 66 Pa. C.S. § 1312(a) provides for refunds that include "interest at the legal rate from the date of each such excessive payment." The "legal rate" of interest is 6 percent per annum. 41 P.S. § 202. *See Duquesne Light Co., supra*, 117 Pa. Commw. at 36, 543 A.2d at 200.

[40] Although Core also disputes billing Verizon for traffic carried over the SS7 ATCTs, its Main Brief indicates that it recorded – and thus presumably billed for – traffic carried over both the LITGs and ATCTs. Core Brief at 12-13 ("Accordingly, Core reexamined its CDRs for traffic received on the SS7 LITGs and ATCs ….").

compensation (since they carry IXC traffic that, if billable, is billable to the IXCs). *Id*. at 36. Due to Core's failure to generate AMA records, it was unable to implement any process by which to exclude MOUs associated with third party-originated traffic from the amounts billed to Verizon, resulting in billing Verizon for 100% of third party traffic carried over the MF trunks. *Id*. Verizon witness Mr. Munsell testified that in his over 30 years of experience, he had never come across an approach like Core's MF "sampling technique," nor was he familiar with an industry standard that would allow for Core's process of billing on the basis of "appl[ying] a guesstimate on top of an estimate on top of an erratic and inconsistent sample (which itself may or may not have been accurately gathered)." VZ Stmt. 2.0 at 31, 34.

Core's reciprocal compensation billing for traffic carried over the MF trunks is completely unreliable and most certainly resulted in overcharges to Verizon, although Core's faulty methodology and failure to create call records leaves Verizon unable to quantify the overcharges. The Commission should require Core to calculate and refund all amounts billed to and paid by Verizon under this approach.

Core's brief also fails to address the fact that its reciprocal compensation billings to Verizon were inflated because Core billed Verizon (and Verizon paid) reciprocal compensation on significant amounts of VNXX traffic. In discovery, Core claimed that it was not providing VNXX services to its customers, but that denial was revealed at hearing to be untrue. VZ Brief at 37-38. Verizon's brief outlined why no reciprocal compensation was due on Core's VNXX traffic (both under the terms of the ICAs and pursuant to Commission precedent[41]), and underscored the conservative nature of Verizon's refund calculation of $2,725,140, since that figure included no

[41] *See* Opinion and Order, *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.*, PA PUC Docket No. A-310771F7000 (April 17, 2003) ("*Global NAPS*") at 45 ("Based on our review of the record and applicable FCC orders, we conclude that calls to VNXX telephone numbers that are not in the same local calling area as the caller should not be subject to reciprocal compensation.").

refunds for reciprocal compensation paid by Verizon on VNXX calls initiated by Verizon end users to Core's ISP customers, which are Core's main customer base. *Id*. Core's brief completely ignores the subject of its VNXX service and traffic. The Commission should find that the parties' ICAs bar Core from billing reciprocal compensation for traffic that does not originate and terminate with end users physically located within the same local calling area, as defined by the relevant ILEC's tariff (including mandatory extended area service).

Core's brief also fails to address how Core manipulated the FCC's "3:1 ratio" in order to profit from appearing to send Core-originated locally dialed traffic to Verizon. VZ Brief at 40-42. The Commission should declare as a matter of law that Core is barred from including non-local and non-Core-originated traffic in its calculations under the 3:1 ratio.[42]

### D. Core's Attempt to Collect Reciprocal Compensation Retroactively on ISP-Bound Traffic by Undoing the *ISP Remand Order* Is Baseless

Core's brief repeats its late-developed and outrageous assertions that Verizon breached the ICAs by failing to "mirror" rates in compliance with the FCC's *ISP Remand Order*,[43] claiming this entitles Core to collect $24,072,573.30 from Verizon as a result. Core Brief at 15-17. Nothing Core says is new or supported by the law, and Verizon's brief preemptively responded to Core's arguments with detailed analysis showing them to be nothing more than the latest round of "pettifoggery" from Core relative to the *ISP Remand Order*. VZ Brief at 39-48.

