

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

May 7, 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. C-2011-2253750 and C-2011-2253787

Dear Secretary Chiavetta:

Enclosed please find Verizon's Amended Prehearing Memorandum, 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 Amended Prehearing Memorandum, 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 7th day of May, 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,	:	
	:	
v.	:	Docket No. C-2011-2253750
	:	Docket No. C-2011-2253787
Verizon Pennsylvania Inc. and	:	
Verizon North LLC,	:	
	:	
Respondents.	:	

**AMENDED 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 amended prehearing memorandum for purposes of the prehearing conference scheduled for May 9, 2012.

I. BACKGROUND

A. Core’s Claims

Core’s Amended Complaint includes two new counts, but the gravamen remains that Verizon breached the parties’ Pennsylvania Public Utility Commission-approved (“Commission”) interconnection agreements (“ICAs”)¹ by disputing Core’s invalid bills and withholding payment thereon.²

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 was attached as Exhibit A to Verizon’s Answer and the excerpted Verizon North/Core ICA is attached as Exhibit B to Verizon’s Answer. Pursuant to the Secretarial Letters served on April 26, 2012, Verizon will file its answer and preliminary objections to Core’s Amended Complaint on May 16, 2012.

² The Commission should ignore the Amended Complaint’s one-sided representations about billing disputes in other states and with other Verizon affiliates. While those companies have good reason to dispute Core’s bills, those matters are not before the Commission in this case.

Count I

Count I of Core's Amended Complaint reiterates Core's original claim that Verizon allegedly breached the ICAs by not paying certain of Core's reciprocal compensation invoices when first issued. This claim is now limited to an 88-day period running from July 2, 2011 to September 28, 2011, as Verizon has been paying the disputed invoices pursuant to the Commission's September 23, 2011 "Opinion and Order," which directed Verizon to pay Core's reciprocal compensation invoices "in the same ratio by which Verizon Pennsylvania Inc. and Verizon North LLC previously paid" them, subject to refund should Verizon prevail in these proceedings. Verizon is in compliance with this requirement.

Core never claims that its reciprocal compensation bills are valid and accurate – just that it has been billing Verizon reciprocal compensation for a long time, and that Verizon had historically paid the invoices. The plain fact is that Verizon had and continues to have 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. Moreover, Count II of the Amended Complaint alleges that Core's reciprocal compensation invoices to Verizon were incorrect (albeit claiming that the "errors" inure to Core's benefit).

Count II

Count II of the Amended Complaint seeks to compel Verizon to pay back-bills newly issued in January 2012, in which Core attempts to bill Verizon at a higher rate for traffic for which Core already billed Verizon and for which Verizon already paid. Core asserts this new theory – apparently developed as a result of information shared confidentially during the mediation process – on the ostensible basis that Core previously erroneously billed Verizon "only" reciprocal

compensation rates for certain traffic that Core now believes it could have billed at interstate or intrastate switched access rates. However, Core is wrong, and as will be noted in Verizon's answer to the Amended Complaint, incorrectly claims that Verizon did not dispute these new invoices. Verizon did in fact dispute the invoices, as it will explain in its answer to the Amended Complaint, and Core has failed to engage in any dispute resolution efforts with Verizon regarding them.

On their face, the ICAs entitle Verizon to withhold payments for these illegitimate and 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 Amended Complaint (§ 116 of which alleges that Verizon did not dispute the invoices) that Core did not engage in the dispute resolution processes plainly laid out in the ICAs. Accordingly, Count II is not a case or controversy ripe for adjudication by the Commission, and is therefore legally insufficient. 52 Pa. Code § 5.101(a)(4). Moreover, the Amended 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).

In addition, this Commission lacks jurisdiction to adjudicate disputes relating to interstate switched access charges. Moreover, Core is not entitled to bill Verizon intrastate switched access charges on ISP-bound traffic, virtual foreign exchange ("VFX") traffic, third-party originated traffic, traffic associated with a traffic pumping scheme, and traffic that is otherwise noncompensable. Count II is also barred by the doctrine of accord and satisfaction, since Core previously billed Verizon for, and has already accepted payment from Verizon for, terminating the traffic at issue.

