

**STEVENS & LEE**  
**LAWYERS & CONSULTANTS**

17 North Second Street  
16th Floor  
Harrisburg, PA 17101  
(717) 234-1090 Fax (717) 234-1099  
www.stevenslee.com

Direct Dial: (717) 255-7365  
Email: mag@stevenslee.com  
Direct Fax: (610) 988-0852

June 5, 2012

**RECEIVED**

JUN 5 2012

**PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU**

**VIA FEDERAL EXPRESS OVERNIGHT DELIVERY**

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, LLC  
Docket Nos. C-2011-2253750 and C-2011-2253787**

Dear Secretary Chiavetta:

Enclosed for filing please find an original plus four copies of Core Communications, Inc.'s Preliminary Objections to the Counterclaims filed by Verizon of Pennsylvania, Inc., and Verizon North, LLC. A copy of the Preliminary Objections has been served upon the parties of record in accordance with the attached Certificate of Service. Upon filing please return a time-stamped copy of the Preliminary Objections to me in the enclosed self-addressed stamped envelope.

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

Sincerely,

STEVENS & LEE



Michael A. Gruin

Enclosures

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

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

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

\_\_\_\_\_  
CORE COMMUNICATIONS, INC.  
Complainant

v.

VERIZON PENNSYLVANIA INC.  
and

VERIZON NORTH, LLC  
Respondents  
\_\_\_\_\_

Docket No. C-2011-2253750

Docket No. C-2011-2253787

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

Core Communications, Inc. ("Core"), pursuant to 52 Pa. Code §§5.101(a), hereby files these Preliminary Objections to Counterclaims I, II and VI raised by Verizon Pennsylvania, Inc. and Verizon North, LLC. (collectively "Verizon") in their New Matter and Counterclaims filed on August 16, 2011 in this matter.

Verizon Counterclaims I and II, and Counterclaim VI in part, relate to invoices sent by Verizon to Core for various services allegedly provided by Verizon to Core, primarily dedicated, high capacity circuits known as "special access services." These invoices and the associated "services" are wholly unrelated to the intercarrier compensation claims raised by Core in its Amended Complaint in this matter. The Commission's regulations permit parties to seek affirmative relief from other parties in a single proceeding; however, such relief may only be sought in the same proceeding if "common issues of fact and law are present".

Verizon's Counterclaim I, in part, seeks recovery of amounts billed by Verizon PA pursuant to its special access tariffs. This claim is premised on an erroneous interpretation of the FCC's

*TRRO*<sup>1</sup> that has been specifically considered and rejected by the Supreme Court, the FCC and the Commission. Therefore this claim fails because it is legally insufficient.

Verizon's Counterclaim II also seeks recovery of amounts billed by Verizon PA and Verizon North pursuant to their FCC interstate special access tariffs. Because the Commission has no jurisdiction to enforce an FCC tariff, and because Verizon's special access tariffs are not incorporated by reference into the ICAs, this claim fails for lack of Commission jurisdiction.

## **I. BACKGROUND**

1. Core's Amended Complaint was served on Verizon on April 16, 2012. Core's Amended Complaint alleged that Verizon had breached the ICAs between the parties by refusing to pay various forms of intercarrier compensation for telecommunications traffic Verizon sent to Core for termination on Core's network.

2. On May 16, 2012 Verizon filed its Answer, New Matter and Counterclaims to Core's Amended Complaint. Verizon's Counterclaims are set forth in that filing beginning at paragraph 157. As relevant to these preliminary objections, Verizon's Counterclaims relate to amounts billed by Verizon pursuant to its intrastate and interstate FCC special access tariffs.

## **II. PRELIMINARY OBJECTIONS**

3. The Commission's Rules of Administrative Practice and Procedure permit the filing of Preliminary Objections.

4. Pursuant to 52 Pa. Code § 5.101(a)(1), a formal complaint may be dismissed for lack of Commission jurisdiction over the subject matter of the complaint.

5. Pursuant to 52 Pa. Code § 5.101(a)(2), a formal complaint may be dismissed for failure of a pleading to conform to the Commission's regulations.

