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August 18, 2011

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

**Re: Core Communications, Inc. v. Verizon of Pennsylvania, Inc. and Verizon  
North, Inc.  
Docket Nos. C-2011-2253750 and C-2011-2253777**

Dear Secretary Chiavetta:

Enclosed for filing please find the Pre-hearing Conference Memorandum of Core Communications, Inc., which was electronically filed today. A copy of the Memorandum has been served upon the parties of record in accordance with the attached Certificate of Service.

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

Sincerely,

STEVENS & LEE



Michael A. Grum

Enclosures

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

Philadelphia • Reading • Valley Forge • Lehigh Valley • Harrisburg • Lancaster • Scranton  
Williamsport • Wilkes-Barre • Princeton • Cherry Hill • New York • Wilmington

A PROFESSIONAL CORPORATION

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Core Communications, Inc.	:	
	:	
v.	:	C-2011-2253750
	:	
Verizon Pennsylvania Inc.	:	
	:	
Core Communications, Inc.	:	
	:	
v.	:	C-2011-2253777
	:	
Verizon North, Inc.	:	

**PREHEARING CONFERENCE MEMORANDUM OF  
CORE COMMUNICATIONS, INC.**

Pursuant to 52 Pa. Code Section 5.222, Complainant, Core Communications, Inc. (“Core”), respectfully submits its Prehearing Conference Memorandum in the above-captioned matter.

**I. ISSUES FOR RESOLUTION AND CORE’S POSITION ON EACH**

**A. Core’s Complaint**

1. Whether Verizon Pennsylvania, Inc. and Verizon North, LLC (collectively, “Verizon”) have violated the Interconnection Agreements (ICA’s) in place between the parties and the *ISP Remand Order*<sup>1</sup> by deeming all telecommunications traffic that Verizon sends to Core’s network as “non-compensable” and by withholding payment on Core’s July 1, 2011 and August 1, 2011 invoices to Verizon?

**Core’s Position:** Verizon’s unilateral deeming of all traffic that it sends to Core as “non-compensable” is a clear violation of the ICAs and applicable law.

2. If Verizon has violated the ICAs, what amounts are owed to Core by Verizon?

**Core’s Position:** Core will demonstrate the amounts owed by Verizon to Core at the time of filing of its testimony in this matter.

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<sup>1</sup> Order on Remand & Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996—Intercarrier Compensation for ISP-Bound Traffic, 16 F.C.C.R. 9151 (Apr. 27, 2001) (“*ISP Remand Order*”).

3. Whether violations of the audit and billing provisions of the ICA occurred which would preclude Core from obtaining the relief it seeks?

**Core's Position:** Core did not violate the audit and billings provisions of the ICA, or any other provisions of the ICA, and the alleged violations raised by Verizon are not a defense to Core's claim.

4. Whether the doctrine of "unclean hands" prohibits Core from obtaining relief from the Commission on its Complaint?

**Core's Position:** Core's claim is not barred by the doctrine of "unclean hands"

5. Whether Core failed to mitigate its damages?

**Core's Position:** Core did not fail to mitigate the damages that were inflicted by Verizon

6. Whether Core's claims are barred as being against public policy and as an impermissible collateral attack?

**Core's position:** Public policy supports Core's position that Verizon violated the law and the ICAs by unilaterally deeming all traffic that it sends to Core as "non-compensable". Core's claim does not involve a collateral attack on a Commission order and is therefore not barred.

7. Whether Core is judicially estopped from obtaining the relief it seeks?

**Core's position:** Core is not judicially estopped from obtaining the relief it seeks.

8. Whether Core has been "unjustly enriched"?

**Core's position:** Core has not been unjustly enriched by Verizon. To the contrary, prior to ceasing payment altogether, Verizon consistently underpaid Core's reciprocal compensation invoices by significantly undercounting the amount of outbound traffic that Core sends to Verizon's network, thereby reducing the amount of Verizon-outbound minutes that are compensated at the reciprocal compensation rate.

## **B. Verizon's Counterclaims**

**Note:** Core was served with Verizon's Counterclaims on August 16, 2011. Core is entitled to 20 days to file responsive pleadings to Verizon's counterclaims. As such, Core reserves the right to raise all available affirmative defenses, objections, and factual and legal responses to the Counterclaims. The discussion below is not intended to reflect the full extent of Core's responses to Verizon's counterclaims, but rather are being provided as preliminary summaries for the purposes of the Pre-Hearing Conference.

1. Whether Core has breached the ICAs between the parties and/or Verizon's applicable tariffs by not remitting payment on Verizon's "entrance facility" and/or "special access" invoices?

**Core's position:** Core has consistently disputed Verizon's entrance facility and special access invoices since Verizon began issuing them. Verizon has never properly provisioned the facilities that are the subject of these invoices. Furthermore, Verizon has never offered Section 251(c)(2) interconnection at cost based rates for these facilities. Verizon's claims are also time-barred. Furthermore, Verizon's claims cannot be asserted as counterclaims to Core's Complaint because they do not involve common issues of fact or law.

2. Whether Core has violated Pennsylvania law by disputing Verizon's entrance facility and special access invoices?

**Core's Position:** Core has not violated Pennsylvania law by disputing Verizon's invoices.

3. Whether Core has overstated the amounts of its invoices to Verizon?

**Core's Position:** Core's invoices to Verizon are not overstated. To the contrary, Verizon has systematically underpaid Core's invoices before ceasing payment altogether.

