

Suzan DeBusk Paiva
Assistant General Counsel
Pennsylvania



1717 Arch Street, 3 East
Philadelphia, PA 19103

Tel: (215) 466-4755
Fax: (215) 563-2658
Suzan.D.Paiva@Verizon.com

April 9, 2012

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. P-2011-2253650, C-2011-2253750 and C-2011-2253787

Dear Secretary Chiavetta:

Enclosed please find Verizon's Motion for Order Imposing Bilateral Payment Obligations, being filed on behalf of Verizon Pennsylvania Inc. and Verizon North LLC in the above captioned matter.

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

Very truly yours,

A handwritten signature in blue ink, appearing to read "Suzan D. Paiva".

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 Verizon's Motion for Order Imposing Bilateral Payment Obligations, 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 9th day of April, 2012.

Via E-Mail and First Class Mail

Michael A Gruin, Esquire
Stevens & Lee
17 North Second St., 16th Fl.
Harrisburg, PA 17101

Renardo Hicks
R. L. Hicks & Associates
17 North Second St., 16th Fl.
Harrisburg, PA 17101

Counsel for Core Communications Inc.



Suzan D. Paiva
Pennsylvania Bar ID No. 53853
1717 Arch Street, 3rd Floor
Philadelphia, PA 19103
(215) 466-4755

Attorney for Verizon

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CORE COMMUNICATIONS, INC.,	:	
	:	
Complainant,	:	
	:	Docket No. P-2011-2253650
v.	:	Docket No. C-2011-2253750 and
	:	Docket No. C-2011-2253787
VERIZON PENNSYLVANIA INC.	:	
and VERIZON NORTH LLC,	:	
Respondents.	:	

**VERIZON'S MOTION FOR ORDER
IMPOSING BILATERAL PAYMENT OBLIGATIONS**

Verizon Pennsylvania Inc. ("Verizon Pa.") and Verizon North LLC ("Verizon North") (collectively, "Verizon"), by and through their undersigned counsel and pursuant to 66 Pa. C.S. § 331, 52 Pa. Code § 5.103 and 47 U.S.C. § 252, hereby move the Pennsylvania Public Utility Commission ("Commission") to impose bilateral payment obligations on the parties for the duration of these proceedings, subject to true up after the conclusion thereof.

Background

On July 22, 2011, Core Communications, Inc. ("Core") filed a formal complaint ("Complaint") against Verizon, asserting various alleged breaches of the parties' interconnection agreements ("ICAs"). That day, Core also filed the "Petition of Core Communications, Inc. for Interim Emergency Order" ("Petition"), which sought an emergency order "directing Verizon to immediately resume payment of Core's intercarrier compensation invoices pending the resolution of any underlying substantive dispute between the parties." Petition at ¶ 1.

Verizon answered the Petition on August 1, 2011 (“Answer”), urging denial due both to Core’s multiple violations of the dispute provisions of the parties’ ICAs, and because the Petition failed to meet the standards for emergency relief under 52 Pa. Code § 3.6(a). Shortly thereafter, Verizon filed an answer and new matter asserting counterclaims against Core for failure to pay invoices totaling, as of that date, \$3,584,834.72 for high capacity transport circuits and directory listing services provided by Verizon to Core under the ICAs.¹ Core apparently contends that the entrance facilities should have been billed at TELRIC rates,² rather than at the special access rates in the ICAs, although Core has never even paid the TELRIC rates that it asserts should apply.

On August 3, 2011, the Administrative Law Judge (“ALJ”) issued an order denying Core’s Petition (“ALJ Order”), but certified the denial to the Commission as a material question. The Commission’s Opinion and Order entered on September 23, 2011 (“Commission Order”) granted the Petition subject to refund and ordered Core to provide certain billing data that Verizon had requested and Core had withheld. Commission Order at 20-21. The Commission also referred the case to mediation. *Id.* at 21. The mediation has since terminated. *See* Mediator’s Progress Report dated March 22, 2012 at 2.