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<sup>1</sup> Order on Remand, *In re Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, FCC Docket No. 04-313, CC Docket No. 01-338, FCC Item No. 04-290, 20 F.C.C.R. 2533 (Feb. 4, 2005) ("*TRRO*").

6. Pursuant to 52 Pa. Code § 5.101(a)(4), a formal complaint may be dismissed for legal insufficiency.

7. Pursuant to 52 Pa. Code § 5.101(a)(5), a formal complaint may be dismissed for misjoinder of a cause of action.

**A. Verizon's Counterclaims I and II Should be Dismissed Pursuant to 52 Pa. Code § 5.101(a)(2) and (a)(5), Because These Counterclaims Do Not Involve Common Issues of Fact and Law to Core's Complaint**

8. The Commission's regulation at 52 Pa. Code 5.62 states: "[i]n its answer, a respondent may seek relief against other parties in a proceeding **if common questions of law or fact are present.**" (emphasis added).

9. Verizon's Counterclaims I and II do not conform with this regulation.

10. Verizon's Counterclaims I and II involve entirely different issues of fact from Core's Amended Complaint. Core's Amended Complaint relates to Verizon's refusal to pay intercarrier compensation invoices for telecommunications traffic that Verizon sends to Core. Verizon's first and second counterclaims do not relate in any way to the Verizon traffic that is the subject of Core's Amended Complaint, or to the Core-generated invoices that are the subject of Core's Amended Complaint. Instead, Verizon's first and second counterclaims relate to invoices issued by Verizon to Core for various services allegedly provided during some unspecified period of time, including "high capacity transport charges," unspecified "intercarrier compensation," "directory listings," "switched access DS1 services, transport, trunk termination charges, entrance facilities, channel termination, multiplexing, and trunk ports, among other things." Verizon Counterclaims, ¶¶ 160-161.

11. Verizon's Counterclaims I and II also raise entirely different issues of law from Core's Amended Complaint. Core's Amended Complaint alleges a breach of the ICAs between the parties, and in particular, the ICAs' intercarrier compensation terms. By contrast, Verizon's

counterclaims are admittedly based in large part on Verizon's FCC and Pennsylvania tariffs.

Verizon Counterclaims, ¶¶ 164 and 166. Verizon also alleges that Core violated Pennsylvania law for not paying tariffed access charges, *id.* at ¶ 185, an issue that is not raised in Core's Complaint.

12. Merging Verizon's first and second counterclaims with Core's Amended Complaint would greatly expand the scope of the proceeding, and unjustly distract from the central issues in Core's Amended Complaint, i.e., Verizon's refusal to pay for traffic that it sends to Core's network. Verizon's counterclaims would expand the scope of the proceeding factually, legally, and temporally.

13. Verizon's Counterclaims I and II do not conform with the Commission's regulation at 52 Pa. Code 5.62, and therefore should be dismissed pursuant to 52 Pa. Code 5.101(a)(2). Verizon's claims against Core regarding Verizon's invoices for various services allegedly provided over various periods have nothing to do with Core's Amended Complaint against Verizon. The only similarity is the parties involved. The Commission's regulations do not permit a party to raise any counterclaim against an opposing party in a proceeding. To the contrary, only counterclaims involving common issues of fact and law may be raised as a counterclaim.

14. By attempting to raise a counterclaim with wholly unrelated issues of fact and law, Verizon's Counterclaims I and II also constitute improper misjoinders of claims and therefore should be dismissed under 52 Pa. Code § 5.101(a)(5). Verizon is improperly attempting to merge its unrelated special access tariff claims against Core into Core's Amended Complaint proceeding against Verizon. To the extent that the issues raised by Verizon in its Counterclaims I and II are valid, Verizon has the ability to pursue such claims through the Commission's formal complaint process. But because Verizon's claims have no common issues of fact or law with Core's Complaint, it is improper under 52 Pa. Code 5.62 for Verizon's claims to be joined in the proceeding that is underway to resolve Core's Complaint against Verizon.

