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November 12, 2012

VIA ELECTRONIC FILING

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**

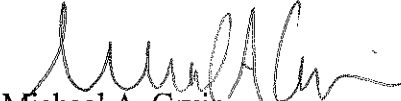
Dear Secretary Chiavetta:

Enclosed for filing please find Core Communications, Inc.'s Motion to Strike Portions of Verizon's Surrebuttal Testimony. Copies of this Motion have been served upon the parties of record in accordance with the attached Certificate of Service.

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 (via email and Federal Express)

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

A PROFESSIONAL CORPORATION

**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	:	
	:	

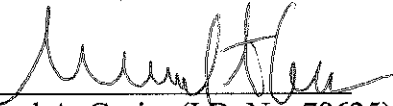
NOTICE TO PLEAD

To: Verizon Pennsylvania, Inc. and Verizon North, LLC C/O Susan D. Paiva, Esq.

Pursuant to 52 Pa. Code § 5.101, *et seq.*, you are hereby notified that an Answer to the enclosed Motion to Strike Portions of Verizon's Surrebuttal Testimony shall be filed within twenty (20) days of the date of service of the Motion. Failure to respond to this Motion will allow the presiding officer to rule on this Motion without a response from you, thereby requiring no other proof. All pleadings, such as an Answer to the Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned counsel for Core Communications, Inc.

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street, Second Floor
Harrisburg, PA 17120

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COUNSEL FOR CORE
COMMUNICATIONS, INC.

DATE: November 12, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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and	:	
	:	
VERIZON NORTH, LLC.	:	
Respondents	:	

**CORE COMMUNICATIONS, INC.’S
MOTION TO STRIKE PORTIONS OF VERIZON’S SURREBUTTAL TESTIMONY**

Core Communications, Inc. (“Core”), pursuant to 52 Pa. Code §§5.103 and 5.403, and the Prehearing Order in this matter, moves to strike certain portions of Verizon Statement 3.0, the pre-served Surrebuttal Testimony of witnesses Peter J. D’Amico, William E. Munsell and Paul B. Vasington on behalf of Verizon Pennsylvania, Inc. and Verizon North, LLC (“Verizon”).

In support of this Motion, Core states as follows:

I. Introduction and Summary of Argument

1. Throughout this case, Core has argued that Verizon is “making it up as you go along,” (Core Statement 3.0, at 59), searching and re-searching for *some* basis to explain its sudden refusal to pay Core any intercarrier compensation beginning in July, 2011. Verizon has taken many different positions with respect to its putative disputes of Core’s bills at various stages in this case. However, now that we are one the eve of hearings, Verizon’s meandering has to stop. Verizon’s 74-page Surrebuttal Testimony (Core’s was just 19 pages) is a systematic attempt to pump up Verizon’s flagging claims, at the expense of Core’s ability to rebut new assertions in an orderly fashion. In particular,

Verizon's incorporation of a vast new slew of materials from several other proceedings involving carriers and issues that are not before the Commission in this case, should have been raised (if at all) in Verizon's Direct Testimony. As a result, the Commission should strike these portions of Verizon's Surrebuttal Testimony.

II. Background

2. Core filed its Amended Complaint in this case on April 16, 2012.
3. A prehearing conference was held on May 9, 2012.
4. Verizon filed its Answer, New Matter and Counterclaims on May 16, 2012.
5. Core filed its Reply to New Matter and New Matter to Counterclaim on June 5, 2012.
6. Verizon filed its Reply to Core's New Matter to Counterclaims on June 25, 2012.
7. The parties have exchanged multiple sets of discovery requests and have produced hundreds of pages of materials to each other.
8. The parties served Direct Testimony on August 23, 2012. The purpose of Direct Testimony is for each party to set out its case-in-chief with respect to the claims for which it bears the burden of proof.
9. The parties served Rebuttal Testimony on October 4, 2012. The purpose of Rebuttal Testimony is for each party to rebut assertions made in the other party's case-in-chief.
10. The parties served Surrebuttal Testimony on October 25, 2012. The purpose of Surrebuttal Testimony is for each party to respond to assertions made in the other party's Rebuttal Testimony, in support of its case-in-chief.