Verizon has fully complied with the Commission Order requiring it to make monthly payments to Core, and will continue to do so. But while Verizon continues to pay Core’s invoices pending litigation, Core is not paying Verizon for services that Verizon is providing

¹ *See* August 16, 2011 “Answer, New Matter, and Counterclaims Seeking Affirmative Relief of Verizon Pennsylvania Inc. and Verizon North LLC to the Formal Complaint of Core Communications, Inc.” (“Counterclaims”) at ¶¶ 71-163.

² *See* Core’s Answer to Verizon’s New Matter at ¶ 81. “TELRIC” is an acronym for Total Element Long Run Incremental Cost, and TELRIC rates are those set by state commissions utilizing the FCC’s pricing methodology for unbundled network elements.

under the ICAs, and has been withholding payment for years. Over the past nine years, Core has paid a mere total of \$30.66 on outstanding Verizon invoices of \$4,224,242.74 (as of March 28, 2012, with \$4,176,726.11 of this amount past due) for transport facilities and directory listings services provided to Core under the ICAs. This outstanding balance due from Core increases at the rate of approximately \$56,429.39 per month. *See* attached Verified Statement of Nancy Floyd at ¶ 3. Core has steadfastly refused to pay Verizon *anything* – not even the lower TELRIC rates it claims should apply to these facilities. *Id.* Even re-rated at the TELRIC rates that Core asserts apply, the past-due amount would be \$748,000, and rated at TELRIC, this amount increases by approximately \$14,500 per month. *Id.* at ¶ 4.

Given that Core continues to refuse to make any payment to Verizon, Verizon respectfully moves the Commission to enter an order imposing *bilateral* payment obligations on the parties for the duration of these proceedings, subject to true up after the conclusion thereof. It is wholly unfair and inequitable to require Verizon to continue to pay disputed invoices from Core each month while Core has an enormous outstanding balance due to Verizon and engages in precisely the same type of “self-help” of which it accused Verizon, alleging that withholding payment on disputed invoices is prohibited under Pennsylvania law. Petition at ¶¶ 39, 43-47. At bare minimum, the Commission should require Core to pay Verizon for its use of these facilities at TELRIC rates (which Core asserts apply) subject to true-up while these complaints are pending.

Argument

The Commission Should Enter an Order Imposing *Bilateral* Payment Obligations on the Parties (Subject to True-Up at the Conclusion of the Proceedings), Because Core Has Engaged in Precisely the Same Type of “Self-Help” That Led to the Commission to Order Verizon to Pay Core’s Invoices in the Interim

The factual and legal bases for Verizon’s motion need not be repeated here because they are already set forth in Core’s Petition and the Commission Order granting it. The Commission has already found that “Core and Verizon PA are parties to an ICA entered March 31, 2000,” and that “Core and Verizon North are parties to an ICA entered August 24, 2005.” Commission Order at 3 (citations omitted). The Petition details the sections of those ICAs that Core argued require *both* parties to pay *each other’s* invoices when due (Petition at ¶¶ 26-33) and the Commission accepted those arguments (Commission Order at 16, FN 8). Because Core has argued – successfully – that these bilateral ICA provisions require Verizon to pay Core’s invoices, even when disputed, Core must concede that the same is true for Core’s payment of Verizon’s invoices. Yet, as noted above, Core has made essentially no payments to Verizon in over nine years.

Similarly, Core’s Petition cites various legal authorities for the proposition that Pennsylvania law condemns “self-help” through non-payment of other carriers’ invoices. For example, Core argued as follows:

The relief that Core requests – timely payment of its intercarrier compensation invoices for locally-dialed traffic – is certainly not injurious to the public interest. To the contrary, allowing Verizon’s non-payment to persist would be a catastrophic blow to competition in Pennsylvania, and would mark the end of a functioning intercarrier compensation system in Pennsylvania. ...