Count III

In 2001 the FCC's *ISP Remand Order* first established a special rate (today \$0.0007) for termination of Internet Service Provider ("ISP")-bound traffic.³ This was necessary to address "a classic example of regulatory arbitrage" where "[c]ertain CLECs . . . took advantage of the traditional reciprocal compensation scheme to target as its customers a species of company that received a high number of telephone calls but originated very few – namely ISPs offering dial-up internet access."⁴ Core is one of those CLECs and – but for the rule set forth in *ISP Remand Order* – Verizon over the years would have paid Core millions of dollars in reciprocal compensation charges for terminating ISP-bound traffic while Core paid Verizon virtually nothing, a state of affairs that the FCC found "troubling," "uneconomic" and market distorting.⁵

Core has been fighting the *ISP Remand Order* tooth and nail for years through numerous unsuccessful challenges before the FCC, this Commission and the federal courts.⁶ In 2002, Core asked this Commission to rule that the *ISP Remand Order* did not constitute a change of law under the terms of the ICA between Core and Verizon PA, so it could force Verizon PA to continue to pay the higher reciprocal compensation rate for terminating its ISP-bound traffic. In 2003, the Commission rejected Core's arguments and found that the ICA permitted Verizon PA

³ *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"). The FCC found "convincing evidence in the record" that carriers had "targeted ISPs as customers merely to take advantage of . . . intercarrier payments" and adopted an ISP payment regime to "limit, if not end, the opportunity for regulatory arbitrage." *Id.* ¶ 77.

⁴ *AT&T Communications of California, Inc. v. Pac-West Telecomm, Inc.*, 651 F.3d 980, 984 (9th Cir. 2011).

⁵ *ISP Remand Order* ¶ 21.

⁶ *See WorldCom, Inc. v. FCC*, 288 F.3d 429, 434 (D.C. Cir. 2002), *cert denied*, *Core Communications, Inc. v. FCC*, 538 U.S. 1012 (2003); *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) From Application of the ISP Remand Order*, 19 FCC Rcd (2004); *In re Core Communications, Inc.*, 2005 U.S. App. LEXIS 9764 (D.C. Cir. May 24, 2005); *In re: Core Communications, Inc.* 455 F.3d 267 (D.C. Cir. 2006); *Core Communications, Inc. v. FCC*, 531 F.3d 849 (2008); *Core Communications, Inc. v. FCC*, 592 F.3d 139 (DC Cir. 2010), *cert denied*, *Core Communs., Inc. v. FCC*, 131 S. Ct. 597 (U.S. 2010).

to stop paying reciprocal compensation for ISP-bound traffic and to pay instead the lower rate permitted by the FCC's *ISP Remand Order*.⁷ Over the years, although Core continued to bill Verizon at the higher reciprocal compensation rate of \$0.002814 for all traffic, Verizon disputed these bills and has paid Core for all traffic over the FCC's 3:1 ratio (the definition of ISP-bound traffic) at the *ISP Remand Order* rate (currently \$0.0007).

Under the *ISP Remand Order*'s "mirroring rule," the lower rate for ISP-bound traffic applies in a state "only if an incumbent LEC offers to exchange all traffic subject to section 251(b)(5) at the same rate," an election that the ILEC was to make "on a state-by-state basis."⁸ The rule does not require that a particular CLEC accept the "offer" in order for the ILEC to be entitled to pay that CLEC at the FCC's rate for ISP-bound traffic – if it did, CLECs like Core could easily evade the *ISP Remand Order* simply by ignoring the offer. The FCC therefore only required that the ILEC make the offer available to CLECs on a statewide basis.