Verizon explained the history behind the FCC's *ISP Remand Order* and the reciprocal compensation arbitrage it aimed to limit, and noted that Core has repeatedly attempted (and failed) to overturn the *ISP Remand Order*. VZ Brief at 39. Even though this Commission rejected Core's attempt to prevent Verizon PA from implementing the *ISP Remand Order* more than a decade

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[42] Verizon does not waive its rights to pursue refunds of amounts wrongly paid to Core on this basis, nor to pursue further Commission relief on this issue at a later date.

[43] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic,* 16 F.C.C.R. 9151 (2001*)* ("*ISP Remand Order*").

ago,[44] Core continues to attempt to evade the law and retroactively collect reciprocal compensation from Verizon on ISP-bound traffic for which Core has already been compensated at the FCC-ordered $0.0007/MOU rate. *Id*. at 39-40.

Core claims that Verizon PA has "utterly failed to adopt the FCC's mirroring rate" (Core Brief at 16-17), ignoring that both the FCC and this Commission have concluded that Verizon PA's mirroring offer complied with the *ISP Remand Order*'s requirements. VZ Brief at 43-44.[45] Verizon detailed why accepting Core's arguments would effectively gut the FCC's *ISP Remand Order* and *ICC Reform Order*,[46] not to mention directly conflict with the position that Core took at the early stages of this case (that the $0.0007 rate applied to all traffic) and enable the very arbitrage that the FCC intended to prevent. *Id*. Verizon also dispelled Core's notion that different rates should apply to CLEC traffic than to ILEC traffic, pointing out that it is belied by the FCC's express intent not to "impose different rates …." *ISP Remand Order* ¶ 90.[47]

Core faults Verizon for failing to offer the $0.0007/MOU rate not only for reciprocal compensation traffic (which Verizon indisputably has done), but also for switched access traffic.

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[44] *Petition of Core Communications, Inc. for Resolution of Dispute with Verizon Pennsylvania Inc. Pursuant to the Abbreviated Dispute Resolution Process*, Docket No. A-310922F7000 (Opinion and Order entered May 27, 2003 and Opinion and Order on Reconsideration entered January 22, 2004). Thus, while Core offers a proposed finding of fact stating that "[t]he 2000 ICA between Core and Verizon Pennsylvania was never amended to reflect the FCC's 2001 *ISP Remand Order*" (Core PFOF ¶ 82), it is inaccurate to imply that Verizon PA was not authorized to implement that order.

[45] Core has steadfastly refused to accept that offer from Verizon PA (although it did with Verizon North), with the result being that it is entitled neither to the low mirroring rate it desires, nor retroactively to collect the higher reciprocal compensation rate from Verizon for traffic for which Verizon has already compensated Core at the applicable $0.0007 FCC-ordered ISP-bound traffic rate. VZ Brief at 42-48.

[46] *See Connect America Fund; a National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers; Developing a Unified Intercarrier Compensation Regime, etc.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (Nov. 18, 2011) ("*ICC Reform Order*").

[47] Core cites *AT&T Comm'ns of Cal., Inc. v. Pac-West Telecomm, Inc.,* 651 F.3d 980, 987 (9th Cir. 2011) (*"Pac-West")* for the proposition that "[t]he FCC's mirroring rules applies [sic] to ILECs only – not CLECs." Core Brief at 15, FN 51. However, Core misrepresents the import of that statement. The *Pac-West* court was confirming that the obligation to make an offer to exchange traffic at the same rate (the "mirroring rule") fell only on ILECs, whereas other obligations arising out of the *ISP Remand Order* applied to both ILECs and CLECs. *Pac-West* in no way supports Core's contention that after Verizon made the required mirroring offer, Verizon was required to accept the FCC-ordered $0.0007/MOU rate while paying Core the higher reciprocal rate. *Pac-West*, 651 F.3d at 987 (emphasis in original).