**B. Verizon’s Counterclaim VI Should Also Be Dismissed, in part, Pursuant to 52 Pa. Code § 5.101(a)(2) and (a)(5).**

15. Verizon’s Counterclaim VI also alleges, in part, a cause of action related to Verizon’s invoices to Core. Verizon’s Counterclaims, ¶ 249. This portion of Verizon’s Counterclaim VI should also be dismissed, without prejudice, on the same grounds that Verizon’s first and second counterclaim should be dismissed, as set forth above.

**C. Verizon PA’s Counterclaim I Should Be Dismissed, as It Relates to Verizon’s Billing for Interconnection Entrance Facilities, Pursuant to 52 Pa. Code § 5.101(a)(4).**

16. Verizon claims that it is entitled to charge, and has billed, Core “for entrance facilities at tariffed [special] access rates” pursuant to the Core/Verizon PA ICA. Verizon Counterclaims, ¶ 166.

17. The Core/Verizon PA ICA makes no reference whatsoever to Verizon’s ability to bill Core for entrance facilities at tariffed special access rates.

18. Aware of this obstacle, Verizon claims that the FCC’s 2005 *Triennial Review Remand Order* automatically updated the pricing for entrance facilities in the Core/Verizon PA ICA, apparently without amendment to the ICA or indeed any discussion between the parties. Verizon Counterclaim, ¶ 166.

19. However, the Supreme Court has found that:

The *Triennial Review* orders eliminated incumbent LECs’ obligation under § 251(c)(3) to provide unbundled access to entrance facilities. But the FCC emphasized in both orders that it did not alter the obligation on incumbent LECs under § 251(c)(2) to provide facilities for interconnection purposes. Because entrance facilities are used for backhauling and interconnection purposes, the FCC effectively eliminated only unbundled access to entrance facilities for backhauling purposes—a nuance it expressly noted in the first *Triennial Review* order. That distinction is neither unusual nor ambiguous. In these cases, the Commission is simply explaining the

interconnection obligation that it left undisturbed in the *Triennial Review* orders.<sup>2</sup>

20. The Court's view is buttressed by the Commission's 2006 order implementing the

*TRRO*:

In its *Triennial Review Order* and the *Triennial Review Remand Order* ("*TRRO*") the FCC found that an incumbent LEC is not obligated to provide a requesting carrier with unbundled access to dedicated transport that does not connect a pair of incumbent LEC wire centers. However, the FCC noted that its finding of "non-impairment" with respect to Entrance Facilities does not alter the right of competitive LECs to obtain interconnection facilities pursuant to 47 U.S.C. §251(c)(2) for the transmission and routing of telephone exchange service and exchange access service. The FCC also requires incumbent LECs to provide requesting competitive carriers with access to these facilities at cost-based rates. Thus, competitive LECs will have access to these interconnection facilities at Section 251(c)(2) cost-based rates to the extent that they require them to interconnect with the incumbent LEC's network.<sup>3</sup>

21. There can be no dispute that Core ordered entrance facilities for interconnection purposes, and not as UNEs.

22. Verizon's claim that the *TRRO* can, in any way, be found to have altered pricing applicable to entrance facilities used for interconnection purposes is forestalled by the foregoing Supreme Court decision and Commission order.

23. Because Verizon's claim that it is entitled to bill Core for entrance facilities at special access rates is premised on its inaccurate reading of the *TRRO*, Verizon's Counterclaim I must be dismissed, as it relates to any claim based on special access bills relating to entrance facilities allegedly provided by Verizon PA, for legal insufficiency.

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<sup>2</sup> *Talk Am., Inc. v. Michigan Bell Tel. Co.*, 131 S. Ct. 2254, 2264-65, 180 L. Ed. 2d 96 (2011)(internal quotations omitted).

<sup>3</sup> Order, *Pennsylvania Public Utility Commission v. Verizon Pennsylvania Inc. Tariff for Other Telephone Companies (Tariff No. 216) Discontinue CLEC Access to Unbundled Entrance Facilities*, Pa. P.U.C. Docket No. R-00050800, at 2 (Feb. 10, 2006)(internal citations omitted).