In Pennsylvania, Verizon elected more than a decade ago to offer to exchange all section 251(b)(5) traffic at the *ISP Remand Order* rates in order to avail itself of the ability to pay the lower rate on ISP-bound traffic. On May 14, 2001, it sent an industry letter notifying all CLECs (including specifically Core) of the availability of this offer through an ICA amendment, and invoked the change of law provision of its existing ICAs to implement the *ISP Remand Order*. To effectuate that offer, Verizon makes available to Pennsylvania CLECs a "Rate Plan B" amendment that many CLECs have accepted. The Commission has approved dozens of ICAs containing this amendment, which it found "modifies the basic Agreement's reciprocal compensation rate to be that contained in Exhibit A of the Amendment which is \$ 0.0007 per minute of use. The

⁷ *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).

⁸ *Id.* ¶ 89 (emphasis added).

Amendment calls for equal reciprocal compensation rates for the exchange of such traffic” pursuant to the *ISP Remand Order*.⁹ Even Core has adopted a Rate Plan B amendment in its ICA with Verizon North, a contractual provision that recognizes expressly that Verizon has made the offer required by the *ISP Remand Order*.¹⁰ Core has never accepted Verizon’s offered amendment for Core’s ICA with Verizon PA, but Core’s acceptance of the mirroring rate for all section 251(b)(5) traffic is not necessary in order for the FCC’s rate to apply to ISP-bound traffic.

Count III of the Amended Complaint reflects yet another baseless attempt by Core to evade the FCC’s *ISP Remand Order*. Core asks this Commission to rescind its 2003 decision allowing Verizon to implement the *ISP Remand Order* rate for terminating ISP-bound traffic to Core and to force Verizon retroactively to pay Core the difference between \$0.0007 and the higher \$0.002814 rate that the FCC and this Commission already held does not apply to Core’s ISP-bound traffic. This claim is based on the wholly unsupported assertion that Core is due tens of millions of dollars from Verizon because Verizon North inadvertently billed Core a few hundred dollars (Core

⁹ See, e.g., *Joint Petition of Verizon Pennsylvania Inc. and 365Wireless LLC, for Approval of an Interconnection Agreement and Amendment No. 1 under Section 252(e) of the Telecommunications Act of 1996*, Docket No. A-2011-2259152, 2011 Pa. PUC LEXIS 267 (Opinion and Order entered October 28, 2011). See also *Joint Petition of Verizon North LLC and NTELOS Licenses Inc. d/b/a NTELOS, for Approval of an Interconnection Agreement and Amendment No. 1 under Section 252(e) of the Telecommunications Act of 1996*, Docket No. A-2011-2233866, 2011 Pa. PUC LEXIS 1784 (Opinion and Order entered June 9, 2011); *Joint Petition of Verizon Pennsylvania Inc. and Cincinnati Bell Any Distance Inc. for Approval of an Interconnection Agreement and Amendment No. 1 to the Interconnection Agreement under Section 252(e) of the Telecommunications Act of 1996*, Docket No. A-2010-2162818, 2010 Pa. PUC LEXIS 857 (Opinion and Order entered May 20, 2010); *Joint Petition of Verizon North Inc. and Time Warner Cable Information Services (Pennsylvania), LLC (Time Warner Cable), for Approval of an Interconnection Agreement with Amendment No. 1 under Section 252(e) of the Telecommunications Act of 1996*, Docket No. A-2009-2147957, 2010 Pa. PUC LEXIS 394 (Opinion and Order entered February 17, 2010); *Joint Petition of Verizon Pennsylvania Inc. and Time Warner Cable Information Services (Pennsylvania), LLC (Time Warner Cable), for Approval of an Interconnection Agreement with Amendment No. 1 under Section 252(e) of the Telecommunications Act of 1996*, Docket No. A-2009-2147967, 2010 Pa. PUC LEXIS 452 (Opinion and Order entered February 17, 2010).