VZ Brief at 46. Core concedes that the additional requirement for the mirroring rule that it now concocts was not part of the rule in the *ISP Remand Order,* which stated that an ILEC must "offer[] to exchange all traffic subject to section 251(b)(5) at the same rate," and clearly explained that "section 251(b)(5)" in the context of the mirroring rule referred to "telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that is *not interstate or intrastate access traffic*…."[48] Core Brief at 16 (acknowledging that "Section 251(b)(5) traditionally applied to all traffic other than switched access traffic."). But Core argues that Verizon's mirroring offer was rendered invalid following the *ICC Reform Order* in 2011, when the FCC began to refer to access traffic as a species of section 251(b)(5) traffic. Core Brief at 16. Core wants to rewrite history – or more to the point, write the *ISP Remand Order* out of the history books – because no mirroring offer made ten years ago following the plain language of the *ISP Remand Order* could possibly comply with Core's newly concocted test. Core therefore asks this Commission to find that the *ICC Reform Order* nullified the *ISP Remand Order* by rendering retroactively invalid Verizon's otherwise lawful mirroring offer. According to Core, the Commission should pretend the *ISP Remand Order* never existed and allow Core now to collect years' worth of uneconomic and market-distorting reciprocal compensation payments for terminating ISP-bound traffic, a preposterous and self-serving result that contradicts the *ISP Remand Order*'s effort to curb this type of arbitrage. The *ICC Reform Order* did not alter the interim rules for ISP-bound traffic set forth in the *ISP Remand Order*, and certainly did not direct that they be retroactively nullified and millions of dollars now paid to the ISP arbitrageurs, as Core argues. Had the FCC intended such a significant, industry-affecting result, it certainly would have

[48] *ISP Remand Order*, ¶ 89, FN 177. The FCC explained that the applicable law at the time it issued the *ISP Remand Order* was "that section 251(b)(5) reciprocal compensation obligations 'apply only to traffic that originates and terminates within a local area,' as defined by state commissions." *Id.,* ¶ 12.

mentioned it in its *ICC Reform Order*. It did not. Clearly, Core's self-serving eradication of the *ISP Remand Order* was not what the FCC intended.

### E. The Commission Should Reject Core's Attempt to Rebill Traffic as Switched Access

#### 1. Core Improperly Seeks to Collect Higher Switched Access Rates on Traffic It Already Billed as Reciprocal Compensation

Core continues to pursue payment of $2,532,143.22 in disputed intrastate and interstate switched access invoices to Verizon – invoices generated only after this case was underway[49] – for traffic carried over the SS7 trunks and already paid for at the FCC-ordered ISP-rate of $.0007/minute of use ("MOU"). It also seeks payment for another $2,661,655.78 in "lost revenue damages" for switched access charges that Core admits it cannot bill, but nonetheless asserts that it is entitled to collect (again, on top of amounts already paid), for traffic carried over the MF trunks. Core Brief at 12-15. Core ignores record evidence rebutting its claims for these amounts, and Verizon's brief has already refuted Core's claims in great detail. VZ Brief at 48-58.

##### a. Core Is Not Entitled to Bill Switched Access Charges on ISP-Bound or Conference Calling Traffic

Core's brief studiously avoids any acknowledgment that the traffic on which it now seeks to collect switched access charges is ISP-bound traffic subject to the FCC rate cap of $0.0007/MOU for ISP-bound traffic. *See, e.g.*, Core PFOF at ¶ 45 ("The MF trunks carried ISP-bound traffic only."). Verizon has already paid Core the $0.0007/MOU rate for the traffic at issue, even though the bills upon which Core seeks to collect reflect no credit for amounts already paid. Core Brief at

[49] Core ironically accuses Verizon of "retaliation" in bringing counterclaims for unpaid bills and refunds due in conjunction with answering Core's complaint (Core Brief at 17) – a routine development in cases involving bilateral disputes. One might surmise that Core's decision to amend its $75,000 complaint to incorporate *over $30,000,000 in additional claims against Verizon* – including claims predicated on backbills created for the first time months into this case – is retaliatory rather than well-founded.

12-15. *See* Core Stmt. 1.0 at Ex. BLM-5. Core is not entitled to collect more than $0.0007/MOU for terminating ISP-bound traffic.

