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November 26, 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 Answer to Core's Motion to Strike Portions of Verizon's Surrebuttal Testimony, being filed on behalf of Verizon Pennsylvania LLC and Verizon North LLC in the above captioned matter.

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

Very truly yours,

Suzan D. Paiva

SDP/slb

cc: **Via E-Mail and Federal Express**
The Honorable Susan D. Colwell
Attached Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Verizon's Answer to Core's Motion to Strike Portions of Verizon's Surrebuttal Testimony, 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 26th day of November, 2012.

Via E-Mail and Federal Express

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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.	:	

VERIZON'S ANSWER TO CORE'S MOTION TO STRIKE PORTIONS OF VERIZON'S SURREBUTTAL TESTIMONY

Pursuant to 52 Pa Code § 5.103(c), Verizon Pennsylvania LLC and Verizon North LLC ("Verizon") oppose the motion of Core Communications, Inc. ("Core") to strike the portion of Verizon's surrebuttal testimony (VZ St. 3.0) from page 45, line 12, through page 51, line 18, and its surrebuttal exhibits 8 through 14 ("Core Motion").[1]

I. INTRODUCTION

Core has been overcharging Verizon for years, while at the same time refusing to pay millions of dollars owed to Verizon for wholesale inputs used to operate Core's business. Having been caught taking fundamentally inconsistent positions in this and other proceedings pending before the Commission, Core now moves to strike the portion of Verizon surrebuttal testimony that points out its contradictory advocacy.

A key issue that Verizon has raised from the outset of this case with respect to Core's chronic overbilling is Core's improper practice of billing *Verizon* for the termination of transit traffic originated by *other carriers*, such as competitive local exchange carriers ("CLECs") and

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[1] The passage of testimony that Core seeks to strike from Verizon's Statement 3.0, from page 45 line 12 through page 51, line 18, is attached hereto as Exhibit A. The exhibits Core seeks to strike are identified in the testimony and are all public documents downloaded from the Commission's electronic dockets in proceedings involving Core and other Pennsylvania carriers.

independent incumbent local exchange carriers ("ILECs"). This traffic comes to Core through Verizon's tandem switches because Core has not established direct interconnection with these other carriers. But the fact that Core has chosen to exchange traffic with these other carriers indirectly does not entitle Core to bill Verizon terminating charges for traffic originated by other carriers. Based on data produced by Core in discovery, Verizon has estimated that Core must refund over $2.7 million that Verizon has paid to Core, for this overbilling issue alone. (VZ St. 3.0 at 69).

Far from being a "made up" argument at "the eve of hearings," as Core accuses in its motion to strike (Core Motion at 1), Verizon has challenged Core's improper billing of Verizon for other carriers' traffic from the very beginning of this case. In its direct testimony, Verizon explained that, among other billing abuses, Core has been "billing Verizon for the termination of third party-originated . . . traffic that is merely transited by Verizon, for which Verizon is not financially responsible." (VZ St. 1.0 at 8).[2] Verizon's direct testimony pointed out that Core "is using its own switch records to bill Verizon for every single minute of use that Verizon delivers to Core over local interconnection trunks – including transit traffic that should instead be billed to the third party carriers whose customers originated those calls – and at the same time using the Verizon-provided EMI records to generate another set of billing records," which it uses to double bill other carriers for terminating the same calls. (*Id.* at 76). Verizon analyzed data produced by Core to show that "Core did not exclude [minutes of use] originated by third parties from the

[2] Verizon operates a network of super-switches known as "tandems" that connect telephone networks to each other. Verizon's local transit service "provides the ability for other ILECs/CLECs/CMRS providers to connect with one another for the exchange of local traffic and non Feature Group D intraLATA toll traffic without having to establish direct trunk groups between each and every service provider, which would be cost prohibitive for many service providers," so that "instead of establishing direct connections with every provider, ILECs/CLECs/CMRS providers can route calls through Verizon's tandem, and Verizon transits them on to their destined terminating carrier." (VZ St. 1.0 at 34, 45-46). Verizon charges the originating carrier for transit service pursuant to an interconnection agreement, transit agreement or its tandem transit tariffs. Verizon also provides a similar transit service in its switched access tariffs to allow traffic to be exchanged indirectly with interexchange carriers. (*Id.*)