III. Argument

11. The Commission's regulations state that evidence may be excluded if:
 - (1) It is repetitious or cumulative.

- (2) Its probative value is outweighed by:
 - (i) The danger of unfair prejudice.
 - (ii) Confusion of the issues.
 - (iii) Considerations of undue delay or waste of time.¹

12. The Commission's regulations further provide that:

A party will not be permitted to introduce evidence during a rebuttal phase which:

- (1) Is repetitive.
- (2) Should have been included in the party's case-in-chief.
- (3) Substantially varies from the party's case-in-chief.²

13. The testimony relating to multiple open proceedings involving Core's dealings with other carriers should be stricken because it is of minimal evidentiary weight, its probative value is outweighed by the danger of unfair prejudice, and because it should have been included in Verizon's case-in-chief.

14. Core is specifically challenging a lengthy passage of Verizon's Surrebuttal Testimony which begins on page 45, line 12 and continues through page 51, line 18 (the "Challenged Testimony"). In this testimony, Verizon opines on Core's efforts to enter into ICAs with CenturyLink, Windstream and more than 30 small rural LECs, as well as its efforts to collect intercarrier compensation from CLECs such as AT&T, XO Communications and One Communications. Verizon attaches Core's exceptions and briefs and the recommended decisions in these cases, adding no less than *seven new*

¹ 52 Pa. Code § 5.401

² 52 Pa. Code § 5.243(e). It should also be noted that the Prehearing Order in this case explicitly directed the parties to comply with this provision. See Prehearing Order, at paragraph 8.

exhibits on surrebuttal (Verizon Exhibits 8-SR, 9-SR, 10-SR, 11-SR, 12-SR, 13-SR and 14-SR).

15. These materials are of minimal evidentiary value. The CenturyLink and Windstream ICA arbitration cases deal with Core's attempt to establish prospective interconnection arrangements with ILECs other than Verizon. The records in those cases were developed over five years ago and, and the arguments Core raised have nothing to do with Verizon's responsibility for the traffic it sends to Core pursuant to the ICAs between Verizon and Core, which is the subject of this case.
16. Core's formal complaints against other CLECs deal with those CLECs' potential responsibility to pay intercarrier compensation for traffic they chose to send Core through Verizon's tandems. This too has nothing to do with Verizon's responsibility for the traffic it sends Core pursuant to the parties' existing ICAs. Nor can Verizon demonstrate that it ever compensated Core for the indirect traffic at issue in the CLEC cases. As Core has stated in this case, Core did not bill Verizon for all of the traffic Verizon transited to Core over the years, and there is no way for Verizon to show that the traffic it paid for and the traffic at issue in the CLEC cases is the same traffic. *See*, Core Statement 4.0, at 5-6 (noting that the CLEC traffic is all associated with a CIC, and CIC traffic is generally transmitted over ATCTs, which Core never billed to Verizon).
17. More important, to the extent the Challenged Testimony is material to the present proceeding, it should have been raised in Verizon's case-in-chief. Indeed, in its Direct Testimony, Verizon noted the existence of the AT&T case and attached *the entire 218-page transcript* of the hearing in that case, Verizon Statement 1.0, at 48 and Exhibit 15. Verizon also referenced the AT&T and XO cases in its rebuttal testimony, Verizon

Statement 2.0, at 17, making a truncated version of the same argument that it expands upon in the Challenged Testimony. Surrebuttal Testimony is not the appropriate forum to recast arguments that belong in a party's case-in-chief; rather, Surrebuttal Testimony is meant to respond to assertions made in an opposing parties' Rebuttal Testimony.