Verizon's brief detailed why Core was not entitled to bill switched access charges on the traffic at issue,[50] noting that the Commission reconfirmed as recently as December 2012 that the FCC-ordered $0.0007/MOU rate, and not switched access charges, applies to ISP-bound traffic.[51] Verizon also outlined why Core's switched access tariffs do not entitle it to bill switched access charges on ISP-bound traffic. VZ Brief at 49-50. Although Core mentions its tariffs as the basis for its billings (Core Brief at 12), it offers no analysis as to why they would apply to the traffic at issue, or why the Commission's decision in the *AT&T Order* that Core's intrastate switched access tariff does *not* apply to ISP-bound traffic is not determinative here as well. *AT&T Order* at 59-60. Nor does Core address the fact that its position here is fundamentally inconsistent with its position in prior commission dockets, in which it vociferously argued that there was "never" a situation in which access charges would apply to ISP-bound traffic. Tr. 342-343; Verizon Cross Ex. 9 at 6. Finally, because Core ignored its VNXX traffic altogether, it does not explain why the Commission's earlier *Global NAPS* decision does not prohibit its attempt to bill switched access charges on VNXX traffic (its ISP traffic).[52]

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[50] Verizon also outlined why the Commission must treat all of the traffic at issue as ISP-bound: (1) Core had the ability to discern between ISP-bound and voice traffic, but chose not to offer evidence on the subject even though it has the burden of proof as to the validity of its access bills; (2) the Commission has previously held that Core's failure to provide such information warranted treating its traffic as ISP-bound, given its customer base; and (3) Core failed to present evidence to rebut the *ISP Remand Order*'s "rebuttable presumption" that all traffic above the (properly applied) 3:1 ratio is ISP-bound. VZ Brief at 49.

[51] *See* Opinion and Order, *Core Communications, Inc. v. AT&T Communications of Pennsylvania, LLC and TCG Pittsburgh, Inc.*, Pa. PUC Dockets C-2009-2108186 and C-2009-2108239 (Dec. 5, 2012) ("*AT&T Order*") at 15.

[52] *Global NAPS*, *supra*, at 49.

### b. Core's Switched Access Claims Are Barred by the Doctrine of Accord and Satisfaction

Core's brief does not bother to address Verizon's additional defenses of accord and satisfaction (Verizon Answer to Amended Complaint at ¶ 155). Verizon's brief explains that Core's claims for switched access charges are barred by the doctrine of accord and satisfaction because Core accepted the $0.0007/MOU rate that Verizon has already paid as payment in full on the disputed invoices. VZ Brief at 50.

### c. Core's Intrastate Tariff Prohibits Core's Backbilling and the Commission Lacks Jurisdiction to Enforce Backbilling of Interstate Charges

Core's brief also does not address Verizon's arguments regarding backbilling. Verizon's brief explained that the terms of Core's intrastate access tariff prohibit Core's attempt to backbill $1,355,006.07 in access charges for traffic carried over the SS7 trunks. VZ Brief at 51. Verizon also outlined why the Commission does not have jurisdiction over Core's attempt to collect $698,195.63[53] in interstate access charges pursuant to Core's interstate tariff. VZ Brief at 51-52. Core's brief does not address either its decision to backbill in contravention of its intrastate access tariff, or its attempt to enforce its interstate tariff in a proceeding before this Commission. Moreover, as ISP-bound traffic is jurisdictionally interstate (*ISP Remand Order*, ¶ 52), it is not subject to intrastate access charges or Core's intrastate switched access tariff.

### d. Core Is Not Permitted to Charge for Switched Access Functions That It Does Not Provide

Verizon's brief explained that Core's switched access bills are also invalid because they purport to charge Verizon for several access rate elements that Core does not and cannot provide. VZ Brief at 52-53. Although the topic came up at the hearing, Core's brief does not explain why it

[53] This figure was calculated by subtracting the $1,833,947.59 in intrastate switched access charges reflected in the invoices contained in Core Stmt. 1.0, Ex. BLM-5 from the total $2,532,143.22 in combined intrastate/interstate switched access charges that Core seeks to collect.