¹⁰ See Amendment No. 2 to the ICA between Verizon PA and Sprint Communications Company L.P., dated September 28, 2004, adopted by Core on August 24, 2005 (“Verizon has elected to offer an optional reciprocal compensation rate plan for traffic subject to Section 251(b)(5) of the Act, under which such traffic exchanged between Verizon and a local exchange carrier or CMRS provider in a given state will be subject to compensation at the same rate applicable to intercarrier compensation for Internet traffic in that state under the terms of the [ISP Remand] Order.”)

only started sending traffic to Verizon in 2009) at the reciprocal compensation rate of \$0.002814 – invoices that Core has never paid.¹¹ For Verizon North, this *de minimis* overbilling was in error because Core’s Rate Plan B amendment to its ICA entitles it to the \$0.0007 rate for the tiny amount of traffic Core sends to Verizon. Verizon has already applied a credit and corrected the error, both retroactively and prospectively.¹² For Verizon PA, the reciprocal compensation rate of \$0.002814 is correct because the traffic Core sends Verizon is not “ISP-bound” and Core never accepted the offered Rate Plan B amendment that would provide for the lower rate for ordinary reciprocal compensation traffic. Neither case establishes, however, that “Verizon has never effectively ‘opted-in’ to the ISP Remand Order’s rate regime,” as Core contends. (Amended Complaint, ¶ 81). Verizon opted into the *ISP Remand Order* for the state of Pennsylvania in 2001 when it “offer[ed] to exchange all traffic subject to section 251(b)(5) at the same rate,” as expressly acknowledged in the Core/Verizon North ICA, and neither a *de minimis* billing error on invoices Core refuses to pay, nor Core’s refusal to accept the offer for its Verizon PA ICA negates that election.

Core’s position that Verizon was never entitled to pay Core at the \$.0007/MOU rate established by the *ISP Remand Order*, and now owes Core tens of millions of dollars for traffic for which Verizon previously paid at the \$.0007/MOU rate is so untenable that its argument borders on the frivolous. Moreover, to the extent that the Amended Complaint asserts that this claim arises out of the ICAs, Core has failed to engage in any dispute resolution efforts with Verizon, and Count III is therefore premature and not subject to adjudication. Moreover, like Count II, Count III is also barred by the doctrine of accord and satisfaction, since Core previously billed Verizon for,

¹¹ Core does not pay *any* of Verizon’s invoices, a matter that is the subject of Verizon’s pending April 9, 2012 “Motion for Order Imposing Bilateral Payment Obligations” and Verizon’s counterclaims in this case.

¹² On May 4, 2012, Verizon issued a full credit to Core’s account for the few hundred dollar rate differential, and has corrected its rate tables to bill Core the \$.0007 rate set forth in the Verizon North/Core ICA going forward (the exact proprietary figure will be included in Verizon’s Answer to the Amended Complaint).

and has already accepted payment from Verizon for, terminating the traffic at issue. Finally, by refusing to execute a Rate Plan B amendment to the Verizon-PA/Core ICA, Core has failed to mitigate its alleged damages.

* * *

The Commission should reject Core's efforts to turn the ICAs on their heads. Core, not Verizon, bears the burden of proving that Core's bills are accurate and legally valid, that Core has actually provided the services for which it bills Verizon, that Core has exhausted the dispute resolution procedures in the ICA before bringing matters to the Commission for adjudication, and that Core is entitled to any payments from Verizon.

For the above-referenced reasons, Verizon will be filing Preliminary Objections to Core's Amended Complaint. Verizon will also raise affirmative defenses to Core's claims, including justification, unclean hands, set-off, judicial estoppel, collateral attack, unjust enrichment, the existence of conditions precedent, failure to mitigate damages and accord and satisfaction. Verizon expects to develop these defenses more fully through discovery and testimony.

B. Verizon's Counterclaims

While Core inveigles this Commission to find that Verizon's withholding of disputed portions of billings is a *per se* breach of the ICAs, Core at the same time willfully withholds millions that it owes Verizon – and in fact for years has not paid Verizon's invoices.¹³ As of the end of April 2012, Core owes Verizon approximately \$4.25 million in unpaid bills issued pursuant to Verizon's tariffs and the ICAs.

