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August 18, 2011

BY HAND DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor (filing room)
PO Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for filing with the Commission are the original and three (3) copies of Verizon Pennsylvania Inc. and Verizon North LLC's Prehearing Memorandum. Copies of this document have been served upon the Counsel for Core Communications in accordance with the attached Certificate of Service.

If you have any questions with regard to this filing, please direct them to me.

Regards,

Thomas J. Sniscak
William E. Lehman

*Counsel for Verizon Pennsylvania Inc.
and Verizon North LLC*

TJS/WEL/das
Enclosures

cc: Honorable Susan D. Colwell
Certificate of Service

**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.	:	

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**PREHEARING MEMORANDUM OF
VERIZON PENNSYLVANIA INC. AND VERIZON NORTH LLC**

Verizon Pennsylvania Inc. and Verizon North LLC (together, “Verizon”), pursuant to 52 Pa. Code § 5.222(d), respectfully submit this prehearing memorandum for purposes of the prehearing conference scheduled for August 22, 2011.

I. BACKGROUND

A. Core’s Claim

The gravamen of Core’s Complaint is that Verizon breached the parties’ Pennsylvania Public Utility Commission-approved (“Commission”) interconnection agreements (“ICAs”)¹ by disputing Core’s bills and withholding payment. The ICAs on their face, however, entitle Verizon to withhold payments for disputed bills and, more importantly, clearly delineate mandatory procedures the parties must follow to resolve the dispute *prior* to Commission involvement. It is apparent from the face of the Complaint and Core’s associated admissions that the dispute

¹ Verizon PA and Core interconnect pursuant to an ICA dated March 31, 2000 (“Verizon-PA/Core ICA”), and Verizon North and Core interconnect pursuant to an ICA dated August 24, 2005 (“Verizon North/Core ICA”). The excerpted Verizon-PA/Core ICA is attached as Exhibit A to Verizon’s Answer and the excerpted Verizon North/Core ICA is attached as Exhibit B to Verizon’s Answer.

resolution processes plainly laid out in the ICAs have not yet been followed or completed. Accordingly, the claim is not a case or controversy ripe for adjudication by the Commission, and therefore is legally insufficient. 52 Pa. Code § 5.101(a)(4). Second, Core's complaint ignores and is inconsistent with the parties' "agreement for alternative dispute resolution" that must be completed before a complaint can be filed with the Commission. 52 Pa. Code § 5.101(a)(6). For those reasons, Verizon has filed Preliminary Objections seeking dismissal of Core's Complaint.

Core's defense to ignoring the ICAs' dispute resolution requirements relies on its bare accusation that Verizon's dispute is in bad faith. Core never claims that its bills are valid and accurate – just that they have been billing Verizon for a long time. The plain fact is that Verizon has legitimate reasons to doubt the validity of Core's bills. Indeed, Core admitted in the Emergency Petition hearing that its bills are vastly overstated and inaccurate, and has provided no evidence that a single minute of traffic it claims to have terminated for Verizon actually exists, or meets the ICAs' definitions for compensable traffic. Tr. at 16, 17, 23, 24, 59, 104.

Core's attempt to turn the ICAs on their heads should be rejected. It is Core, and not Verizon, that bears the burden of proving its bills are accurate, that it has actually provided the services for which it bills Verizon, and that it has exhausted the dispute resolution procedures in the ICA.

Verizon has raised affirmative defenses to Core's claim, including justification, unclean hands, set-off, judicial estoppel, collateral attack, unjust enrichment, and the existence of conditions precedent. Verizon expects to develop these defenses more fully through discovery and testimony.

B. Verizon's Counterclaims

Core owes Verizon over \$3,500,000 in unpaid bills pursuant to Verizon's tariffs and the ICAs. Just as it inveigles this Commission to find that Verizon's withholding of disputed

portions of billings is a *per se* breach, Core willfully withholds millions that it owes Verizon.² Verizon provides Core high capacity circuits that Core apparently uses to transport traffic. Verizon bills Core for those facilities along with the various rate elements associated with those high capacity transport circuits, intercarrier compensation and directory listings.³ Core has steadfastly refused to pay Verizon's invoices. Verizon bills Core tariffed rates, and while Core (incorrectly) claims that lower rates should apply, even if that were correct, Core is obligated under the ICAs, Pennsylvania law, and clear Commission precedent to pay at least the portion of the bill that it does not dispute. Yet, Core has never paid even that lower amount, while it shamelessly seeks protection from this Commission under the guise of "protecting competition." Accordingly, by its Counterclaims I and II, Verizon seeks to collect on its unpaid bills, and asks this Commission to enjoin Core to pay the undisputed portions of its bills immediately.⁴