[minutes of use] that Core billed to Verizon" and explained that "Core has not taken steps to remove the substantial number of calls that did not originate with local service customers of Verizon PA or Verizon North from the usage that Core bills to Verizon. As a result of this failure, Core has inflated the volume of traffic it has billed to Verizon." (*Id.* at 73-74). Core is obligated to issue accurate bills to Verizon, which requires Core to make reasonable efforts to exclude transit traffic from the billing. Yet, the evidence shows that Core has instead improperly billed *Verizon* for *other carriers'* traffic – and that, in at least some cases, Core has double-billed the other carrier too.

Core responded to this argument in its rebuttal testimony, attempting to justify its practice of billing Verizon for transit traffic originated by other carriers.[3] Core admits that local transit traffic "comes to Core over local interconnection trunks" (Core St. 3.0 at 45) and concedes that Core bills Verizon for every single minute received over the local interconnection trunks (*id.* at 68), therefore admitting that it has been billing and collecting from Verizon for terminating other carriers' traffic that transits Verizon's tandem switches. Core argued in rebuttal that the interconnection agreements ("ICAs") do not allow Verizon to "dump transited traffic on Core's network," suggesting that Core is the unwilling recipient of other carriers' traffic that it does not want Verizon to send. (*Id.* at 45). Core also argued that it has no responsibility to attempt to quantify this transit traffic and adjust its billings to Verizon accordingly. Instead, Core argued that it is entitled to bill Verizon terminating charges for local traffic originated by other carriers and transited to Core through Verizon's tandem switches unless Verizon somehow guarantees that Core will not only be able to "bill the originating carrier" but also "have a reasonable opportunity to actually collect the charges billed." (*Id.* at 45-46).

[3] Core complains that Verizon's surrebuttal was longer than Core's (Core Motion at 1), but Core's rebuttal testimony was 73 pages long, with 28 exhibits comprising 365 additional pages, and Verizon response was necessary to respond to this lengthy rebuttal testimony.

The pages Core now seeks to strike from Verizon's surrebuttal testimony responded directly to these arguments made in Core's rebuttal testimony. Verizon's surrebuttal debunked Core's overbillings using *Core's own words* in pleadings and other documents filed in the open Commission proceedings against some of the carriers for whose transit traffic Core has billed and continues to bill Verizon. These public documents on file with the Commission demonstrate that:

- While Core accuses Verizon of "dumping" unwanted transit traffic on its network, Verizon's surrebuttal evidence shows that Core has known for years that it is receiving substantial amounts of other carriers' transit traffic through Verizon's tandems and in fact has encouraged traffic to be sent that way. (VZ St. 3.0 45-47).

- While Core attempts to wash its hands of any responsibility to exclude third parties' transit traffic from its billing to Verizon and argues that Verizon should bear the burden to pay for other carriers' traffic, Verizon's surrebuttal evidence shows that Core vehemently opposed the independent ILECs' attempts to cease transiting their traffic to Core through Verizon and affirmatively sought terms that would ensure that traffic continued to be exchanged indirectly with the independent ILECs through Verizon's tandems, arguing that the efficiencies of indirect interconnection benefit Core. (VZ St. 3.0 45-47, 51).

- While Core claims that it is impossible to identify and exclude billing for transit traffic, Verizon's surrebuttal evidence shows that Core has been able to identify with precision the number of minutes coming to it from CLECs, including AT&T and XO, and has been billing these CLECs for years for the very same minutes it has billed and collected from Verizon. (VZ St. 3.0 at 48). And Verizon pointed out that it is also possible to quantify ILEC transit traffic, as the CenturyLink record demonstrates that information exists to quantify the volume of minutes transited through Verizon from that carrier. (VZ St. 3.0 at 47, n. 12).

- While Core argues that the onus is on Verizon to pay the termination charges for other parties' transit traffic (unless Verizon guarantees that Core collects from the originating carrier), Verizon's surrebuttal evidence shows that Core has taken the opposite position in these other cases, arguing that the *originating* carrier, not *Verizon*, is responsible to pay terminating charges on transit traffic, including as recently as October of 2011 in a letter filed with the Commission in the CenturyLink arbitration. (VZ St. 3.0 at 49-50).