should be permitted to bill and collect for services that it does not provide – such as billing Verizon for end office switching and end user common lines (*see* Core Stmt. 4.0 at Ex. Core SR-5) even though Core provides no end office switching or loops.[54] Tr. 395-407. The majority of the switched access charges Core seeks to collect are for the carrier common line ("CCL") charges, including charges that purport to match unreasonably high RLEC CCL rates. VZ Br. at 50-51. According to Core's tariff, the CCL is a "cost category" charged for "the use of Company-provided end user common lines by customers and end users for interstate [sic] access." Core Pa. PUC No. 4, Section 5.2.1 (Core Stmt. 2.0 at Ex. CFV-3). But as Core explained at hearing, it terminates traffic to pieces of equipment that are <u>not</u> local loops. VZ Br. at 53 (explaining Core's proprietary testimony about its network configuration). As the FCC explained in its *Ymax Order,*[55] the "commonly understood meanings of the terms 'termination[]' . . . and 'end user line' *do not include* the type of non-physical 'virtual connection'" that Core uses and, indeed, such "'virtual' loop[s] . . . *cannot be* what the Tariff means by 'termination' of . . . 'end user lines.'" *See YMax Order* at ¶¶ 43-45. According to the FCC, the argument that such "virtual" loops constitute "'end user lines' is contrary to the common meaning of these terms in the telecommunications industry." *Id*. Not only is Core not providing any "end user common lines" for which it could justify charging Verizon a CCL, but it also is not providing end office switching, for the same reasons the FCC disallowed that charge in the *YMax Order*.[56]

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[54] Verizon also noted that Core admitted at hearing that it does not provide 800 database services, and yet charged for them, as well as for certain tandem-related charges, even though Core is not a tandem provider. VZ Brief at 52-53.

[55] *AT&T v. YMax*, 26 FCC Rcd 5742 (2011).

[56] In any event, a competitive LEC using a single switch may charge *either* end office switching *or* tandem switching, but not both. *See* Order, *Access Charge Reform; Cox Communication, Inc., et al. Petition for Clarification or Reconsideration*, 23 FCC Rcd 2556, ¶ 26 (2008). If Core attempts to rely upon *PAETEC Communications, Inc. v. MCI Communications Servs., Inc.*, 712 F. Supp. 2d 405, 413, 415 (E.D. Pa. 2010) ("*PAETEC")* to claim that its tariffs allow it to bill for tandem switching it does not perform, then the Commission should be aware that on appeal of that decision to the Third Circuit (which appeal has since been voluntarily dismissed), the FCC filed an amicus brief stating that "the district court erred" in that holding and confirming that a CLEC may only "charge for tandem switching when it provides tandem switching *in addition to* end office switching," and that any tariff that authorizes

### e. Core's Switched Access Billings to Verizon Suffer from Many Additional Flaws, Including Rate and Rate Application Errors

Cross examination at hearing revealed that Core's switched access billings to Verizon are rife with error, including multiple rate and rate application errors, all of which inured to Core's benefit. Verizon detailed these numerous flaws in its brief.[57] VZ Brief at 53-56. Once again, although Core bears the burden of proving that it is entitled to collect on these bills, it made no effort to address any of the issues that arose at hearing with respect to the errors in its bills.

Core suggests that its switched access bills are valid because it uses Verizon-provided EMI records to avoid double billing for switched access minutes, but it fails to address any of Verizon's detailed criticism of Core's "matching process" for doing so, which was the subject of considerable testimony through the proceeding.[58] Verizon's brief details the many flaws in Core's "matching process," all of which benefit Core by failing properly to exclude third party-originated traffic for which Core should not have billed Verizon. VZ Brief at 33-34. The result of these flaws is that the matching process did not avoid billing Verizon for minutes billable to (and likely billed to) other carriers.

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charging rates in violation of this rule is prohibited and void *ab initio*. *See* FCC Amicus Br., *PAETEC Communications, Inc. v. MCI Communications Servs., Inc.*, No. 11-2268 (3d Cir. filed Mar. 14, 2012) ("FCC Amicus Br.") at 14-15; 25 (*available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-312984A1.pdf ). As the Supreme Court explained in *Talk America*, the courts must defer to the FCC's reasonable interpretation of its own regulation and orders reflecting its fair and considered judgment. *Talk America, supra*, 131 S. Ct. at 2260-61. Accordingly, the district court's holding in *PAETEC* is not valid precedent.