Verizon also seeks relief from this Commission for Core's breaches of the ICAs stemming from its inaccurate and invalid billing of Verizon for ostensible "reciprocal compensation" traffic. Counterclaim III explains how Core has systematically and willfully over-billed Verizon, overstating the rates, inflating the minutes of use ("MOU"), and billing Verizon for traffic that is non-compensable under the ICAs. Counterclaim IV seeks relief from Core's breach of the bill validation provisions of the ICAs, non-compliance with which Core has already admitted to in the Emergency Petition hearing. Counterclaim V requests this Commission find Core in breach of its obligation to comply with the dispute resolution

² In the last three years, Core has paid Verizon \$30.66 on that \$3.5 million and it seems likely that even that single payment was a clerical error.

³ In some cases, Verizon's claims implicate the same ICAs as Core's Complaint, are between the same parties, involve the same interconnections, and implicate the same provisions of the contract and intercarrier compensation issues. Verizon's remaining Counterclaims involve the same Core and Verizon conduct that is the subject of Core's Complaint. Accordingly, they each present common questions of law or fact pursuant to 52 Pa.Code § 5.62.

⁴ Counterclaim I seeks redress for Core's breach of the ICA. Counterclaim II seeks redress for Core's failure to pay intrastate switched access charges, as required under Pennsylvania law. 66 Pa.C.S. § 3017(b).

provisions of the ICAs. Counterclaim VI requests this Commission find Core in breach of the contractual duty of good faith for its willful noncompliance with the clear and unambiguous terms of the contracts.

* * *

The Commission enforces ICAs for a reason – they govern the terms of the relationship between the parties. Core should be held to the terms of the ICAs it signed – no more and no less.

Verizon respectfully submits that this Commission dismiss the proceeding for the reasons described in Verizon’s Preliminary Objections. Because Core’s Complaint is so facially contrary to the plain terms of the ICA, Verizon should not be required to expend additional time and expense on litigation, including discovery and motion practice, until those Objections are ruled upon, or the parties fail to resolve the matter through good-faith negotiations. In short, proceeding with the case now would require the Commission and Verizon to waste their time and limited resources trying to resolve an issue that the contracts between the parties clearly require to be negotiated in the first instance. Administrative efficiency and the interest of orderly decision-making would best be served by staying this case or otherwise holding scheduling in abeyance pending negotiation and decision on the Preliminary Objections.

II. ISSUES

If this matter proceeds to litigation, the Commission will have to address at least the following issues:

1. Whether Core’s bills for reciprocal compensation charges reflect traffic that is actually compensable under the ICAs and federal law.
2. Whether Core’s bills for reciprocal compensation charges accurately reflect the Minutes of Use (“MOUs”) it actually terminated for Verizon.

3. Whether Core has demonstrated that Verizon owes Core the amounts alleged in its bills.
4. Whether Verizon was entitled to obtain bill validation through requests to Core for Call Detail Records.
5. Whether Core was justified in refusing to provide those records.
6. Whether Verizon's affirmative defenses, including justification, unclean hands, set-off, judicial estoppel, collateral attack, unjust enrichment, and the existence of conditions precedent, preclude a finding of breach of the ICAs against Verizon.
7. Whether Core breached the ICAs by its non-payment of more than \$3.5 million in services received by Verizon.
8. Whether Core should be required to pay for those services received.
9. Whether Core should be immediately required to pay the lesser amounts it claims should apply to those services.
10. Whether Core's failure to pay tariffed intrastate switched access charges violates Pennsylvania law.
11. Whether Core should be required to pay for those tariffed services received.
12. Whether Core breached the ICAs by billing Verizon for inflated usage, inaccurate amounts, and for traffic it claimed to be compensable that was not in fact compensable under the ICAs and applicable law.
13. Whether Core should be required to refund Verizon payments made for those inaccurate bills.
14. Whether Core breached the ICAs by willfully ignoring the bill validation provisions of the ICAs and refusing to cooperate with Verizon's attempts to validate Core's bills.
15. Whether Core breached the ICAs by ignoring the dispute resolution requirements of the ICAs and instead filing the Emergency Petition and the instant Complaint.
16. Whether Core breached the contractual duty of good faith through its various willful breaches of the ICAs and failure to cooperate with Verizon.