Rather than confronting and attempting to explain its inconsistent positions, Core wants to keep the Commission in the dark by striking all this evidence from the record. For the reasons discussed below, Verizon's surrebuttal evidence is clearly admissible under the Commission's

rules and Core's arguments are baseless. Each one of the cases Verizon has quoted – Core v. AT&T, Core v. XO, the Core/CenturyLink Arbitration, the Core/Windstream Arbitration and the Core/RLEC Arbitration – remains open before the Commission and ripe for a decision. It is imperative that the Commission be made aware of the positions taken by Core on the transit issues in the other cases and how they interrelate with the dispute in this case. If Core has some explanation for its inconsistent statements and positions, it is free to provide it. But the answer is not to strike material, relevant evidence from the record in this case and force the Commission to decide this case without a full understanding of the relevant facts.

II. ARGUMENT

The Commission's rules provide for the admission of "[r]elevant and material evidence." 52 Pa. Code § 5.401. Core does not deny that Verizon's surrebuttal testimony and exhibits are *relevant* – it simply attempts to minimize the "evidentiary value" of this relevant and material evidence.

A key point of dispute in this case is Core's admitted practice of billing Verizon for transit traffic originated by third parties, including CLECs and other ILECs. Verizon argues that third party originated transit traffic is not properly billed to Verizon, that Core has the responsibility to issue accurate bills, which includes making reasonable efforts to exclude transit traffic from the billing, and that Core has not done so and should be required to refund overcharges. In response, Core introduced evidence suggesting that Verizon was "dumping" third-party traffic on Core's network, and that Core had no choice but to bill the transit provider. Verizon's challenged surrebuttal evidence is certainly relevant to that claim, and to Core's response, as it shows that:

(1) Core has known for years that it is receiving significant volumes of third party transit traffic through Verizon's tandems;

(2) data exists to quantify the transit traffic for which Core has billed other carriers for terminating and for which Core has also billed Verizon;

(3) Core has argued (when it advantages Core to do so) that the *originating carrier* is responsible to pay the terminating charges on transit traffic not the *transit provider* (Verizon); and

(4) Core has opposed efforts by some originating carriers to stop exchanging traffic indirectly through Verizon's tandems because indirect interconnection benefits Core.

All of this evidence is unquestionably relevant to Core's flimsy attempt to justify its systematic overbillings. Core's arguments against the admission of this testimony and associated exhibits do not withstand scrutiny.

Minimal Evidentiary Value. Because it cannot deny the relevance of the challenged evidence, Core instead concocts a new standard, one that does not appear in the Commission's rules, arguing that the evidence should be excluded because it is of "minimal evidentiary value." (Core Motion at 4). But Core "confuses the admission of evidence with the probative weight that the trier of fact may attach to such evidence once it is admitted."[4] While Core may attempt to minimize the significance of its statements in other Commission dockets, that argument goes to the weight to be accorded to the evidence, not its admissibility.

For example, Core argues that the AT&T and XO cases have "nothing to do" with this case because Core believes Verizon has not shown that it paid for the exact "same traffic" Core also billed to AT&T and XO, for which Core is demanding that those carriers pay in its complaint cases against them. Verizon disagrees,[5] but that is not the point. Not only does Core admit that Verizon discussed the AT&T and XO cases in Verizon's direct testimony (Core

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[4] *Schwartz v. Pennsylvania-American Water Company*, Docket No. C-20031315, 2005 Pa. PUC LEXIS 3 (Opinion and Order entered March 24, 2005).

[5] Verizon disagrees with Core's factual assertion; the record is sufficient to show that Core has double billed Verizon and the CLECs for the same traffic because Core has repeatedly confirmed that it bills Verizon for every minute of traffic carried over the local interconnection trunks. *See, e.g.*, Core St. 2.0 at 68.