[57] Core rather remarkably claims that "Verizon has never articulated a serious dispute with respect to Core's switched access bills." Core Brief at 14. Core apparently forgets that it breached the ICAs' mandatory dispute resolution process and filed an amended complaint seeking to collect on those bills on April 16, 2012, *a mere three days after receiving Verizon's initial April 13, 2012 dispute correspondence*. Core Stmt. 1.0 at 33-34. Verizon has vigorously contested those bills throughout this proceeding.

[58] In fact, Core goes so far as to offer a proposed finding of fact deeming that process "very generous to Verizon," completely ignoring the detailed Verizon testimony showing that the opposite is true. Core PFOF ¶ 73.

### 2. Core Cannot Collect "Damages" for "Lost Switched Access Revenues" on Historical MF Traffic

Core reiterates its claim for $2,661,655.78 in "lost revenue damages," representing switched access charges for historical traffic on the MF trunks that it concedes it is unable to bill because it cannot identify the jurisdiction of a single minute thereof. Core Brief at 15. Core admits that 100% of this traffic was ISP-bound, making it interstate and subject only to the $0.0007/MOU rate already paid.[59] *Id*. at 14-15, Core PFOF ¶ 45. Core makes no attempt to address Verizon's detailed criticism of Core's process for "guesstimating" the MF MOUs for which Core now seeks to collect unbilled switched access charges, nor does Core address the longstanding legal prohibition against the Commission awarding damages (something Core's general counsel acknowledged at hearing[60]), or the ICA provisions prohibiting Core's attempt to pursue consequential and lost revenues damages. VZ Brief at 56-58. A federal district court in Maryland recently enforced a similar ICA provision between Verizon Maryland and Core, in a case in which Core also sought improperly to recover alleged lost profits.[61] The Commission should summarily deny Core's claim for $2,661,655.78 in "lost revenue damages" for historical MF traffic for which Core has already been fully compensated.

## F. Having Committed Various Breaches of the ICAs, Core Comes to the Commission with Unclean Hands

Verizon's brief explained that in addition to breaching the ICAs through its billing practices, Core also violated various provisions thereof by failing to engage in the required dispute resolution efforts, failing to provide requested records, and failing to act in good faith with respect to the parties' disputes. VZ Brief at 58-59 (providing detailed ICA citations).

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[59] *ISP Remand Order,* ¶ 52.

[60] Tr. 338.

[61] *See* Order and Memorandum to Counsel, *Core Communications, Inc. v. Verizon Maryland Inc.*, No. 02-cv-03180-JFM (D. Md. Nov. 27, 2012), *appeal pending*, No. 12-2572 (4th Cir.), copy attached as **Exhibit 1** hereto for the Commission's convenience.

Core accuses Verizon of the same because Verizon withheld payment on a single month's worth of invalid invoices from Core on grounds with which Core disagreed, and about which Core refused to engage in dispute resolution. Core Brief at 11; VZ Brief at 58-59. The irony of Core's continued complaints regarding improper "self-help" on Verizon's part given Core's own refusal to pay over $4.5 million of invoices from Verizon is palpable. As detailed in Verizon's brief, Core breached a number of ICA provisions and the doctrine of unclean hands bars Core's attempt to benefit from its own bad faith conduct.[62] VZ Brief at 58-59.

After all of the misdeeds by Core uncovered through discovery in this case, and Core's continued refusal to pay for facilities it ordered and receives from Verizon, Core's request that the Commission to impose a "civil penalty" on Verizon for the "88 days" during which it withheld payment on Core's faulty and overstated intercarrier compensation bills while Core's petition for emergency relief was being litigated makes a mockery of this proceeding. Core omits to mention that for two thirds of this period, the controlling law was the ALJ's August 3, 2011 order finding that Verizon was *not* required to pay since Core had failed to comply with the bill validation requirements of the ICAs. When the Commission only later directed Verizon to pay, Verizon promptly complied. Verizon has continued to comply with the emergency order each month, even though the record here conclusively shows that Core is overcharging Verizon, and even though Core has testified that it is unlikely to be able to refund those overpayments, much less the years of payments it owes Verizon for facilities and services provided to Core. VZ Brief at 9. This state of affairs is already penalizing Verizon heavily. Core's request for additional civil penalties should leave the Commission with no doubt as to which party to this case is pursuing claims based on "retaliation."