III. PROCEDURAL SCHEDULE

Verizon respectfully requests that the Commission refrain from setting a litigation schedule at this time. As stated above, Verizon has filed preliminary objections in this proceeding, requesting that the Commission dismiss Core's Complaint. If Verizon's objections

are granted, no procedural schedule is necessary. Even if Verizon's objections are denied, the Commission should stay or otherwise hold the matter in abeyance pending completion of the dispute resolution procedures required by the ICAs, and order Core to comply with those procedures. Verizon suggests that the parties be required to provide a report to the presiding officer within 20 days following those negotiations as to whether the dispute has been resolved, and include a proposed procedural schedule at that time.

If Verizon's Preliminary Objections are denied and the Commission disagrees with the proposal to stay this matter, then Verizon suggests the following procedural schedule to brief the stay issue and allow it to be brought to the full Commission as a material question, if necessary:

10 days following presiding officer's ruling on Preliminary Objections – Parties file simultaneous memoranda on whether the matter should be stayed or otherwise held in abeyance to allow operation of the ICAs' dispute resolution provisions.

10 days following Stay Memoranda – Parties file replies to the Stay memoranda.

20 days following presiding officer's written order – Either party may file a petition requesting Commission review and answer to a material question pursuant to 52 Pa. Code § 5.302 if it disagrees with the presiding officer's resolution.

30 days following entry of Commission order on the merits of any material question petition, or as needed – Further telephonic prehearing conference if necessary to address scheduling or other issues as a result of orders from the Commission.

Core proposed a procedural schedule to Verizon that does not include holding litigation in abeyance during the pendency of the dispute resolution process or decision on Verizon's Preliminary Objections. Should the presiding officer and the Commission rule against Verizon with respect to the issues discussed herein, the schedule proposed by Core is otherwise acceptable to Verizon.

IV. WITNESSES

For the reasons stated above, Verizon does not propose the filing of testimony or scheduling of an evidentiary hearing at this time. However, in compliance with the prehearing order in this matter, Verizon identifies the following witnesses should testimony be required:

William Munsell 600 Hidden Ridge, Room E03c59 Irving, TX 75038	(issues relating to traffic exchange and compensation)
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Peter J. D'Amico 416 7 th Avenue, 19th Floor Pittsburgh, PA 15219	(issues relating to Core and Verizon facilities, traffic, interconnection agreements, and billings)
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Verizon reserves the right to identify new or different witnesses, including but not limited to in response to issues raised by Core in its testimony.

V. DISCOVERY

The parties have not commenced discovery in this matter. Verizon has agreed with Core to modify the Commission's standard discovery rules to allow for objections to discovery within five days, and responses within ten days.

If the Commission determines to stay this matter pending the parties' attempts at dispute resolution required by the ICAs, Verizon requests that discovery be stayed as well.

VI. PROTECTIVE ORDER

Discovery in this matter will call for the disclosure of information that the parties view as competitively sensitive or otherwise proprietary. Pursuant to 52 Pa. Code § 5.423(c)(4), the parties will work together to propose a form of protective order to govern their production of proprietary and highly confidential information prior to the entry of a protective order in this matter. Verizon respectfully requests that this or a similar form of protective order be entered to

govern the information already produced and that may in the future be produced or filed in this case.

VII. SERVICE LIST

Pursuant to 52 Pa. Code § 1.55, Verizon's representative for the service list in this proceeding is as follows:

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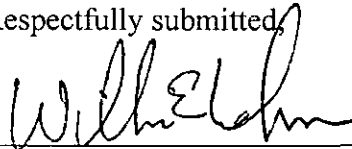
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VIII. SETTLEMENT

Verizon has requested that Core continue the negotiations required by the parties' ICAs to resolve Core's claims, and has requested that Core enter into settlement negotiations regarding Verizon's counterclaims, rather than litigate these issues before the Commission. Verizon continues to be open to the amicable resolution of this matter.

Respectfully submitted,



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Dated: August 18, 2011

Counsel for Verizon Pennsylvania Inc. and Verizon
North LLC

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CERTIFICATE OF SERVICE

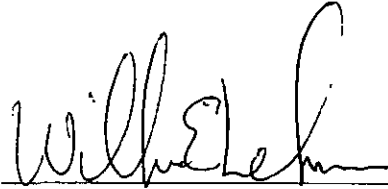
I hereby certify that I have this day served a true copy of the foregoing Prehearing Memorandum upon the parties, listed below, in accordance with the requirements of §1.54 (relating to service by a party).

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Counsel for Core Communications Inc.



Thomas J. Sniscak
William E. Lehman

*Counsel for Verizon Pennsylvania Inc.
and Verizon North LLC*

Dated this 18th day of August, 2011.

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