Motion at 4), but the purpose of Verizon's discussion of the AT&T and XO cases is to show that Core knew about its receipt of their transit traffic for years, was able to quantify it and bill it to the CLECs, and yet made no effort to remove those minutes from its billings to Verizon, violating its obligation to render accurate bills. It is for the fact-finder to determine what weight to give to this evidence, but there is no basis to exclude it from the record.

Similarly Core claims that its arguments in the CenturyLink and Windstream arbitrations have "nothing to do with Verizon's responsibility for the traffic it sends to Core." (Core Motion at 4). To the contrary, the evidence from these arbitrations has everything to do with Core's erroneous claim that it is entitled to bill Verizon for traffic originated by CenturyLink, Windstream and others. The evidence shows that Core knew these carriers were sending it transit traffic through Verizon's tandems, but that Core actually opposed those carriers' efforts to avoid transiting their traffic and instead interconnect directly with Core. Core is certainly free to argue that indirect interconnection is more efficient in the context of interconnection terms with the independent ILECs. But it is unfair for Core to advocate for indirect interconnection when that arrangement benefits Core and also to argue that Verizon, as the transit provider, must bear the burden of paying to terminate other parties' traffic indirectly exchanged with Core, particularly when Core has taken the position in other proceedings at the Commission that the party originating that traffic, and not the transit provider, is liable to compensate Core. Again, it is for the fact-finder to determine the weight to give to this evidence in the context of Verizon's argument that it should not be paying to terminate this traffic, but there is no basis to exclude it from the record.

Improper Rebuttal. Core next argues that, even if it is relevant, this testimony "should have been raised in Verizon's case-in-chief," and therefore is improper rebuttal prohibited by 52

Pa. Code § 5.243(e). (Core Motion at 4). But this rule is intended only to prohibit the introduction of *new claims* in rebuttal, not to preclude introduction of evidence further supporting claims that were already presented in the direct testimony and responding to Core's attempt to rebut those claims.[6] There is no doubt that Verizon challenged Core's improper practice of billing it for third party transit traffic in its direct testimony. (VZ St. 1.0 at 8, 73-76). Core responded to that testimony in its own rebuttal testimony, and the challenged surrebuttal testimony responds directly to Core's rebuttal arguments – an entirely proper use of surrebuttal testimony.

Core's argument that Verizon should have raised in its case-in-chief these specific positions taken by Core in other litigation assumes that Verizon should have known what Core was going to say in response to Verizon's accusation that it is improperly charging Verizon for transit traffic. According to Core, Verizon was obligated not only to anticipate Core's arguments but also to rebut them in its pre-filed direct testimony, even though the schedule also provided for pre-filed rebuttal and surrebuttal testimony. Imposing such a draconian evidentiary burden on Verizon would be unfair and illogical. Verizon's case-in-chief was satisfied by establishing factually that Core has been billing it for terminating transit traffic (which the testimony established) and arguing that Core is not entitled to do so. Conceivably, Core could have come back and agreed with Verizon (consistent with its position in the other cases that the originating carrier pays). Core might have admitted it made a mistake, in which case the surrebuttal references to its inconsistent statements in other cases would not have been necessary. Core did not take that tack, and as a result it was necessary for Verizon to raise Core's contrary

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[6] "The clear purpose of [rule 5.243(e)] it is to avoid trial by ambush," by forbidding the introduction of "new claims" for the first time on rebuttal. *Popowsky v. UGI Utilities, Inc.*, Docket No. R-00932862, etc., 1994 Pa. PUC LEXIS 137 (PUC 1994); *see also PUC v. Commonwealth Telephone Company*, Docket No. R-00974128, etc., 1997 Pa. PUC LEXIS 70 (PUC 1997).

advocacy in other Commission cases in its surrebuttal testimony to respond to Core's rebuttal arguments.

