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September 16, 2011

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-2011-2253777

Dear Secretary Chiavetta:

Enclosed please find the Answer of Verizon Pennsylvania Inc. and Verizon North LLC to the Preliminary Objections of Core Communications, Inc., being filed 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

Via E-Mail and First Class U.S. Mail
cc: Attached Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document 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).

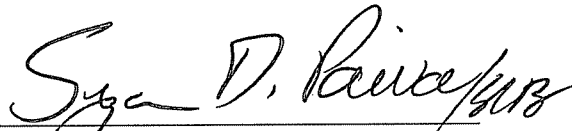
Dated at Philadelphia, Pennsylvania, this 16th day of September, 2011.

Via E-Mail and First Class Mail

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**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.	:	

**ANSWER OF VERIZON PENNSYLVANIA INC. AND VERIZON NORTH LLC
TO THE PRELIMINARY OBJECTIONS OF CORE COMMUNICATIONS, INC.**

Pursuant to 52 Pa. Code § 5.101(f), Verizon Pennsylvania Inc. (“Verizon PA”) and Verizon North LLC¹ (“Verizon North”) (collectively, “Verizon”), hereby answer the Preliminary Objections filed by Core Communications, Inc. (“Core”) to Verizon’s Counterclaims I, II, and VI (in part).

INTRODUCTION

Core half-heartedly but speciously suggests that three of Verizon’s counterclaims “do not conform with” Pa. Code § 5.62 and are mis-joined because, according to Core, they “have nothing to do with Core’s Complaint against Verizon.” Core mischaracterizes both the facts and the legal standard. Under Pa. Code § 5.62, “a respondent may seek relief against other parties in a proceeding if common questions of law or fact are present.” As described in greater detail below, both parties’ claims implicate the same governing contract, the same federal statute, and the same Commission law and precedent.² They both involve the collection of disputed but

¹ Core erroneously names the company Verizon North, Inc. in its Complaint. Verizon requests that the caption be changed to indicate Verizon Pennsylvania Inc. and Verizon North LLC as the Respondents.

² Verizon’s Counterclaims I and II seek redress for Core’s breach of the ICAs and breach of Pennsylvania law for Core’s failure to pay Verizon for intercarrier compensation and interconnection-related facilities and services.

withheld monies for telecommunications services, and the compliance of each party with the billing and dispute resolution provisions of the contracts. Accordingly, the three counterclaims at issue meet the requirements of Pa. Code § 5.62.

Not only do both parties' claims present common questions, but also judicial economy demands the claims be heard together. Verizon has asserted affirmative defenses to Core's Complaint of unclean hands, setoff and judicial estoppel, each of which implicate the same facts and law as Verizon's Counterclaims. Thus, the issues raised by Verizon's Counterclaims I, II, and VI will be joined in this action no matter how hard Core tries to avoid them. Moreover, Verizon's Counterclaims are timely, ripe and subject to Commission jurisdiction, so dismissal would require litigation of the same questions of fact and law in two parallel and contemporaneous proceedings. Even if Verizon's Counterclaims did not meet the requirements of Pa. Code § 5.62 – and they clearly do - the matters should be consolidated.

The Commission's regulations "shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable. The Commission or presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties." 52 Pa. Code § 1.2(a). Core has had the opportunity to answer the substance of Verizon's new matter, and to raise other preliminary objections. Dismissing two and part of a third of Verizon's six Counterclaims would do nothing more than require Verizon to file a separate complaint against Core raising the same claims. This procedure would only complicate and render more expensive the resolution of this interrelated set of disputes, contrary to 52 Pa. Code § 1.2(a).

Verizon's Counterclaim VI seeks remedy from Core's multiple breaches of the duty of good faith. Core's Complaint seeks redress for Verizon's alleged breach of the ICAs between the parties resulting from Verizon's disputes with Core's interconnection-related intercarrier compensation charges.

BACKGROUND

Counterclaims I and II. As explained in Verizon's Answer, New Matter and Counterclaims, Verizon's Counterclaims I and II seek redress for Core's breach of the ICAs and breach of Pennsylvania law for Core's failure to pay Verizon for intercarrier compensation and interconnection-related facilities and services. As of July 28, 2011, Core owed Verizon \$3,584,834.72 for services rendered by Verizon to Core in Pennsylvania. Core continues to receive services from Verizon, but has still made no payments on Verizon's invoices. The vast majority of those amounts are owed to Verizon PA, and the remainder to Verizon North. These services, and the relationship between the parties, are governed by the ICAs and Verizon's tariffs.

The amounts included in Verizon's invoices to Core are primarily for high capacity circuits that Core apparently uses to transport traffic, as well as other services such as intercarrier compensation and directory listings. The rates for those services are governed and determined by reference to the parties' ICAs (the same ICAs at issue in Core's Complaint) and Verizon's tariffs.