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[62] *See Terracino v. Pa*., 562 Pa. 60, 69 (2000); *Shapiro v. Shapiro*, 415 Pa. 503, 506, 204 A.2d 266 (1964) (doctrine of unclean hands "is a self-imposed ordinance that closes the doors of a court of equity to one tainted with the inequitableness or bad faith relative to the matter in which he seeks relief").

## III. CONCLUSION

For the reasons stated herein, as well as in Verizon's Initial Post-Hearing Brief, the Commission should deny Core's Amended Complaint it its entirety and grant the relief sought in Verizon's New Matter by adopting the proposed and supplemental findings of fact, conclusions of law and ordering paragraphs provided in the accompanying Appendices to both briefs.

Respectfully submitted,

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*Counsel for Verizon Pennsylvania LLC and Verizon North LLC*

Dated: March 18, 2013

**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. | : | |

**VERIZON'S SUPPLEMENTAL PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Pursuant to 52 Pa Code § 5.501 and as directed by the presiding officer, Verizon Pennsylvania LLC ("Verizon PA") and Verizon North LLC ("Verizon North") (together, "Verizon") hereby submit their supplemental proposed findings of fact and conclusions of law.

## I. SUPPLEMENTAL PROPOSED FINDINGS OF FACT

1. Verizon's billings to Core were properly authenticated in the evidentiary record. Verizon Statement ("VZ Stmt.") 1.0 at 30-39, 43, 61-65 and Ex. 13 thereto; Hearing Transcript ("Tr.") 467-472; 495.

2. Because the physical bills themselves are exceedingly voluminous, Verizon compiled and provided a spreadsheet detailing each bill issued to Core and payment made by Core for services rendered by Verizon in Pennsylvania, which was designated as Exhibit 13 to VZ Stmt. 1.0 and admitted into the record. This document lists the Core Billing Account Number (BAN), invoice number, bill date, invoiced amount, total due, and total past due for every invoice issued to Core in Pennsylvania, with all applied credits and payments reflected in red text. VZ Stmt. 1.0 at Ex. 13.

3. At hearing, Verizon's witness indicated familiarity with Verizon's access bill format, noting that "[t]he structure is basically the same" regardless of the particular entity being billed. Tr. at 495.

4. At hearing, Verizon's witness authenticated Ex. 13 to VZ Stmt. 1.0 and confirmed that the amounts shown had been billed to Core. Tr. 467-71.

5. At hearing, Core confirmed that there was no dispute that that Verizon had issued the invoices listed in Ex. 13 to VZ Stmt. 1.0. Tr. 471-72.

6. Core's Main Brief inaccurately describes the record with respect to the availability of Verizon bill detail and recordkeeping practices. VZ Stmt. 3.0 at 17-18; VZ Stmt. 2.0 at 55-57 and Ex. 19-R thereto.

7. Verizon billed Core $3,687,677.22 between August 16, 2007 and August 6, 2012. VZ Stmt. 1.0 at Ex. 13.

8. None of Verizon's $93,000 in intercarrier compensation billings to Core predate August 16, 2007, as Core began sending outbound traffic to Core in August 2010. VZ Stmt. 1.0 at Ex. 1.

9. None of Verizon's $32,685.91 in directory listing billings to Core predate August 16, 2007, as Core began offering directory listing services to its customers in May 2010. VZ Stmt. 1.0 at Ex. 12.

## II. ADDITIONAL PROPOSED CONCLUSIONS OF LAW

10. Core bears the burden of proof on its affirmative defense invoking the statute of limitations. *Weinberg v. Commw. State Bd. of Examiners of Pub. Accountants*, 509 Pa. 143, 148, 501 A.2d 239, 242 (Pa. 1985); *Mancuso v. Markoff*, 14 Phila. 405, 418, 1986 Phila. Cty. Rptr. LEXIS 55, *21 (Comm. Pleas Phila. Cty. 1986).