Core's claim that the surrebuttal testimony does not respond to anything raised in Core's rebuttal testimony is also wrong. Core argued on rebuttal that Verizon is "dump[ing] transited traffic on Core's network," (Core St. 3.0 at 45), strongly implying that Core does not want transit traffic and gains no benefit from this arrangement. Verizon is entitled to put forward evidence refuting that suggestion by showing that Core has been aware for years that other carriers were sending it transit traffic and encouraged them in litigation to continue sending it because the efficiencies of indirect interconnection benefit Core. Core also claimed in rebuttal that transit traffic is "difficult to account for" and to "distinguish," and argued that Core is justified in billing Verizon instead of the originating carrier unless Verizon not only identifies the transit traffic for Core, but also guarantees that Core will collect compensation from the originating carrier. (Core St. 3.0 at 46). Verizon is entitled to refute that argument by putting forward evidence showing that Core has argued in other proceedings before this Commission that Verizon's EMI records are fully sufficient to allow Core to identify and bill the party responsible for originating the transit traffic, that Core and/or the originating carriers are able to quantify the amount of transit traffic (when it suits them to do so for purposes of litigation), and that Core therefore could have devised a way to adjust its billings to Verizon to account for transit traffic, but chose not to do so.

In short, this detail regarding Core's positions and admissions in the other cases was properly raised in surrebuttal testimony rather than in Verizon's direct testimony, and it directly responds to the positions taken in Core's rebuttal testimony.

Unfair Prejudice. Core claims that it would be "unfairly prejudiced" by the admission of the challenged testimony and exhibits, because Core does not have sufficient time to review them and lacks an opportunity to respond. (Core Motion at 6). This argument does not pass the red face test given that Verizon's surrebuttal testimony was served on October 25, 2012 – *more than five weeks before the December 4th hearing date.* If there is any explanation for Core's inconsistent litigation positions in various open dockets before this Commission, Core has ample time to refine that explanation. And any prejudice that may stem from Core getting caught taking inconsistent positions in different cases pending before the same tribunal cannot be deemed "unfair."

Moreover, the content of the documents at issue can hardly be a surprise to Core; they are Core's own pleadings and recommended decisions in cases in which the same Core witnesses are involved and the same issue (transit traffic) was discussed. And, as Core points out, two of the cases were already cited in Verizon's direct and rebuttal testimony.

Verizon was more than fair in raising these documents in its surrebuttal testimony a full five weeks before the hearing and attaching copies for ease of reference. Verizon could instead have cross-examined Core's witnesses about their prior inconsistent pleadings and introduced the documents into the record at the hearing as public documents (see below) without any prior notice. It is highly telling that Core's motion does not even seek leave to respond substantively, nor does it proffer a response as an alternative to striking the testimony. Clearly Core wishes only to bury the evidence of its admissions and contrary statements in these other cases, not respond to it.

Verizon's Surrebuttal Exhibits. In addition to moving to strike several pages of Verizon's testimony, Core seeks to strike Verizon's surrebuttal exhibits 8 through 14. These are

copies of the Core pleadings from the CenturyLink, Windstream, RLEC, AT&T and XO cases that are quoted in the written testimony, as well as the recommended decisions in the CenturyLink and Windstream cases. Verizon attached the documents as exhibits for ease of reference and to counter any argument that the statements were taken of context. But each of these documents is independently admissible as evidence even without offering a copy because these documents are "on file with the Commission." Indeed, they were downloaded from the Commission's electronic dockets. Therefore, pursuant to 52 Pa. Code § 5.406(a), these documents "need not be produced or marked for identification, but may be offered in evidence as a public document by specifying the document or part thereof and where it may be found." Accordingly, there is no basis to strike these exhibits from Verizon's surrebuttal testimony.

III. CONCLUSION

When Core introduced evidence on rebuttal purporting to justify its systematic overbillings, Verizon properly responded to that evidence. A portion of that response included Core's inconsistent statements in other proceedings – a response that is entirely proper, and highly probative. For the foregoing reasons, Core's motion to strike should be denied.

Respectfully submitted,

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Counsel for Verizon Pennsylvania LLC and Verizon North LLC

Dated: November 26, 2012

EXHIBIT A

VERIZON PENNSYLVANIA LLC
AND VERIZON NORTH LLC
STATEMENT NO. 3.0

CORE COMMUNICATIONS, INC.

V.