Core essentially has paid none of Verizon's billings. Of more than \$3.5 million billed, Core has paid just \$30.66. Nor has Core properly disputed the unpaid amounts. As Core itself points out in its affirmative claim against Verizon, both the Verizon-PA/Core ICA and the Verizon North/Core ICA require that parties pay those portions of bills not properly in dispute. While the contracts provide the billed party the choice to pay or legitimately dispute any given amount, the dispute must, at minimum, specify the particular "amounts" the billed party disputes. The ICAs also require that a disputing party provide "specific details and reasons" for "each item," and that it follow specific dispute resolution and escalation procedures. Core has never disputed any particular amount. Core has occasionally propounded general theories as to why it

claims Verizon's billings are flawed, but it has never attached these theories to any particular billings. Instead, Core has simply refused to pay.³ Refusing not only to pay but also to even dispute unpaid amounts defines the type of "self-help" that the Commission has stated it finds to be untenable.

Were Core to attach particular amounts to its disputes, that reckoning would perforce demonstrate that it has failed to pay undisputed amounts. Even Core's own logic – that Verizon overbilled for one or more rate element – cannot excuse payment for the lower amount that Core claims should have been billed. If a particular facility has been billed at one rate, and Core claims it should be billed at another, Core must quantify that amount, and pay at least the amount it claims it should have been billed. But it has not.

Core's failure to pay its bills for services received, including intercarrier compensation, violate the ICA and Pennsylvania law. This mirrors Core's claim against Verizon. Accordingly, both the Commission's rules and judicial economy demand that they be heard together.

Counterclaim VI. In this Counterclaim, Verizon seeks Commission relief from Core's failure to comply with the contractual duty of good faith. The Verizon North/Core ICA, Section 5.0, requires that "[i]n the performance of their obligations under this Agreement, the Parties shall act in good faith." Exhibit B § 5.0. The Verizon PA/Core ICA, Section 42.1, similarly provides "[i]n the performance of their obligations under this Agreement, the Parties shall cooperate fully and act in good faith and consistently with the intent of the Act." Exhibit A, Part A § 42.1.

Verizon identifies multiple failures by Core to meet its good-faith obligations, including its willful decision to ignore the dispute resolution procedures of the contract, and its knowing lack of cooperation with Verizon's legitimate requests for substantiation of its bills – requests

³ This stands in direct contrast to Verizon's current dispute with Core's bills. Verizon has provided the exact amounts that are in dispute and the source of the dispute for each amount.

Verizon is clearly entitled to make under the ICAs. Verizon will be shortly be amending its Counterclaims because it has recently learned that Core has been knowingly overbilling Verizon for non-local traffic and traffic not originated by Verizon, in direct contravention of the ICAs.

Core seeks to dismiss, however, only that portion of Counterclaim VI related to Core's failure to pay Verizon's invoices, as described in Verizon's Counterclaims I and II. Yet, Core's willful refusal to timely dispute those bills, unwillingness to identify or negotiate the lower amount it would apparently agree that it ought to pay, and willful refusal to pay even the lower rate that it itself claims should apply are part and parcel of Verizon's claim, and implicate many of the same contract terms and legal standards relied upon by Core in its Complaint.

ARGUMENT

Core's preliminary objections assert a meritless and improperly narrow view of Pa. Code § 5.62 in an attempt to avoid having the Commission reach the substance of Verizon's claims. These preliminary objections do not satisfy the heavy burden required for preliminary dismissal without a consideration of the merits. "In ruling on preliminary objections [the Commission] must accept as true all well-pleaded facts and all inferences reasonably deducible therefrom," and it cannot sustain preliminary objections unless it "appear[s] with certainty that the law will not permit recovery."⁴ Moreover, "any" doubt must "be resolved by a refusal to sustain them." Core's objections should be rejected for three independent but related reasons. First, Verizon's claims meet the requirements of Pa. Code § 5.62. Second, the legal and factual issues underlying Verizon's claims will be joined in the proceeding in any event, because they are part and parcel of Verizon's affirmative defenses. Third, Verizon's claims will be heard by this Commission,

⁴ *Dorfman v. Pennsylvania Social Servs. Union B Local 668*, 752 A.2d 933, 936 (Pa. Commw. Ct. 2000). See also *Valentino v. Dominion Retail, Inc. t/a Peoples Plus*, Docket No. C-20055447, 2006 Pa. PUC LEXIS 27, 3-4 (Order entered January 12, 2006, adopting ID of Chief ALJ Smith).

and so even if Verizon's Counterclaims were dismissed, judicial economy would require the cases be consolidated.

First, Pa. Code § 5.62(a) requires only that "common questions of law or fact are present."⁵ Core asserts that Verizon's claims for unpaid bills for telecommunications services are "wholly unrelated to the dispute raised by Core in its Complaint" – Core's claims for unpaid bills for telecommunications services. Both parties' claims involve the same ICAs, and many of the same provisions of those ICAs. Both parties' claims involve the respective duties of each party to pay bills for services received, the legitimacy of their disputes under the ICAs, the parties' compliance with the dispute resolution processes of the ICAs, and the parties' compliance with state and federal law.