Verizon provides Core high capacity circuits that Core successfully uses to transport traffic (as demonstrated by traffic that Core sends Verizon and that Verizon sends Core that is

¹³ In the last three years, Core has paid Verizon \$30.66 on that approximately \$4.25 million and it seems likely that even that single payment was a clerical error.

the subject of the billing issues in Core's Amended Complaint, as well as traffic Core exchanges indirectly with other carriers, which is carried over those circuits), undermining Core's specious assertion that Core owes Verizon nothing because the circuits do not function. Verizon bills Core for these facilities, along with the various rate elements associated with them, as well as for intercarrier compensation for terminating Core's traffic sent to Verizon and for directory listings.¹⁴

Core has steadfastly refused to pay Verizon's invoices for interconnection facilities because it disputes Verizon's billing of the tariffed rates associated with these services. Yet, while Core (incorrectly) claims that lower rates should apply, Core does not even pay that much. Even if Core's position 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. However, Core has never paid even that lower amount, and has not paid for Verizon's other services either. Accordingly, by its amended counterclaims, Verizon will seek to collect on its unpaid bills, and ask this Commission to enjoin Core to pay the undisputed portions of its bills immediately.¹⁵

Verizon also seeks relief from Core's breaches of the ICAs stemming from Core's inaccurate and invalid billing of Verizon for ostensible "reciprocal compensation" traffic. Verizon's amended counterclaims will explain 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. Verizon will also seek relief from Core's

¹⁴ In some cases, Verizon's claims implicate the same ICAs as Core's Amended 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 Amended Complaint. Accordingly, they each present common questions of law or fact pursuant to 52 Pa.Code § 5.62.

¹⁵ Verizon will seek redress both for Core's breaches of the ICAs and Core's failure to pay ILEC intrastate switched access charges, as required under Pennsylvania law. 66 Pa.C.S. § 3017(b).

breach of the bill validation provisions of the ICAs, non-compliance with which Core has already admitted to in the Emergency Petition hearing; its obligation to comply with the dispute resolution provisions of the ICAs; and 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. Because much of Core’s Amended Complaint is faulty as a matter of law, Verizon should not be required to expend additional time and expense on litigation until those preliminary objections are ruled upon. In short, proceeding with the case now would require the Commission and Verizon to waste their time and limited resources trying to resolve issues that are not properly before the Commission. Administrative efficiency and the interest of orderly decision-making would best be served by holding scheduling in abeyance pending a decision on the preliminary objections.

II. ISSUES

If this matter proceeds to litigation, the Commission will have to address at least the following issues (based on the issues raised in the Amended Complaint and expected to be raised in the Amended Answer and Counterclaims):

1. Whether Core’s bills for reciprocal compensation charges are for traffic that is actually compensable from Verizon under the ICAs and applicable law.
2. Whether Core’s bills for reciprocal compensation charges accurately reflect the Minutes of Use (“MOUs”) that originated from Verizon’s end-user customers and were terminated by Core.
3. Whether Core’s bills for reciprocal compensation charges reflect charges for traffic that was originated by third parties and merely transited by Verizon.