VERIZON PENNSYLVANIA INC.
AND VERIZON NORTH LLC

DOCKET NOS. C-2011-2253750, C-2011-2253787

VERIZON PENNSYLVANIA LLC
VERIZON NORTH LLC

STATEMENT NO. 3.0

(SURREBUTTAL TESTIMONY)

WITNESSES: Peter J. D'Amico
William E. Munsell
Paul B. Vasington

DATED: October 25, 2012

PUBLIC VERSION

EXCERPTS

A. No. Verizon creates AMA call records and sends Core EMI call records for calls that transit the Verizon network from IXCs, CLECs, CMRS providers, and more recently, some rural ILECs. As Core has noted, the ICAs only require Verizon to provide EMI records on the IXC traffic that transits the Verizon network. In providing additional EMI records for other traffic that transits the Verizon network, Verizon is assisting the terminating carrier in identifying the party responsible to compensate the terminating carrier for each call. Verizon is not responsible for paying Core for any call for which Verizon does not provide an EMI record – each ICA is specific in defining the calls for which Verizon is responsible to compensate Core, and the responsibility to determine which calls are Verizon calls and which calls are not is Core's.

Q. CORE'S WITNESSES CONTEND AT PAGE 45, LINES 10-12 OF THEIR REBUTTAL THAT VERIZON IS "DUMP[ING] TRANSITED TRAFFIC ON CORE'S NETWORK," SUGGESTING THAT CORE DOES NOT WANT TO RECEIVE TRANSIT TRAFFIC (OR "TRANSITED" TRAFFIC, AS CORE CALLS IT) FROM VERIZON. IS THIS CLAIM CONSISTENT WITH CORE'S POSITION IN OTHER COMMISSION PROCEEDINGS?

A. No. Core is a party to over thirty open arbitration dockets before this Commission (dating back to 2006) in which Core is seeking interconnection agreements with most or all of the rural ILECs or "RLECs" operating in Pennsylvania. The most active cases appear to involve CenturyLink and Windstream (two of the largest

RLECs),[10] while the other RLEC cases have been stayed pending a decision in the CenturyLink and Windstream cases.[11]

In arbitrating with the RLECs, Core has uniformly *opposed* interconnection terms that would limit the volume of traffic transited from the RLECs to Core through Verizon's tandems, and has affirmatively sought terms that would ensure that traffic continues to be exchanged *indirectly* with the RLECs, *through* Verizon's tandems, to minimize Core's own costs of transport and interconnection in comparison to the interconnection conditions advocated by these parties. According to Core, "[t]here is no technical or engineering reason for the parties to impose restrictions on their own use of a third party tandem provider for delivery of transit interconnection traffic," and "using a third party tandem can be just as efficient – if not more so – than establishing new, direct interconnection facilities." *See* Windstream Arbitration, Core's January 29, 2008 "Exceptions of Core Communications, Inc." at 19 (attached as **Exhibit 8-SR**). Core challenged the ALJ's recommended decision in part because it would allow Windstream to "refuse to send traffic to Core via a third party transit provider." *Id.* at 21. As the ALJ described in the Windstream Arbitration, "Core proposes that it be permitted to indirectly interconnect with Windstream without a volume limitation that would

[10] *Petition of Core Communications, Inc. for Arbitration of Interconnection Rates, Terms and Conditions Pursuant to 47 U.S.C. § 252 with the United Telephone Company of Pennsylvania d/b/a Sprint (now d/b/a CenturyLink)*, Docket No. A-310922F7002 ("CenturyLink Arbitration"); *Petition of Core Communications, Inc. for Arbitration of Interconnection Rates, Terms and Conditions With Windstream Pennsylvania, Inc. Pursuant to Section 252(b)*, Docket No. A-310922F7004 ("Windstream Arbitration").

[11] *Petition of Core Communications, Inc. for Arbitration of Interconnection Rates, Terms and Conditions Pursuant to 47 U.S.C. § 252(b) With Commonwealth Telephone Company, et al.*, Docket Nos. A-310922F7003, F005-F007, F009-F016, F018, F020-F026, F028-F0034, F036 and F038 (Order Staying Further Proceedings, March 17, 2008) ("Consolidated RLEC Arbitration").

necessitate direct interconnection. With an indirect connection, traffic between the two carriers would be routed over the facilities of a third carrier, usually Verizon," and "Core objects to Windstream's proposal to limit the use of indirect interconnection and require direct connection between Core and Windstream once the indirect traffic volume exceeds one DS1 of traffic per month." *See* Windstream Arbitration, December 18, 2007 Recommended Decision ("*Windstream RD*") at 18-19 (**Exhibit 9-SR**).