Core ignores these obvious common issues and instead focuses on small differences in a meager attempt to distinguish the claims. But Pa. Code § 5.62 does not require perfect identity. Indeed, while Core attempts to distinguish its claims by arguing that "Verizon's Counterclaims are based primarily on its own access tariffs, in addition to the ICAs", the ICAs themselves incorporate the tariffs for certain services and purposes, including those at issue here.⁶ Indeed, the salient point for purposes of Pa. Code § 5.62 is that both parties' claims

⁵ The standard for a new matter seeking affirmative relief mirrors the Commission's rule for consolidation of proceedings. The Commission "may order proceedings involving a common question of law or fact to be consolidated." 52 Pa. Code § 5.81(a).

⁶ See, e.g., Verizon-PA/Core ICA, § 1.3: ("The Parties acknowledge that some of the services, facilities and arrangements provided pursuant to this Agreement are or will be available under and subject to the terms of the federal or state Tariffs of the Party providing them. To the extent that a Tariff of a Party applies to any service, facility or arrangement provided pursuant to this Agreement, the following shall apply:

1.3.1 The rates and charges set forth in Attachment I shall remain fixed for the term of this Agreement or until superseded by such rates (whether interim or permanent) as may be applied by the Commission, notwithstanding that either of such rates may be different from those set forth in any effective, pending or future Tariff of the providing Party, (including any changes or modifications to any such Tariff--or any new Tariff--filed after the Effective Date of this Agreement); provided, however, this Section 1.3.1 shall remain subject to Section 1.3.3.

1.3.2 This Agreement and any applicable Tariffs of either Party shall be construed whenever possible to avoid any conflict between them. The fact that a condition, term, right or obligation appears in the Agreement and

involve the same contract terms. Similarly, Core misreads the Commission Rules by arguing that Verizon's claims are "unrelated" because they do not involve the precise traffic or Core-generated invoices involved in Core's claims. But they do involve traffic between the parties, intercarrier compensation between the parties, and *Verizon*-generated invoices for those services, which are governed by and implicate the same ICAs and the same or overlapping legal standards and factual questions. In sum, Verizon's claims are not identically the same as Core's, but the relevant test is whether there are common questions of law or fact. There are.

Second, Verizon's Counterclaims involve facts and legal issues that will be joined in the proceeding in adjudicating Verizon's affirmative defenses. Verizon asserts that Core comes to this Commission with unclean hands. As described in Verizon's Answer, Verizon's proof of that well-recognized defense under Pennsylvania law will involve, among other things, Core's conduct in failing to pay its bills or properly dispute them, and failing to comply with the related requirements of the ICA. Similarly, Verizon's affirmative defense of set-off, a well-recognized defense under Pennsylvania law will inevitably require joinder of the issues surrounding the several million dollars owed by Core to Verizon. Finally, Verizon's claim of judicial estoppel, a similarly well-recognized affirmative defense, relies directly on Core's inconsistent positions. Core has asserted its right to withhold payments from Verizon, and conducted itself in a manner under the ICA in withholding payments from Verizon, that are directly in conflict with the positions that it asserts in this proceeding in order to seek remedy from the Commission. Thus,

not in a Tariff, or in a Tariff but not in the Agreement, shall not be interpreted as, or deemed grounds for finding, a conflict for the purposes of this Section 1.3.

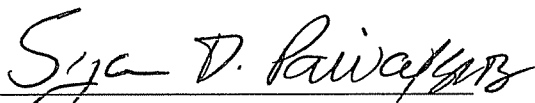
1.3.3 Any change or modification to any Tariff (including any Tariff filed after the Effective Date hereof) filed by either Party that materially and adversely impacts the provision or receipt of services hereunder or which materially and adversely alters the terms hereof shall only be effective against the other Party to the extent permitted by: (i) that Party's written consent; or (ii) an affirmative order of the Commission. Each Party shall file any required Tariff revisions, modifications or amendments in order to comply with Applicable Law and to continue performance of this Agreement in a lawful manner.

Core's unpaid bills for Verizon's services, and the factual and legal questions surrounding them, will necessarily be joined in this proceeding. That joinder underscores the obvious point that the parties' claims present "common questions of law or fact."

Third, dismissal of Verizon's Counterclaims I, II and part of VI will ill-serve the Commission, squander limited resources, and achieve nothing but duplicative litigation. Verizon's claims are timely, ripe and subject to Commission jurisdiction. This case is less than two months old, neither party has provided discovery, and there is no procedural schedule. The only thing that could flow from dismissal would be a new filing by Verizon, resulting either in consolidation or duplicative, contemporaneous proceedings involving the same parties and many of the same issues. Thus, even if the Commission were inclined to consider Core's incorrect characterization of the claims under Pa. Code § 5.62, the Commission's mandate to "secure the just, speedy and inexpensive determination of every action" would require that the "presiding officer... disregard an error or defect of procedure which does not affect the substantive rights of the parties," and hear these claims together. 52 Pa. Code § 1.2(a).

WHEREFORE, Verizon respectfully requests that the Commission dismiss Core's Preliminary Objections.

Respectfully submitted,



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