4. Whether Core has demonstrated that Verizon owes Core the amounts alleged in its bills.
5. Whether Verizon was entitled to obtain bill validation through requests to Core for Call Detail Records.
6. Whether Core was justified in refusing to provide those records.
7. Whether the Commission has jurisdiction to adjudicate Core's claims for interstate switched access charges on traffic delivered to Core.
8. Whether the Commission has jurisdiction to address billing disputes arising in other states, and/or involving carriers not parties to these proceedings, as part of its consideration of the issues in these dockets.
9. Whether Verizon owes Core intrastate switched access charges on traffic that Verizon has delivered to Core.
10. Whether the traffic that Verizon has delivered to Core is ISP-bound traffic, VFX traffic, traffic associated with a traffic pumping scheme, third party-originated traffic, or traffic otherwise non-compensable by Verizon at intrastate switched access rates.
11. Whether intrastate switched access charges are due from Verizon on ISP-bound traffic, VFX traffic, traffic associated with a traffic pumping scheme, third party-originated traffic, or traffic otherwise non-compensable at intrastate switched access rates.
12. Whether the doctrine of accord and satisfaction bars Core's claims for Verizon's payment of intrastate switched access rates for past traffic, since Core previously billed Verizon for, and has already accepted payment from Verizon for, terminating the traffic at issue.
13. Whether Core has proven that Verizon failed to comply with the FCC's *ISP Remand Order*.
14. Whether the remedy for an alleged failure to comply with the FCC's *ISP Remand Order* is to require Verizon to compensate Core for past traffic at a reciprocal compensation rate of \$.002814/MOU, less amounts already paid by Verizon at \$.0007/MOU.
15. Whether the doctrine of accord and satisfaction bars Core's claims for compensation from Verizon for past traffic at a reciprocal compensation rate of \$.002814/MOU, since Core previously billed Verizon for, and has already accepted payment from Verizon for, terminating the traffic at issue.
16. Whether Core has failed to adopt a Rate Plan B amendment to the Verizon-PA/Core ICA, despite the opportunity to do so.

17. Whether Core's failure to adopt a Rate Plan B amendment to the Verizon-PA/Core ICA, despite the opportunity to do so, constitutes a failure on Core's part to mitigate its alleged damages.
18. Whether Verizon's affirmative defenses, including justification, unclean hands, set-off, judicial estoppel, collateral attack, unjust enrichment, the existence of conditions precedent and accord and satisfaction preclude a finding of breach of the ICAs against Verizon.
19. Whether Core breached the ICAs by its non-payment of approximately \$4.25 million in invoices for services provided by Verizon.
20. Whether Core should be required to pay for those services received from Verizon.
21. Whether Core should be immediately required to pay the lesser amounts it claims should apply to services provided by Verizon.
22. Whether Core's failure to pay tariffed intrastate switched access charges of ILECs violates Pennsylvania law.
23. Whether Core should be required to pay for tariffed services provided by Verizon.
24. Whether Core breached the ICAs by billing Verizon for inflated usage, inaccurate amounts and traffic that Core claimed to be compensable that was not in fact compensable under the ICAs and applicable law.
25. Whether Core should be required to refund Verizon's payments made for those inaccurate bills.
26. 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.
27. Whether Core breached the ICAs by ignoring the dispute resolution requirements of the ICAs and instead filing the Emergency Petition and the Amended Complaint.
28. 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 will soon file preliminary objections in this proceeding, requesting that the Commission dismiss some or all of Core's Amended Complaint. Verizon will also file amended counterclaims against Core, and anticipates that Core will file preliminary objections as to those amended counterclaims (as it did to Verizon's original counterclaims). The scope of this proceeding will remain unclear until both sets of preliminary objections are ruled upon.

A ruling granting even one of the parties' preliminary objections could significantly narrow this case. Moreover, the parties may seek to certify any ruling on preliminary objections to the Commission as a material question.

Verizon suggested the following procedural schedule to Core to allow rulings on the parties' preliminary objections before expending resources litigating claims that may not ultimately be part of this proceeding. As noted in its Further Amended Prehearing Memorandum, Core is willing to discuss this proposal at the Prehearing Conference.

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

20 days following entry of Commission order on the merits of any material question petition, or if no such petition is filed – Further telephonic prehearing conference if necessary to address scheduling or other issues.

Should the presiding officer decline to adopt the above approach, then Verizon proposes as an alternative the following schedule to allow time for the preliminary objections to be decided before the first round of testimony, with the understanding that either party may seek to suspend/revise the schedule if any rulings on preliminary objections are taken up to the Commission on a material question petition. Verizon has reviewed the proposed schedule

provided with Core's Further Amended Prehearing Memorandum but believes it is too truncated and does not provide sufficient time for the parties to analyze, take discovery and respond to the rounds of written testimony.