The ALJ similarly observed in the CenturyLink Arbitration that "Core objects to [CenturyLink] placing a limit on the amount of traffic after which the parties must establish a direct interconnection." *See* CenturyLink Arbitration, October 19, 2007 Recommended Decision at 34 (**Exhibit 10-SR**). Although in 2007, the ALJ agreed with both Windstream and CenturyLink on the terms relating to interconnection and limits on the indirect exchange of traffic, the Commission has never issued a final decision in these cases. As a result, by default, Core has been able to continue to exchange traffic with these carriers indirectly, effectively keeping their traffic flowing to Core through Verizon's tandems.

Not only has Core's advocacy before this Commission encouraged the transiting of RLEC-originated traffic through Verizon's tandem switches (over the objections of the RLECs seeking direct connection with Core), it is evident that Core has known for years that it was receiving RLEC-originated transit traffic from Verizon.[12] Core should not now be heard to accuse Verizon of "dumping" this

[12] The record in the CenturyLink case indicates that Core was informed at least by 2007 that CenturyLink was transiting substantial amounts of traffic through Verizon's tandems destined to Core. According to the recommended decision, issued in 2007, "[CenturyLink] indicates that the traffic between

transit traffic on Core, to feign surprise that RLEC-originated traffic has been sent to Core over the local interconnection trunks, or to claim that Verizon is financially responsible for the termination of this RLEC traffic.

Q. HAS CORE ALSO ADMITTED IN OTHER COMMISSION PROCEEDINGS THAT IT IS AWARE THAT CLEC TRAFFIC IS COMING TO IT INDIRECTLY BY BEING TRANSITED THROUGH VERIZON'S TANDEMS?

A. Yes. In pleadings in the XO and AT&T cases, where Core is seeking compensation for traffic originated by those carriers and transited through Verizon's tandems, Core has admitted that it has been aware of their traffic coming to it from Verizon for at least five years, and that Core is able to quantify how much traffic those carriers are sending to it.

According to Core's main brief in the XO case, Core discovered as long ago as 2007 that XO was sending "substantial volumes of traffic to Core indirectly, via the tandem switch network of Verizon," and Core has been billing XO for that traffic since 2007. *See* February 1, 2012 "Main Brief of Core Communications, Inc." in *Core Communications, Inc. v. XO Communications Services, Inc.*, PA PUC Docket No. C-2009-2133609 ("*XO Case*") at 6, 9, 10 (**Exhibit 11-SR**).

Core also claims that in 2007, it discovered that since at least 2004, AT&T had been sending it "substantial volumes" of traffic through Verizon tandems. *See* December 14, 2010 "Main Brief of Core Communications, Inc." in *Core Communications, Inc. v. AT&T Pennsylvania, L.L.C. and Core Communications,*

[CenturyLink] and Core is extremely heavy and equal to several dozen DS1's worth of traffic," all of which is transited through Verizon. CenturyLink Arbitration, RD at 35 (Exhibit 10-SR).

Inc. v. TCG Pittsburgh, Inc., PA PUC Docket Nos. C-2009-2108186 and C-2009-2108239 ("*AT&T Case*") at 10 (**Exhibit 12-SR**). Core states that it can precisely quantify that traffic and has been billing AT&T for it since January of 2008 and back-billed to 2004. *Id.*

Q. IN ITS LITIGATION WITH THE RLECS AND CLECS, HAS CORE CONTENDED THAT *VERIZON* SHOULD BE RESPONSIBLE FOR PAYING TERMINATING CHARGES ON TRAFFIC TRANSITED THROUGH VERIZON'S TANDEMS TO CORE, OR THAT THE *ORIGINATING PARTY* MUST PAY?