18. The Challenged Testimony is improper because it is not being made to rebut an assertion from Core's Rebuttal Testimony. Indeed, the sole nexus Verizon can muster is the notion that, by using the term "dump" in its Rebuttal Testimony, Core "suggest[ed] that [it] does not want to receive transit traffic... from Verizon." See Verizon Statement 3.0, at 45, lines 14-16. However, a review of the passage from Core's Rebuttal Testimony in which the referenced term appears clearly does not indicate that Core "does not want to receive transit traffic from Verizon".

19. The referenced passage is actually an assertion by Core about what the ICAs say about transited traffic, which is very little:

Verizon cites to Section 1 of Attachment IV to the Verizon PA ICA and Section 1.2 of Part V to the Verizon North ICA to support the notion that it may dump transited traffic on Core's network via the interconnection arrangements. These sections discuss the scope of traffic which the parties may send over the LITGs. However, Attachment IV, Section 1.1.1 of the Verizon PA ICA only permits transmission of local traffic, intraLATA toll traffic and "local transit traffic to other ILECs" over the LITGs. This means transit traffic, not transited traffic. That is, Verizon is permitted to send Core traffic destined "to other ILECs" but says nothing about traffic from other carriers to Core. See Exhibit CORE R-15 (Attachment IV to Verizon PA ICA), at § 1.1.1. Core Statement 4.0, at 45.

In fact, Core clearly states that it does not oppose Verizon's use of the LITGs to deliver transited traffic— just the opposite of what Verizon claims in the Challenged Testimony:

Even though the ICAs do not discuss transited traffic, *Core does not object to Verizon's transmitting this traffic to Core over the local interconnection arrangements*. We are willing to terminate this traffic in the same manner as we terminate Verizon-originated traffic. Indeed, it is indistinguishable from such traffic. However, Verizon must be held accountable for the traffic it sends Core. This means that Verizon should either (1) compensate Core for termination of the transited traffic; or (2) supply Core with sufficient information so that Core may bill the originating carrier and have a reasonable opportunity to actually collect charges billed. *Id.*, at 46. (Emphasis added).

20. The Challenged Testimony is meant to bolster Verizon's extra-contractual theory that Core is responsible under industry standards and implicit understandings for weeding out third-party traffic that Verizon sends over LITGs, whether or not that traffic may be differentiated from "Verizon" traffic as a practical matter. The implication is that all of the hypothetical or actual traffic for which Core is seeking compensation from other carriers is traffic that Verizon delivered to Core over the LITGs, and for which Verizon compensated Core. This implication is simply wrong, but that is beside the point. To the extent that Verizon seeks to make this argument, Verizon should have made the argument in its Direct Testimony, as part of its case-in-chief, or at the very least in Rebuttal Testimony. The inclusion of the Challenged Testimony and accompanying exhibits for the first time in Surrebuttal Testimony is an inappropriate attempt to "sandbag" Core, and therefore must be stricken.
21. Core would be unfairly prejudiced if the Challenged Testimony and accompanying exhibits are permitted into the record in this case on Surrebuttal. The Challenged Testimony is similar to less expansive testimony that appeared in Verizon's Direct Testimony, to which Core was able to respond in the rebuttal phase. However, the Challenged Testimony is much more expansive than previous testimony and incorporates

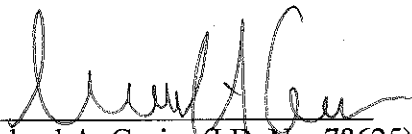
seven new exhibits with hundreds of pages of additional record evidence. While Core believes much or all of these additional pages are irrelevant, Core's witness must nevertheless review these additional pages in already crowded record, and prepare for cross-examination and briefing on these additional materials. And, because this new material is being presented for the first time in Surrebuttal Testimony, Core does not have any opportunity to respond to Verizon's mischaracterizations and unsupported assertions.

Conclusion

For all of the foregoing reasons, Core respectfully requests that the Challenged Testimony and Verizon Exhibits 8-SR, 9-SR, 10-SR, 11-SR, 12-SR, 13-SR and 14-SR be stricken, and that Verizon be ordered to prepare and submit versions of its Surrebuttal Testimony that do not include the Challenged Testimony and accompanying Exhibits.

Respectfully Submitted,

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