May 16, 2012	Verizon's Answer, New Matter, Counterclaims and Preliminary Objections
May 29, 2012	Core's Answer to Verizon's Preliminary Objections
June 5, 2012	Core's Answer to Verizon's New Matter and Counterclaims; Core's Preliminary Objections
June 15, 2012	Verizon's Response to Core's Preliminary Objections
August 23, 2012	Direct Testimony on Claims for Relief
October 4, 2012	Rebuttal Testimony
October 25, 2012	Surrebuttal Testimony
November 2012 <i>*but prior to November 19</i>	Hearing (2 days)
TBD	Briefing dates to be set at hearing based upon transcript availability and holiday schedules

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 potential witnesses should testimony be required:

Lisa A. Peterson 13100 Columbia Pike, Room B-15 Silver Spring, MD 20904	(issues relating to billing records, traffic exchange and compensation)
Peter J. D'Amico 416 7 th Avenue, 19 th Floor Pittsburgh, PA 15219	(issues relating to Core and Verizon facilities, traffic, interconnection agreements, billings and billing disputes)
Paul B. Vasington 125 High St. – Oliver Tower, 7 th Floor Boston, MA 02110	(public policy issues relating to matters in this case)

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. STIPULATIONS

Verizon is amenable to Core's suggestion that the parties stipulate to the admission of the ICAs and associated tariffs into the record by reference to the publicly-filed versions thereof, given that these documents are voluminous.

VI. DISCOVERY

The parties have not commenced discovery in this matter. Verizon recommends that the parties abide by the Commission's standard discovery rules (with the addition set forth in

Paragraph 6 of the April 3, 2012 Prehearing Order). Verizon understands based on Core's Further Amended Prehearing Memorandum that it is amenable to this proposal.

VII. 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. 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.

VIII. VERIZON'S *PRO HAC VICE* MOTION

On October 11, 2011, Verizon filed its "Motion for Admission of Deborah L. Kuhn *Pro Hac Vice* on Behalf of Verizon Pennsylvania Inc. and Verizon North LLC." This motion has not been ruled upon. Verizon respectfully requests that the presiding officer grant the motion so that Ms. Kuhn can be added to the service list for these proceedings and otherwise participate as counsel to Verizon.

IX. SERVICE LIST

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

Suzan D. Paiva
Assistant General Counsel
Verizon Pennsylvania Inc.
1717 Arch St., 3rd Floor
Philadelphia, PA 19103
Phone: (215) 466-4755
Fax: (215) 563-2658
suzan.d.paiva@verizon.com

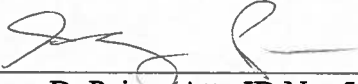
Deborah Kuhn, *pro hac vice** (*subject to ruling on *pro hac vice* motion)
Assistant General Counsel
Verizon Communications Inc.
205 N. Michigan Ave., 7th Floor
Phone: (312) 260-3326
Fax: (312) 470-5571
deborah.kuhn@verizon.com

Thomas J. Sniscak
William E. Lehman
Hawke McKeon & Sniscak LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105
Phone: (717) 236-1300
tjsniscak@hmslegal.com
welehman@hmslegal.com

X. SETTLEMENT

Settlement attempts during the mediation process were unsuccessful. Verizon continues to be open to the amicable resolution of this matter.

Respectfully submitted,


Suzan D. Paiva (Atty ID No. 53853)
Verizon Pennsylvania Inc.
1717 Arch Street, 3rd Floor
Philadelphia, PA 19103
Telephone: 215-466-4755
Facsimile: 215-563-2658
E-mail:
Suzan.D.Paiva@verizon.com

Dated: May 7, 2012

Counsel for Verizon Pennsylvania Inc. and Verizon
North LLC