A. Core has consistently argued that the *originating party*, and not *Verizon*, must pay. In its main brief in the XO case, Core stated that "[p]ursuant to the law, the originating carrier, in this case XO. . . is required to compensate the terminating carriers, in this case Core, for its termination of traffic originated by XO's end-users" and transited to Core through Verizon's tandems. *See* Core Main Br., *XO Case* at 1 (Exhibit 11-SR). Likewise in its main brief in the AT&T case, Core contends that AT&T "is required to compensate Core for its termination of traffic originated by AT&T's end-user consumers. AT&T has refused to do this and that is why Core was forced to file this complaint." Core Main Br., *AT&T Case* at 1 (Exhibit 12-SR).

In the Windstream Arbitration, "Core propose[d] that the party originating Section 251(b)(5) traffic compensate the terminating party for the transport and termination of the traffic to its customer." Windstream Arbitration RD at 27 (Exhibit 9-SR). Core's Initial Offer filed on November 28, 2007 in the Consolidated

RLEC Arbitration proposed that the parties would exchange "indirect traffic" to the extent that "each party is interconnected at a tandem which RURAL ILEC's end office subtends," that "[t]he Parties may send each other Indirect Traffic and that "[t]he Party originating Section 251(b)(5) Traffic shall compensate the terminating party for the transport and termination of such traffic to its Customer in accordance with Section 251(b)(5) of the Act at the equal and symmetrical rates stated in the Pricing Attachment." (**Exhibit 13-SR**)

Up to today, Core continues to argue that the *RLECs*, and not Verizon, are responsible for paying terminating charges on traffic they send to Core transited through Verizon. On October 31, 2011, Core told the Commission that "CenturyLink's end users . . . avail themselves of services provided by Core's wholesale customers," and that "[u]nder the current calling-party-network-pays ("CPNP") intercarrier compensation regime, as reflected in the FCC's interconnection rules" CenturyLink, as "the originating carrier" must pay Core to terminate this traffic. CenturyLink Arbitration, Core's October 31, 2011 Letter at 2. (**Exhibit 14-SR**).

Q. CORE HAS ARGUED IN THE LITIGATION AGAINST THE CLECS AND RLECS THAT IT HAS "BEEN FORCED TO INCUR UNCOMPENSATED COSTS" TO TERMINATE THEIR TRAFFIC (CORE EXCEPTIONS, *XO CASE*, AT 1). WHAT DOES THE RECORD IN THIS CASE REVEAL ABOUT THOSE CLAIMS?

A. It has become evident through the development of the record in this case that Core has been collecting payments for terminating the traffic originated by CenturyLink,

Windstream, XO, AT&T and others all along, but it has been collecting from the wrong party – Verizon. If Core prevails in both those proceedings and this one, the result would be permitting Core to collect twice for the same third party-originated traffic – once from the third party that actually originated it, and once from Verizon, because Core billed all local minutes of use to Verizon, without regard to whether the traffic was originated by third parties and merely transited by Verizon.

In the other litigation dockets, the RLECs and CLECs advocate for a "bill and keep" arrangement for exchanging traffic with Core, and raise other arguments contending that they should not have to pay Core for terminating ISP-bound traffic. By contrast, Verizon does not dispute its obligation to pay for Verizon-originated traffic that is properly compensable under the ICA, at the applicable rate (which is currently $0.0007). But regardless of how the Commission resolves the other carriers' arguments about their obligation to pay Core, it does not follow that Core is – or has ever been – entitled to bill Verizon for terminating traffic originated by other carriers. Yet that is exactly what Core concedes it has done, since it admits that it has billed Verizon for every minute of traffic received over the local interconnection trunks. Core should be required to refund those overcharges and cease billing Verizon for terminating traffic originated by other carriers.

Q. CORE'S WITNESSES CONTEND THAT VERIZON IS OBLIGATED TO PAY THE TERMINATING CHARGES FOR TRAFFIC ORIGINATED BY OTHER CARRIERS AND TRANSITED TO CORE THROUGH VERIZON'S TANDEM UNLESS VERIZON "SUPPL[IES] CORE WITH SUFFICIENT INFORMATION SO THAT CORE MAY BILL THE