Non-payment of intercarrier compensation is approaching epidemic proportions. This phenomenon was epitomized by the *Palmerton v. Global Naps* case from 2009, wherein the Commission strongly condemned the practice of “self-help” refusal to pay intercarrier compensation bills. ...

Other examples of Commission complaints triggered by carriers simply refusing to pay intercarrier bills include Buffalo Valley Telephone Company's complaint against CommPartners, and Core's pending complaint against AT&T. ... Core respectfully submits that Verizon's current refusal to pay Core's intercarrier compensation bills is the [sic] not just the most recent example of unlawful "self-help" nonpayment; it is also the most egregious example. ...

In the present case, Verizon has simply and unilaterally deemed that the traffic that it sends to Core's network is "not compensable". ...

Such action by Verizon is a blatant violation of the ICA and well-established principles of intercarrier compensation. It is not in the public interest to permit this behavior to continue. If every carrier was permitted to ignore Commission approved ICAs and simply deem its traffic non-compensable, the entire intercarrier compensation system, and indeed, the PSTN, would cease to function. ...

Verizon is well aware of the Commission's rejection of this non-payment self-help business practice. Verizon's sudden refusal to stop paying Core's intercarrier compensation bills represents a declaration by Verizon that they have no concern about complying with the Commission's directives concerning payment of intercarrier compensation bills. This behavior by the largest telephone Company [sic] in Pennsylvania is egregious and shocking, and should not be permitted to persist.

Petition at ¶¶ 43-47 (citations omitted).

The Commission accepted Core's arguments. For example, the Commission stated that "Core certainly has raised substantial legal questions regarding Verizon's decision to engage in a 'self-help' remedy and unilaterally cease all payments to Core for intercarrier compensation." Commission Order at 12. The Commission found that "Verizon has instituted what amounts to a 'self-help' remedy by unilaterally deciding to withhold payment to Core for the traffic at issue without providing a factual or legal basis for such unilateral action," and concluded that such "conduct appears to violate the spirit, if not the letter, of the Commission-approved ICAs

between the Parties.”³ *Id.* at 16. As such, the Commission determined that granting Core’s requested relief:

... is in the public interest and consistent with our practice that disfavors carriers from engaging in “self-help” to unilaterally resolve intercarrier compensation disputes. The Commission repeatedly has rejected carrier attempts to engage in “self-help” to address intercarrier compensation disputes. *See, e.g., Palmerton Telephone Co. v. Global NAPS Pennsylvania, Inc.*, Docket No. C-2009-2093336 (Order entered May 5, 2009) (“without an affirmative authorization from this Commission or the FCC to terminate service to Global NAPS, Palmerton must continue to terminate the traffic and is constrained from engaging in a ‘self-help’ remedy”); *Level 3 Communications v. Mariana & Scenery Hill Telephone Company*, Docket No. C-20028114 (Order entered August 8, 2002) (“when M&SH implemented its self-help remedy, it threatened the reasonably continuous service to customers thereby requiring this Commission to take this dramatic action” and grant emergency relief.).

Commission Order at 18.

As the old adage goes, “what’s good for the goose is good for the gander.” Core alleged that withholding payment on disputed invoices is a violation of the ICAs and the Commission accepted that argument. It is every bit as much a violation of those ICAs when *Core* engages in the same “self-help” by withholding payment on disputed invoices from Verizon. Core can offer no colorable reason that the Commission should not enter an order requiring *both* parties to pay *each other’s* invoices for the duration of the proceeding, subject to true up when the issues are resolved, particularly given that Core has never filed a dispute regarding any Verizon invoice. Indeed, given the great pains Core took to demonstrate in the Petition that its financial position is precarious,⁴ it is all the more appropriate that the Commission not require Verizon to continue making payments to Core each month without also making Core pay Verizon’s invoices. If Core

³ The Commission cited Part A, §§ 4.1, 6.1, 24, 42 and Att. IV, § 2.42 and Att. VII, § 3.1.9 of the Core/Verizon Pa ICA, and §§ 2.7, 5.0 and 11.0 of the Core/Verizon North ICA – the same provisions Core cited in the Petition, which Verizon references here. *See* Commission Order at 16, FN 8; *see also* Petition at ¶¶ 26-34.