11. No statute of limitation bars the Commission from finding that Core has breached the ICAs by improperly failing to pay all of the invoices summarized in Exhibit 13 to VZ Stmt. 1.0. The Commission's authority to require Core to pay specific amounts as a result thereof is a separate legal question.

12. 47 U.S.C. § 415 does not bar recovery of amounts due from Core for interstate facilities and services provided by Verizon to Core before August 16, 2009, as Verizon is not bringing federal tariff enforcement proceedings before this Commission; Verizon is seeking to enforce state commission-approved ICAs whose price schedules incorporate the rates set forth in Verizon's federal and state tariffs for the facilities and access services Core obtained from Verizon pursuant to those ICAs. As Core stated in its preliminary objections to Verizon's Amended Counterclaims, "[o]f course the case is different where the ICA itself specifically incorporates provisions of an FCC tariff by reference." *See* "Core Communications, Inc.'s Preliminary Objections to the Counterclaims of Verizon Pennsylvania, Inc. and Verizon North, LLC" (June 5, 2012) at 8, FN 4; *see also Castro v. Collecto, Inc.*, 634 F.3d 779, 784-786 (5th Cir. 2011) (Congress has stated no clear intent to preempt state statutes of limitations with 47 U.S.C. § 415(a)).

13. Core must pay late payment charges at the rate of 18% per year for amounts due to Verizon North and 9% per year for amounts due to Verizon PA that are not barred by any statute of limitations. *See* Verizon North ICA at GT&C, Section 11.3(e)) and Verizon PA ICA at Part A, Section 21.3.3, incorporating the interest rate set forth in Section 2.4.1(B)(iii)(b)(II) of Verizon PA's FCC Tariff No. 1.

Respectfully submitted,

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*Counsel for Verizon Pennsylvania LLC and Verizon North LLC*

Dated: March 18, 2013

# EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF MARYLAND**

| | | |
|---|---|---|
| CORE COMMUNICATIONS | * | |
| | * | |
| | * | |
| v. | * | Civil No. – JFM-02-3180 |
| | * | |
| VERIZON MARYLAND | * | |
| | ****** | |
| VERIZON MARYLAND | * | |
| | * | |
| v. | * | Civil No. JFM-08-503 |
| | * | |
| CORE COMMUNICATIONS | * | |

**ORDER**

For the reasons stated in the accompanying memorandum to counsel, it is, this 27th day of November 2012

ORDERED

1. Verizon Maryland, Inc.'s motion for partial reconsideration (document 69) is granted; and

2. Core Communications, Inc.'s cross-motion for partial reconsideration (document 70) is denied.

/s/
J. Frederick Motz
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
J. FREDERICK MOTZ
UNITED STATES DISTRICT JUDGE

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November 27, 2012

MEMO TO COUNSEL RE: Core Communications, Inc. v. Verizon Maryland, Inc.
Civil No. JFM-02-3180
Verizon Maryland, Inc. v. Core Communications, Inc.
Civil No. JFM-08-503

Dear Counsel:

I have reviewed the memoranda submitted in connection with Verizon's motion for partial reconsideration and Core's cross-motion for partial reconsideration. Verizon's motion is granted, and Core's motion is denied.

Verizon requests that I reconsider my ruling that section 26 of the Interconnection Agreement is void insofar as Core's contract claim is concerned. In my August 10, 2012 opinion I held that section 26 was void under Maryland law insofar as Core's *tort* claims were concerned, and I extended that ruling to the contract claim as well. The parties had not, however, briefed the issue as to whether section 26 was void under federal law as to the *contract* claim, and I was therefore not aware of the FCC's rulings in the *Local Competition Order* and in the *Cavalier Order*. It seems apparent that in those orders the FCC at least implicitly found that exculpatory causes, like section 26 of the ICA, are not void under the Telecommunications Act. Therefore, Verizon's motion is granted.

Core's cross-motion is denied. The questions presented by this case are close but I am content that my August 10, 2012 opinion, with the exception of the issue just discussed, was correct. Core has raised nothing in its cross-motion for partial reconsideration that changes my opinion.

Despite the informal nature of this letter, it should be flagged as an opinion and docketed as an order.

Very truly yours,

/s/

J. Frederick Motz
United States District Judge