4. Whether Core violated the ICA's bill audit provisions?

**Core's Position:** Core has not violated the bill audit provisions, and Verizon has never invoked the audit provisions.

5. Whether Core has violated the ICAs' dispute resolution provisions?

**Core's Position:** Core has not violated the dispute resolution provisions, and Verizon has not invoked a bona fide dispute.

6. Whether Core has violated the ICAs' good faith provisions?

**Core's Position:** Core has acted in good faith at all times. Verizon is the party that has demonstrated systematic bad faith in its dealings with Core.

### C. **Burden of Proof**

As the proponent of a Commission order, Core has the burden of proof to prove the elements of its Complaint under 66 Pa.C.S.A. § 332(a). To establish a sufficient case and satisfy the burden of proof, Core must show that Verizon is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990), *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Public*

*Utility Comm'n*, 134 Pa.Cmwth. 218; 221-222, 578 A.2d 600; 602 (1990), app. denied, 529 Pa. 654, 602 A.2d 863 (1992).

Likewise, Verizon has the burden of proving the elements of its counterclaims. And, each party bears the burden of proof on their Affirmative Defenses. Affirmative Defenses are distinguished from the mere denial of facts which make up the complainant's cause of action in that affirmative defenses require the averments of facts extrinsic to the complainant's claim. *Coldren v. Peterman*, 2000 Pa.Super. 364, 763 A.2d 905 (2000), app. denied, 566 Pa. 633, 781 A.2d 137 (2001). The party asserting an affirmative defense bears the burden of proof as to that affirmative defense. *Id.* See, also, *Commonwealth ex rel. Corbett v. Griffin*, 596 Pa. 549, 946 A.2d 668 (2008).

## II. PROPOSED WITNESSES

Core expects to call the following witnesses:

Bret L. Mingo, President, Core— Mr. Mingo is expected to provide testimony, *inter alia*, regarding Core's receipt of traffic from Verizon, Core's call records for that same traffic, Core's billing of Verizon, the basis for the invoices generated by Core and sent to Verizon, Verizon's underpayment and eventual non-payment of Core's invoices, the exchange of records between the parties and the results of Core's review of the exchanged records, Verizon's incorrect billing for entrance facilities and special access to Core, Core's disputes of such billings, and the grounds for Core's dispute of such billings.

Christopher Van de Verg, General Counsel, Core—Mr. Van de Verg is expected to provide both expert and fact testimony, *inter alia*, regarding the law applicable to intercarrier compensation in connection with the traffic sent by Verizon to Core, Core's entitlement to compensation for the traffic that Verizon sends to Core, the invalidity of Verizon's entrance

facility and special access bills to Core, and the inapplicability of the ICA audit provisions and dispute resolution provisions to the case at bar.

Core reserves the right to identify and present the testimony of additional witnesses, as necessary, in direct, rebuttal, and surrebuttal phases of these proceedings, in accordance with the schedule adopted in this proceeding.

### **III. PROPOSED DISCOVERY, HEARING, AND BRIEFING SCHEDULE**

Core proposes the following schedule, which envisions pre-served written testimony followed by an evidentiary hearing for cross-examination of witnesses:

August 22, 2011	Prehearing Conference
October 5, 2011	Direct Testimony on Claims for Relief
November 7, 2011	Rebuttal Testimony
December 9, 2011	Surrebuttal Testimony
January, 2011	Evidentiary Hearing (2 days)
30 days after transcript	Main Briefs Filed
15 days after Main Brief	Reply Briefs Filed

Core intends to introduce the written, pre-served, testimony of each of its witnesses and make its witnesses available for cross-examination at the hearing. Additionally, Core expects to cross-examine witnesses presented by Verizon in this proceeding.

### **IV. DISCOVERY MODIFICATIONS**

Core Proposes to modify the Commission's discovery procedures to require Answers to discovery to be provided within 10 days, and Objections to discovery to be served within 5 days.

## **V. STIPULATIONS**

Core is agreeable to stipulating to admitting the Interconnection Agreements between the parties into the record by reference to the publicly filed versions of the Interconnection Agreements, to avoid the need to submit copies of the voluminous Agreements themselves.

Core and Verizon have conferred regarding a Protective Order and expect to present a proposed Protective Order to the ALJ for approval.

## **VI. EXCHANGE OF RECORDS AS REQUIRED BY ORDER ON CORE'S PETITION FOR EMERGENCY RELIEF**

Since the issuance of the Order on Core's Emergency Petition, the parties have conferred and agreed upon the mechanics for an exchange of call detail records. As of the date of this Pre-hearing Conference Memorandum, Core has compiled the records requested by Verizon, in the format requested by Verizon, and stands ready to transmit those records to Verizon. The parties have agreed that the exchange of records will take place on Friday, August 19, 2011 at 2:00 p.m.

## **VII. SETTLEMENT**

Settlement negotiations have not been initiated by the parties. However, Core remains open to the amicable resolution of this matter. Core believes that the call detail records it will provide to Verizon will conclusively demonstrate that there is no valid basis for Verizon to withhold payment on Core's invoices, and Core is hopeful that Verizon will acknowledge as such and resume payment of Core's invoices. Furthermore, if full settlement cannot be achieved, Core intends to work with Verizon to reach agreement on as many factual and legal issues as

possible, to limit the number of issues in dispute and to streamline this proceeding to the greatest extent possible.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael A. Gruin", written over a horizontal line.

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Counsel for Core Communications, Inc.

DATED: August 18, 2011