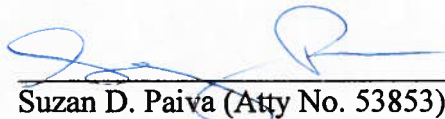
⁴ *See* Petition at ¶¶ 14, 21, 35-41; *see also* Commission Order at 14.

cannot survive when required to pay its suppliers for services rendered – particularly captive suppliers like Verizon that have no option to decline to enter into business arrangements with Core – then Core should not continue to operate.

Conclusion

Core sought and obtained an order forcing Verizon to resume payments to Core on disputed invoices, claiming that Verizon was engaging in improper “self-help.” Yet, Core has been engaging in, and continues to engage in, the very same form of “self-help,” having failed to pay \$4,224,242.74 in Verizon invoices to date, an amount that increases by \$56,429.39 with each passing month. The Commission has found that the parties’ ICAs require payments on disputed invoices, and that Pennsylvania law precludes the “self-help” that Core has implemented by refusing to pay any of Verizon’s invoices. The only appropriate step for the Commission to take is to enter an order imposing *bilateral* payment obligations on the parties for the duration of these proceedings (requiring Core to pay Verizon’s invoices or, at absolute minimum, to pay at TELRIC rates for transport facilities provided by Verizon), subject to true up after the conclusion thereof, as well as such other and further relief as the Commission deems warranted.

Respectfully submitted,



Suzan D. Paiva (Atty No. 53853)

Verizon

1717 Arch Street, 3rd Floor

Philadelphia, PA 19103

Telephone: (215) 466-4755

Facsimile: (215) 563-2658

E-Mail: Suzan.d.paiva@verizon.com

Counsel for Verizon

April 9, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CORE COMMUNICATIONS, INC.,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. P-2011-2253650
	:	Docket No. C-2011-2253750 and
	:	Docket No. C-2011-2253787
VERIZON PENNSYLVANIA INC.	:	
and VERIZON NORTH LLC	:	
Respondents.	:	

VERIFIED STATEMENT OF NANCY J. FLOYD

I, Nancy Floyd, hereby state as follows:

1. I am employed by Verizon as a manager in its Corporate Finance Department, a position I have held since March 2011. I have worked for Verizon since 1987, and prior to taking my current position, held a number of other such positions with the company.

2. My job duties include, but are not limited to, working with Verizon employees to investigate and resolve billing disputes from competitive local exchange carriers, teaming with other internal Verizon departments (for example, product line management, sales, installation and maintenance) to assist resolution of such disputes, providing training, and managing certain collection efforts. In the regular course of my duties, I review and analyze Verizon business records relating to invoices issued to Verizon's wholesale customers, including Core Communications Inc. ("Core"), as well as payments made on those invoices.


3. I have reviewed Verizon's records relating to invoices issued to Core by Verizon Pennsylvania Inc. ("Verizon Pa.") and Verizon North LLC ("Verizon North") since 2001, and

Core's payments on those invoices. Those records indicate that over the past nine years, Core has paid a mere total of \$30.66 on outstanding Verizon invoices of \$4,224,242.74 (as of March 28, 2012, with \$4,176,726.11 of this amount past due) for the use of Verizon transport circuits and for directory listing services provided to Core under the ICAs. This outstanding balance due from Core increases at the rate of approximately \$56,429.39 per month.

4. Even re-rated at the TELRIC rates that Core asserts apply, the past-due amount would still be approximately \$748,000, which, at TELRIC rates, increases by approximately \$14,500 per month.

5. The foregoing statements are true to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa. C. S. § 4904, relating to unsworn falsification to authorities.

DATED: April 5, 2012


Nancy J. Floyd