**D. Verizon's Counterclaim I Should be Dismissed Pursuant to 52 Pa. Code § 5.101(a)(1) to the Extent This Claim Seeks Recovery of Interstate Special Access Charges Because The Commission Lacks Jurisdiction Over Verizon's FCC Special Access Tariff**

24. Verizon admittedly seeks recovery of amounts billed pursuant to its interstate FCC special access tariffs. Verizon Counterclaims, ¶¶ 164 (“Verizon has billed entrance facilities to Core in accordance with its Tariff PA- P.U.C.–No. 9 and for interstate services, Verizon has billed Core according to its tariff F.C.C. No. 1, Sec. 6, 7.”); and ¶166 (“Verizon has been billing Core for entrance facilities at tariffed access rates”).

25. However, while the ICAs incorporate the parties' FCC tariffs with respect to switched access, *see*, Am. Compl., ¶¶ 107-117, there are no such incorporating provisions with respect to special access, including entrance facilities and related dedicated transport (what Verizon refers to as or “high capacity transport circuits”). Nor does Verizon claim otherwise.

26. A review of **Exhibit F** to Verizon's counterclaims, entitled “June 2011 Invoice for Pennsylvania LATA,” reveals that a substantial portion of Verizon's special access billings are based on Verizon's interstate FCC special access tariff. For example, page 1 of the first bill indicates that “\$3,145.00” was billed as “interstate” while a mere “\$250.00” was billed as “local,” and page 1 of the second bill indicates that “\$26,458.53” was billed as “interstate” whereas just “\$1,311.75” was billed as “intrastate.”

27. It is axiomatic that the Commission has no independent jurisdiction to enforce an FCC tariff for interstate services.<sup>4</sup>

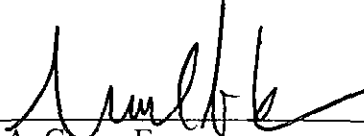
28. Accordingly, Verizon's Counterclaim I must be dismissed to the extent that Verizon seeks recovery of amounts billed pursuant to its FCC tariff for interstate services.

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<sup>4</sup> Opinion & Order, *MilleniaNet Corporation v. Verizon Pennsylvania Inc.*, Docket No. C-20055173, at 11 (May 2, 2008) (“We agree with Verizon that this Commission does not have jurisdiction over billing for items purchased from an FCC-approved tariff.”). Of course, the case is different where the ICA itself specifically incorporates provisions of an FCC tariff by reference. *See*, Core Answer to Verizon Preliminary Objections, at ¶ 11.

WHEREFORE, for the foregoing reasons, Core respectfully requests that the Commission dismiss Verizon's first and second Counterclaims in their entirety, and dismiss Verizon's sixth Counterclaim in part, as set forth above.

Respectfully submitted,



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Michael A. Grun, Esq.  
ID No. 78625  
Stevens & Lee  
17 N. 2<sup>nd</sup> St.  
16<sup>th</sup> Floor  
Harrisburg, PA 17101  
717-255-7365  
[mag@stevenslee.com](mailto:mag@stevenslee.com)

*Counsel for Complainant Core  
Communications, Inc.*

June 5, 2012

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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CORE COMMUNICATIONS, INC.  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served by First Class U.S. Mail and Electronic Mail a true and correct copy of the foregoing Preliminary Objections upon the parties listed below, in accordance with the requirements of § 1.54 (relating to service by a party):

VIA ELECTRONIC MAIL AND FIRST CLASS US MAIL

Thomas Sniscak, Esq.  
William Lehman, Esq.  
Hawke McKeon & Sniscak  
100 North 10<sup>th</sup> Street  
Harrisburg, PA 17101

Suzan D. Paiva, Esq.  
Verizon Pennsylvania, Inc.  
1717 Arch Street, 3 East  
Philadelphia PA 19103

June 5, 2012

  
\_\_\_\_\_  
Michael A. Guin